

Balakrishna Vs B. Narayana Kodamannaya**M.F.A. 333 of 1978**

Court: High Court Of Kerala**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.