

Deo Kumar Saraf Vs Mangal Keshav Securities Limited

Court: Calcutta High Court

Date of Decision: April 9, 2010

Acts Referred: Arbitration and Conciliation Act, 1996 â€” Section 11, 2, 34, 42, 43

Citation: (2010) 2 CALLT 575

Hon'ble Judges: Prasenjit Mandal, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: S.P. Roy Chowdhury, Mr. Hiranmoy Bhattacharyya and Mr. Alokesh Dalai, for the Appellant; Abhrajit Mitra, Anirban Roy and Ms. Nasreen Kauser, for the Respondent

Judgement

The Judgment of the Court was as follows:

1. This First Miscellaneous Appeal is at the instance of a respondent in a proceeding u/s 9 of the Arbitration and Conciliation Act, 1996

(hereinafter referred to as the Act) and is directed against order No. 1 dated 22nd February, 2010 passed by the learned District Judge, North

24-Parganas at Barasat, in Misc. Case No. 38 of 2010 thereby issuing a notice to show cause upon the appellant as to why the prayer of

temporary injunction prayed for by the respondent should not be granted and at the same time, also passing an ad interim order of injunction

restraining the Appellant from selling the shares as mentioned in the order impugned or withdrawing those from the concerned bank without giving

security to the extent of the awarded sum of Rs. 43,38,603.28 paise until further orders fixing 13th April, 2010 for service return.

2. Instead of showing cause or filing any application for variation of the said interim order, the respondent in the proceeding u/s 9 of the Act has

straightway preferred the present appeal before this Court.

3. Having regard to the limited scope of this appeal against the order granting ad interim injunction where the appellant has decided to prefer the

appeal without showing cause or without disclosing the defence in the trial Court, Mr. Roy Chowdhury, the learned Senior Advocate appearing on

behalf of the appellant has advanced a pure question of law as to the jurisdiction of the learned Trial Judge in entertaining the application u/s 9 of

the Act and granting ad interim order of injunction.

4. According to Mr. Roy Chowdhury, his client after suffering the award, passed by the Arbitral Tribunal having filed an application u/s 34 of the

Act before the learned District Judge, Alipore and the said application being pending, the subsequent application u/s 9 of the Act is not

maintainable before the learned District Judge, Barasat, in view of specific bar created u/s 42 of the Act.

5. In other words, Mr. Roy Chowdhury contends that once his client is filed an application u/s 34 of the Act which is under Part I of the said Act,

any subsequent application under that part should be filed only in that Court, i.e. the Court of District Judge, Alipore.

6. Before we proceed to answer the said question, it will not be out of place to mention here that it is apparent from the order impugned that in the

past before passing of the arbitral award, the respondent before us filed another application u/s 9 of the Act before the learned District Judge,

Barasat, thereby praying for a direction upon the present appellant for furnishing security to the extent of Rs. 43,38,603.28 paise in the form of

bank guarantee in the Court within a month. The Court, on contested hearing, allowed such prayer and directed both the parties to take recourse

to section 11 of the Act for referring the dispute to the arbitrator. There is no dispute that subsequently, arbitrators were appointed and an award

was passed on 10th June, 2009 to the extent of Rs. 43,38,603.28 paise. It is also apparent from the order impugned that the present appellant did

not comply with the earlier order passed by the learned District Judge, Barasat by furnishing bank guarantee.

7. Therefore, after the passing of the award, the respondent before us came up with his second application u/s 9 before the learned District Judge,

Barasat, for restraining the Appellant before us from selling the shares or withdrawing the amount as mentioned in the prayer portion of the

application without giving securities to the extent of the awarded sum of Rs. 43,38,603.28 paise.

8. In order to appreciate the question raised by Mr. Roy Chowdhury, it will be profitable to refer the provision contained in section 43 of the Act

which is quoted below:

Jurisdiction - Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an

arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral

proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other

Court.

9. It may not be also out of place to mention here that Part I of the Act starts from section 2 and ends with section 43 of the Act.

10. On a plain reading of the aforesaid section, it is apparent that notwithstanding anything contained in Part I or in any other law for the time being

in force where with respect to an arbitration agreement any application under Part I of the Act has been made in a Court, that Court alone shall

have the jurisdiction over the arbitral proceeding and all subsequent applications arising out of that agreement and the arbitral proceedings should

be made in that Court and in no other Court.

11. If we apply the said section to the fact of the present case, it will appear that the respondent before us first made an application u/s 9 of the Act

in respect of the selfsame arbitration agreement in the Court of Barasat and that miscellaneous case was disposed of on contested hearing by

passing a direction upon the appellant before us to give security and that order was not challenged by the present appellant before any higher forum

and had attained finality.

12. In view of section 42 of the Act, any further application under Part I of the Act either arising out of the said agreement or the consequent

arbitral proceeding, should be made in the Court of District Judge, Barasat and not in any other Court notwithstanding anything contained in Part I

of the Act and also in any other law for the time being in force.

13. Therefore, the present respondent did not commit an illegality in filing its second application u/s 9 of the Act which was, in essence, filed for

enforcement of the earlier order passed by the learned District Judge, Barasat, in respect of the selfsame agreement.

14. We, thus, find that merely because the appellant before us has filed an application u/s 34 of the Act in a different Court, namely, the Court of

the District Judge, Alipore, such fact will not oust the jurisdiction of the Court of the District Judge, Barasat, where the first application u/s 9 of the

Act was disposed of and the said order had attained finality and the said Court alone has the jurisdiction to entertain all subsequent applications

arising out of the selfsame agreement or the arbitral proceedings arising thereof.

15. We, thus, find no merit in the aforesaid contention of Mr. Roy Chowdhury.

16. The only point raised by Mr. Roy Chowdhury having failed, we find no merit in this appeal and the same is dismissed under Order XLI Rule

11 of the Code of Civil Procedure.

17. We make it clear that we have otherwise not gone into the merit of the application u/s 9 of the Act and dismissal of this application will not

stand in the way of the appellant in defending the proceeding u/s 9 of the Act on merit by giving written objection before the District Judge,

Barasat.

18. In view of dismissal of the appeal itself, the connected application being CAN 2852 of 2010. has become infructuous and the same is disposed

of accordingly.

Xerox certified copy of this order, if applied for, be given to the parties by Wednesday next upon compliance of all requisite formalities.