

Queens College, Kanetra and Another Vs The Collector, Varanasi and Others

Court: Allahabad High Court

Date of Decision: Feb. 15, 1974

Acts Referred: Arbitration Act, 1940 " Section 2, 34

Citation: AIR 1974 All 431

Hon'ble Judges: G.C. Mathur, J

Bench: Single Bench

Advocate: R.M. Singh, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G.C. Mathur, J.

The applicants filed a suit against the opposite parties in the court of the Civil Judge, Varanasi. On the application of the plaintiffs, an ex parte ad interim injunction was issued against the defendants. When the defendants appeared, they moved an application u/s 34 of

the Arbitration Act for staying the hearing of the suit as there was a binding agreement between the parties to. refer the dispute to arbitration. This

application was allowed on January 14, 1972. Thereafter the defendants moved an application that the ex parte ad interim injunction be vacated.

The plaintiffs raised an objection that, after the stay of the hearing of the suit u/s 34 of the Arbitration Act. the court had no jurisdiction to hear the

injunction matter. By its order dated May 6, 1972, the trial Court held that the injunction matter could be disposed of by it and fixed May 20,

1972, for its disposal. Against this order, the plaintiffs filed a revision before the District Judge, Varanasi. The District Judge rejected the revision

summarily, holding that the order of the trial court did not amount to a case decided and that the stay of a suit did not divest the trial court of its

jurisdiction to dispose of interlocutory matters. The plaintiffs have now come up to this Court in revision.

2. The trial court has relied on certain decisions based on the provisions of Section 41 of the Arbitration Act in coming to the conclusion that it has

jurisdiction to dispose of interlocutory matters, even though the hearing of the suit is stayed u/s 34. Some decided cases, in which Section 41 has

been interpreted, were cited before me also. Section 41 reads thus:--

41. Procedure and powers of Court -- Subject to the provisions of this Act and of rules made thereunder-

(a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals, under this Act, and

(b) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the

matters set out in the second Schedule as it has for the purpose of, and in relation to, any proceedings before- the Court :

Provided that nothing in clause shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with

respect to any of such matters.

In the second Schedule, which enumerates the powers of Court, Clause (4) relates to interim injunctions and the appointment of Receivers. Thus,

u/s 41, the Court can grant injunctions and appoint Receivers. But I think that Section 41 has no application to the present case. There are two

types of cases in which the provisions of the Arbitration Act can be invoked. The first type is pending suits in which applications under certain

provisions of the Arbitration Act can be made. Examples of such applications are applications u/s 21 for referring any matter in dispute in a suit to

arbitration and applications u/s 34 for staying the hearing of a suit. The second class of cases is where no regular suit has been filed but

proceedings are initiated in a court by an application made under the Arbitration Act. Instances of such cases are applications u/s 14 for filing an

award in court and applications u/s 20 for filing an arbitration agreement in court. It is to this second class of cases that Section 41 applies, for, in

the first class of cases, the court hearing a regular suit already has power under the CPC to grant injunctions and to appoint receivers. The

definition of the word "court" in Section 2(c) also points to the same conclusion. "Court" is defined to mean a civil court having jurisdiction to

decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit. The definition indicates that the

word "court" here does not mean the court before which a suit has actually been filed but it means a court which has jurisdiction to entertain a suit

in respect of the subject-matter of the reference.

3. In the present case, since a regular suit had been filed before the trial court, it had, under the Code of Civil Procedure, power to consider and

dispose of applications for injunctions and for vacating, injunctions. There is no provision in the Arbitration Act which, in any way, prevents the

court from disposing of such matters. A stay u/s 34 of the Arbitration Act does not affect the powers of the court which it possesses under the

Code.

4. It was then contended by learned counsel for the applicants that if, before the hearing of the suit was stayed u/s 34, the defendants had sought to

get the ex parte injunction vacated, they would have become disentitled to the stay, as such action would have been a step in the suit and they,

having obtained a stay of the suit, are not now entitled to take the same step for vacating the injunction. I am unable to accept the contention that

taking steps to set an ex parte injunction vacated amounts to taking such a step in the suit as would disentitle the defendants from applying for stay

u/s 34. u/s 34, an application may be made by the defendant ""at any time before filing a written statement or taking any other steps in the

proceedings"". The true test for determining whether an act is ""a step in the proceedings"" is not so much the question as to whether it is an

application but whether the act displays an unequivocal intention to proceed with the suit and to give up the right to have the matter disposed of by

arbitration. There must be submission to the jurisdiction of the court for adjudication of the claim in the suit itself. There can be no doubt that the

act of the defendant to get an ex parte order of injunction vacated does not indicate an unequivocal intention to proceed with the suit and to give up

the right to have the matter disposed of by arbitration. The adjudication of the injunction matter does not amount to adjudication of the claim in the

suit itself. I am, therefore, of opinion that the action of a defendant in a suit to have an injunction matter decided finally cannot amount to ""a step in

the proceedings"" so as to disentitle him from successfully maintaining an application u/s 34 of the Arbitration Act. In this view, I am supported by a

decision of a Division Bench of the Madhya Pradesh High Court in Sansarchand Deshraj Vs. State of M.P. and Others, and by the decision of a

learned Single Judge of the Punjab High Court in Charan Das and Sons Vs. Harbhajan Singh-Hardit Singh, .

5. Thus, in the present case, if the defendants had, before obtaining the stay u/s 34, moved to have the ex parte ad interim injunction vacated, their

action would not have disentitled them from making an application u/s 34 and from obtaining the stay. That being so, there could be no objection to

their doing so after they had obtained the stay. The Court, having jurisdiction under the CPC to consider the matter, was fully, justified in holding

that the question could be gone into by it. I have no doubt that the trial court had jurisdiction to hear and decide the injunction matter.

6. The revision is without force and is hereby dismissed with costs. The stay order is vacated.