
(1982) 10 P&H CK 0046

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal From Order No. 66 of 1973

M/s Segat Brothers and
others

APPELLANT

Vs

Food Corporation of
India and others

RESPONDENT

Date of Decision: Oct. 29, 1982

Acts Referred:

- Arbitration Act, 1940 - Section 34

Hon'ble Judges: C.S. Tiwana, J

Bench: Single Bench

Advocate: D.V. Sehgal with Mr. B.R. Mahajan, for the Appellant;

Final Decision: Allowed

Judgement

C.S. Tiwana, J.

This is an appeal on behalf of the plaintiff against the order dated January 31, 1973 of the Sub Judge, Amritsar (Class not specified), staying the suit for rendition of accounts in view of the provisions contained in section 34 of the Arbitration Act. The point for determination is whether obtaining for an adjournment for the filing of a written statement would be tantamount to taking any step in the proceedings.

2. Messrs Segat Brothers, Buildings and Contractors, had instituted the suit against the Food Corporation of India and also the Executive Engineer, Food Corporation of India, for the rendition of the accounts. There was an arbitration clause in the agreement between the parties. After the suit was filed on June 20, 1970, the Government Pleader made his appearance on August 21, 1970, and then the case was adjourned for the filing of the written statement. In then came up before the Court on August 29, 1970, when it was represented by the Government pleader that the written statement not being ready sometime should be granted. Thereafter the case was adjourned to October 3, 1970, when an application for the stay of the suit was filed The trial court relied upon Punjab

State v. Moji Ram AIR 1957 Pb. 223. It was such a case in which the Government pleader had voluntarily made his appearance without any authority from the Government. He asked for an adjournment on the assumption that in due course of time he would receive the instruction from the Government. It was held that the Government was defendant and that defendant never took part in the proceedings. The circumstances in the present case are altogether different Furthermore it has been held in The State of Uttar Pradesh v. M/s Janki Saran Kailash Chandra and another AIR 1913 S.C. 2071, that an application by District Government Pleader for an adjournment for filing a written statement would debar the defendant from taking a plea for the stay of suit. It was further held that the plea that the application for adjournment was not made on instructions or was unauthorised and that he appeared as a mere volunteer cannot be made available to the defendant State In Union of India v. M/s Hira Lal Sud and others (1978) 80 P.L.R. 239, this Court also took this view that that the oral request seeking adjournment to file a written statement is at good as a written request. Thus the order of the trial court staying the suit is held to be invalid. The appeal is allowed. The order for the stay of the proceedings is set aside. The case shall now go back for further proceedings to the trial Court and the parties shall make their appearance before the said Court on November 29, 1932. There will be no order as to costs in this appeal.