

(2000) 11 CAL CK 0006

Calcutta High Court

Case No: C.O. No. 2401 of 2000

Saibal Kundu

APPELLANT

Vs

Archana Talukdar

RESPONDENT

Date of Decision: Nov. 29, 2000

Acts Referred:

- Arbitration Act, 1940 - Section 34
- Constitution of India, 1950 - Article 227

Citation: (2001) 1 ILR (Cal) 193

Hon'ble Judges: Subhro Kamal Mukherjee, J

Bench: Single Bench

Advocate: Ram Chandra Banerjee, for the Appellant; Debashis Roy, for Opposite Partie
Nos. 1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

Subhro Kamal Mukherjee, J.

This is an application under Article 227 of the Constitution of India challenging an order dated June 19, 2000, passed by the learned District Judge at Barasat, District 24 Parganas (North) in Civil Revision case No. 30 of 2000 affirming the order No. 29 dated February 3, 2000, passed by the learned Civil Judge (Junior Division), Third court at Sealdah in Title Suit No. 426 of 1993.

2. The Plaintiff/Petitioner instituted Title Suit No. 426 of 1993, inter alia, for dissolution of partnership and for settlement of accounts. In the said suit the Defendant/ opposite party appeared and, thereafter, filed an application u/s 34 of the Arbitration Act, 1940 praying for stay of the suit contending, inter alia, that one of the terms mentioned in the deed of partnership contained Arbitration Clause. The said Clause 14 of the deed of partnership runs as under:

That in case of any dispute between the parties with regard to the interpretation of this deed or any other matter relating to the firms affairs, the same shall be referred

to an Arbitrator mutually agreed upon between the parties in accordance with the provisions of the Indian Arbitration Act 1940 or may be modified from time to time or for the time being in force.

3. The learned Munsif after a contested hearing by Order No. 20 dated May 12, 1997, inter alia, passed an order granting stay of the suit.

4. In or about August 5, 1997, the Petitioner herein filed an application in the said suit praying for appointment of an arbitrator for adjudication of the dispute between the parties on the allegation that parties have failed to appoint an arbitrator by common consent.

5. The learned Civil Judge (Junior Division), Third court at Sealdah by Order No. 29 dated February 3, 2000, rejected the said application. The Plaintiff/ Petitioner filed on application u/s 115 of the CPC before the learned District Judge at Barasat, District 24 Parganas (North). The learned District Judge dismissed the revisional application and affirmed the said Order No. 29 dated February 3, 2000.

6. Being aggrieved the Plaintiff/Petitioner has come up with the present application under Article 227 of the Constitution of India.

7. I have heard Shri Ram Chandra Banerjee, Advocate, for the Petitioner, and Shri Debashis Roy, Advocate, for the opposite party. In my opinion, courts below were justified in rejecting the application for appointment of an arbitrator in a suit which has been stayed earlier u/s 34 of the Arbitration Act, 1940. That u/s 34 of the Arbitration Act, 1940 court merely passes an order staying the proceedings of the suit so that the contesting parties may comply with the provisions contained in the agreement for arbitration and the court does not made a reference to an Arbitrator. In proceedings u/s 34 of the Arbitration Act, 1940, all that the court is empowered to do is to stay the suit and it will then be for the parties to make a reference out of court or both or either one of them may move appropriate application before the appropriate forum for making reference. The parties will have to seek proper relief under relevant provisions as may be applicable for obtaining an order of reference to the Arbitrator. It is only u/s 21 of the Arbitration Act, 1940. If an application is made by all the interested parties for a reference being made, the court may make a reference under that Section and even supersedes the reference, if that be necessary.

8. Moreover, the Arbitration and Conciliation Act, 1996 came into force on January 25, 1996 and the said Act contains specific provisions for appointment of arbitrators and as such the application dated August 5, 1997 filed by the Plaintiff/Petitioner in the said suit for reference and appointment of arbitrator is misconceived one.

9. In view of the such settled position in law, I dismiss the revisional application and hold that courts below were justified in not entertaining the prayer of the Plaintiff/Petitioner for reference of the dispute to the Arbitrator.

10. There will be no order as to cost.