
(1977) 09 AHC CK 0021

Allahabad High Court

Case No: Civil Miscellaneous Application No. 4809 of 1977

Vineet Kumar

APPELLANT

Vs

Smt. Bhagwan Dei

RESPONDENT

Date of Decision: Sept. 2, 1977

Acts Referred:

- Arbitration Act, 1940 - Section 30, 32, 33
- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 9, 12, 122, 125, 2(18)
- Specific Relief Act, 1963 - Section 14(2), 43

Citation: AIR 1978 All 312

Hon'ble Judges: M.P. Mehrotra, J

Bench: Single Bench

Advocate: H.S. Nigam, for the Appellant; H.S. Joshi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.P. Mehrotra, J.

This application is palpably based on a false allegation. It has been stated in para 14 of the affidavit in support of the review application:

"That against the order of the District Judge, Rampur, the applicant filed the Civil Revision No. 455/76 in this Hon"ble Court which was decided on merits without the hearing of the counsel for the applicant Sri H.S. Nigam. The case was not actually argued by Sri H, S. Nigam as it appears from the judgment and order sheet .Only the rulings mentioned in the judgment of the lower court below which were cited, have been mentioned in the court's judgment at the High Court."

A reference to the judgment and order-sheet itself will show that this allegation is absolutely incorrect. The order-sheet dated 4th April, 1977 has clearly mentioned that Shri H.S. Nigam, for the applicant, and Shri H.S. Joshi for the opposite party

were heard in part and then it was directed to be listed as a part-heard case on the next date. The order sheet dated 6th April, 1977 again clearly mentions that Shri H.S. Nigam for the applicant and Shri H.S. Joshi for the opposite party were further heard and, thereafter the revision was dismissed but no order as to costs was made. A reading of the judgment will also show that I have referred to Shri H.S. Nigam's contentions and I have clearly stated therein that the learned counsel for the parties were heard. In the face of these facts, the allegation made in the new application supported by an affidavit was wholly uncalled for and it is particularly more regrettable that the applicant is said to belong to the legal profession. However, as regret has been expressed by the applicant, it is not necessary to pursue this matter.

2. The office has reported that there is a delay of 12 days in moving this application for review. In my opinion, I should condone the delay in the facts of the case and deal with the review petition on merit.

3. The review is sought on the ground that an amendment in Section 32 of the Arbitration Act which had been effected by Section 43 of the Specific Relief Act, 1963, had not been brought to my notice. It is further contended that attention was not drawn to Section 14(2) of the new Specific Relief Act. It is, also contended that a reported decision in AIR 1074 All 37, Kedar Nath v. Ambika Pd. which is said to have a bearing on the controversy was not brought to my notice. Lastly, reliance is placed on Section 12 C.P.C. to contend that a regular suit was not maintainable after the decision in Misc. Case No. 93 of 1975.

4. It is true that when the case was originally argued the amendment in Section 32 of the Arbitration Act effected by Section 43 of the Specific Relief Act had not been brought to my notice, However, I do not think that it would have made any difference at all to my verdict if the said amendment had been brought to my notice at the original hearing of the revision. As will be clear from a reference to the Law Commission's Report dealing with this amendment, it was done only with a view to resolve the difference of opinion which had crystallised between the Madras and the Patna High Courts on the one side and the Nagpur and the Calcutta High Courts on the other on the question whether a separate suit would be maintainable to enforce the award. The Madras and Patna High Courts took the view that such a separate suit was not maintainable but the Nagpur and Calcutta High Courts took the view that the bar contained in the unamended Section 32 of the Arbitration Act related only to a challenge to the award and not to the enforceability of the award. They, therefore, held that a separate suit to enforce the award was maintainable. In view of this difference, the Commission recommended that the word "enforced" should also be inserted in Section 32 of the Arbitration Act and that was done by Section 43 of the Specific Relief Act which inserted the word "enforced" after the words "nor shall any arbitration agreement or award be" already occurring in Section 32 of the Arbitration Act. I have already reproduced Section 32 in my judgment In the revision

but in view of the fact that Section 43 of the Specific Relief Act 1963 had not been brought to my notice at the said stage, the reproduction was of the old unamended section and in view of Section 43 of the Specific Relief Act the word "enforced" should have also found a place in the said section. However, as I have stated above, that expression was put merely to clarify that no suit would lie for enforcing the award. This was done to negative the effect of the views which the Nagpur and Calcutta High Courts had taken.

5. Briefly, I decided the controversy at the original stage and held in favour of the maintainability of the suit on the ground that fraud had been alleged by the plaintiff in the suit in respect of the proceedings which were said to have been initiated by her by allegedly moving the application u/s 14 of the Arbitration Act. The plaintiff denied that she had really moved any such application u/s 14 and the whole thing was allegedly conceived in fraud. I took the view that such an allegation, and a suit based thereon did not attract the provisions of Sections 32 and 33 of the Arbitration Act. Secondly, I took the view that after an award had been made the rule of the court and a decree had been passed thereon, then a suit could be maintained to question the decree on the ground of fraud and such a suit could not be barred by the provisions of Sections 32 and 33 of the Arbitration Act. In my opinion, the fact that the amendment effected by Section 43 of the new Specific Relief Act in Section 42 of the Arbitration Act had not been brought to my notice does not affect the drift or tenor or the, basis of my earlier judgment.

6. Section 14(2) of the Specific Relief Act lays down as under:

"save as provided by the Arbitration Act. 1940, no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply), and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit."

It should be seen that Sub-section (2) is practically the last para of Section 21 of the old Specific Relief Act with certain words added to the new Sub-section. But, in my opinion, this sub-section has nothing to do with the controversy at hand, namely, whether the suit of the plaintiff is maintainable in law.

7. So far as the case reported in AIR 1974 All 37 is concerned, that, I apprehend, has no bearing on the controversy at hand. The short point before the Bench was whether an award which has not been made a rule of the court can be set up as a defence in suits and the Bench held that it can be set up in defence and that Section 32 did not bar the setting up of an award in defence in a suit. I do not think that the Division Bench even remotely was concerned with the controversy which has been considered by me in the revision.

8. So far as the last contention is concerned, I do not think that Section 12 C. P. C, affects the maintainability of the suit. The said section can come into play only when a plaintiff is precluded by rules from instituting a further suit in respect of a particular cause of action in any court to which this Code applies. I think this provision refers to such situations as, for example, Order XXII Rule 9 C. P. C. wherein it is laid down:

"Where a suit abates or is dismissed under this order, no fresh suit shall be brought on the same cause of action."

It is to such situation that Section 12 C. P.C. is attracted. It has to be seen that in Section 12 the expression "rules" has reference to the rules and forms contained in the First Schedule or made u/s 122 or Section 125 vide the definition of rules in Section 2(18) C. P. C. In the instant case, therefore, this section has no reference to a situation where a suit is contended to be not maintainable on account of some provisions contained in independent statutes. The bar, if any, to the maintainability of the suits is due not on account of Section 12 C. P. C. but on account of the bar contained in the independent statutes. Therefore, if the suit in the instant case were to be held to be barred, that could only be on account of the provisions contained in Sections 30, 32 or 33 of the Indian Arbitration Act and not on the ground of Section 12 C. P.C.

9. I, therefore, do not find any merit in this review petition and it is accordingly dismissed.