

(1979) 02 KL CK 0026

High Court Of Kerala

Case No: M.F.A. 333 of 1978

Balakrishna

APPELLANT

Vs

B. Narayana Kodamannaya

RESPONDENT

Date of Decision: Feb. 20, 1979

Acts Referred:

- Arbitration Act, 1940 - Section 34, 39
- Kerala Civil Courts Act, 1957 - Section 12, 13, 13(1)

Hon'ble Judges: V. Balakrishna Eradi, J; K.K. Narendran, J

Bench: Division Bench

Advocate: T.P. Kelu Nambiar, P.G. Rajagopalan, A. Unnikrishnan and K.R. Ramesh, for the Appellant; K.P.V.B. Ejman, for the Respondent

Final Decision: Dismissed

Judgement

Balakrishna Eradi, J.

The Appellant before us is the Plaintiff in O.S. No. 23 of 1978 on the file of the Subordinate Judge's Court, Kasaragod. The appeal is filed against the order passed by the learned Subordinate Judge allowing I.A. No. 268 of 1978 filed by the Defendants u/s 34 of the Arbitration Act for stay of the proceedings in the suit on the ground that in respect of the subject matter of the suit there is a valid arbitration agreement entered into between the parties and that the Defendants were at the time when the suit was instituted and still remained ready and willing to do all things necessary for the proper conduct of the arbitration. The lower court found that Clause 20 of the deed of partnership entered into between the Plaintiff and the Defendants contained an arbitration clause and that the issues ought to be litigated in the court in the suit falls within the scope of the said arbitration clause. In that view the court below granted the prayer of the Defendants for a stay of the suit u/s 34 of the Arbitration Act. In this appeal preferred by the Plaintiff u/s 39 of the Arbitration Act the legality and correctness of the aforesaid order passed by the lower court are under challenge.

2. At the outset the learned Advocate appearing for the Defendants Respondents raised a preliminary objection that the appeal is not maintainable in this Court and that the proper forum to which the appeal from the order of the court below ought to have been preferred is the District Court, Tellicherry. Section 39 of the Arbitration Act, which inter alia provides for filing an appeal against an order staying or refusing to stay legal proceedings u/s 34 of the Act, states that the appeal shall lie "to the court authorised by law to hear appeals from original decrees of the court passing the order". The question, therefore, is which is the court authorised by law to hear appeals from original decrees of the Subordinate Judge's Court, Kasaragod. For an answer to this question we have to turn to Sections 12 and 13 of the Kerala Civil Courts Act, 1957 (Act I of 1957). Section 12 reads:

Appeals from decrees and orders of District Court or Subordinate Judge's Court.--Save as provided in Section 13, regular and special appeals shall, when such appeals are allowed by law, lie from the decrees or orders of a District Court or a Subordinate Judge's Court to the High Court.

We shall also extract Section 13:

Appellate jurisdiction of District Court and Subordinate Judge's Court.--(1) Appeals from the decrees and orders of a Munsiff's Court and where the amount or value of the subject matter of the suits does not exceed ten thousand rupees from the original decrees and orders of a Subordinate Judge's Court shall, when such appeals are allowed by law, lie to the District Court:

Provided that whenever a Subordinate Judge's Court is established in any district at a place other than the place where the District Court is stationed, the High Court may, with the approval of the Government, direct that appeals from the decrees or orders of the Munsiff's Courts within the local limits of the jurisdiction of such Subordinate Judge's Court be preferred in such Subordinate Judge's Court:

Provided further that the District Court may remove to itself from time to time appeals so preferred and dispose of them itself or may, subject to the orders of the High Court, refer any appeals from the decrees and orders of Munsiff's Courts preferred in the District Court to any Subordinate Judge's Court within the district.

(2) The provisions of Sub-section (1) shall apply to original decrees and order of Subordinate Judge's Court passed after the commencement of the Kerala Civil Courts (Amendment) Act, 1959, notwithstanding the fact that the suits in respect of which such decrees and orders have been passed were instituted before such commencement.

The relative scopes of these two sections came up for examination by a Full Bench of this Court in *Palakattumala Devaswom v. Pylee* 1969 KLT 275. Raman Nayar, J. speaking for the Full Bench stated the principle thus after extracting Sections 12 and 13:

This means that appeals from the decrees or orders of a Subordinate Judge's Court lie (when such appeals are allowed by law) to the High Court excepting that where the amount or value of the subject matter of the suit does not exceed Rs. 10,000 the appeal shall lie to the District Court. For Section 13 to apply so as to make the forum of appeal the District Court instead of the High Court the appeal must be from a decree or order in a suit, for, it is only when the amount or value of the subject matter of the suit does not exceed Rs. 10,000 that it comes into play. When the appeal is from a decree or order in a proceeding which is not a suit, Section 12 alone applies and, irrespective of the value of the subject-matter--in most such proceedings the subject-matter would have no money value and the Suits Valuation Act would not apply to give it one--the appeal would lie to the High Court.

In the case before us the order appealed against is not an order passed in a suit, though it undoubtedly concerns the suit and vitally affects its progress. It is implicit in the nature of the proceeding u/s 34 of the Act that the person moving the court under that section does not participate in the suit and thereby submit himself to the court's jurisdiction to try the suit but merely moves the court for a stay of the proceedings by making a motion under the special provision contained in Section 34. Such a proceeding is not a proceeding in the suit, but an independent original motion before the court where the suit has been instituted by the opposite party. Hence the appeal in the present case is not an appeal from an order passed in the suit. In such a case, as pointed out by the Full Bench, the appeal can lie only to the High Court and not to the District Court. We accordingly overrule the preliminary objection.

When this appeal came up before us today, in the light of the conclusions reached by us overruling the preliminary objection raised by the Respondents, the learned Advocate appearing for the Appellant submitted that information has been received by him that the subject matter of this appeal has been settled out of court between the parties and that hence the appeal need not be pressed. In the light of the aforesaid submission made by the learned Advocate appearing for the Appellant we dismiss this appeal as not pressed on the ground of its having been settled out of court. The parties will bear their respective costs.