N.B.O.C. Ltd. Vs Patel Construction Co.

Court: Calcutta High Court

Date of Decision: Aug. 28, 1992

Citation: (1992) 2 ILR (Cal) 427

Hon'ble Judges: S.K. Mookherjee, J; A.M. Sinha, J

Bench: Division Bench

Advocate: S.P. Roy Chowdhury and Kamalesh Bhattacharjee, for the Appellant;Partha Dutta, Krishna Banerjee and Gouranga Chatterjee, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Mookherjee, J.
The present Revisional Application is directed against Order No. 20 dated March 16, 1991, passed by the learned

Asstt. District Judge. Ninth Court, Alipore, in Misc. Case No. 36 of 1990, arising out of Title Execution Case No. 14 of 1990 filed by the

opposite party, for execution of a decree, passed on an arbitration award, dated July 29, 1983. The application, which stood rejected, was one

u/s 47 read with Section 151 of the Code of Civil Procedure. The necessary facts, leading to the passing of the impugned order, may be outlined

as follows:

An arbitration proceeding culminated with an award, dated July 29, 1983, which was filed, giving rise to Title Suit No. 18 of 1984 of the Ninth

Court of the learned Asstt. District Judge, Alipore. In the said suit the Plaintiff, at different stages, filed two applications. The first was under Order

7 Rule 10 read with Section 151 of the Code of Civil Procedure, inter alia, raising a contention that the subject-matter of arbitration was beyond

the jurisdiction of the Court of the learned Asstt. District Judge, Ninth Court, Alipore, and as such plaint was liable to be rejected. The judgment-

debtor also filed another application under Order 6 Rule 17 of the CPC seeking to introduce the plea of absence of jurisdiction of the concerned

Court by way of amendment. As far as the application for amendment was concerned, the same was rejected by the learned trial Judge by his

order dated June 4, 1986, and the same order, not having been moved against in any higher Court, became final.

2. As far as the application for rejection of the plaint was concerned, the learned trial Judge, ultimately, by his order dated February 12, 1986,

directed the same to be heard along with the suit. After about more than hundred adjournments, the suit was ultimately decreed in terms of the

award, on or about March 14, 1988. Such order was again challenged by an application under Order 47 Rule 1/151 of the Code of Civil

Procedure, raising the question of lack of jurisdiction, but such application was dismissed by order No. 82 dated May 19, 1990. At this stage, it

should be noted that, notwithstanding a. direction for simultaneous hearing, the application made on behalf of the judgment-debtor under Order 7,

Rule 10, Section 151 of the CPC remained undisposed and no notice of Court to the pendency of the same was drawn by either of the contesting

parties throughout. As stated above, at the execution stage, an application was filed by way of an objection on behalf of the judgment-debtor, inter

alia, canvassing the said point which stood rejected by the impugned order.

3. In the background of the aforesaid facts, we have been invited to decide whether the decree in question could be said to be nullity and whether

on such ground the execution case was liable to be dismissed after setting aside the impugned order. We repeat that the basic argument made on

behalf of the judgment-debtor is that the trial Court, which passed the decree, lacked inherent jurisdiction as the entire transaction took place

within the jurisdiction of the Midnapore Court.

4. It is an admitted position in law that jurisdiction can be broadly classified into two types: (a) Inherent jurisdiction and (b) Technical jurisdiction.

Such classification arises from the nature of the factors which determine the jurisdiction and such factors may relate to (i) subject-matter, (ii)

person, (iii) territorial limit, and (iv) pecuniary limit. It is well-settled that in case of inherent lack of jurisdiction, which is based on factor (i) above

the decree becomes a nullity and consent or waiver and acquiescence by the judgment-debtor does neither render the decree valid nor executable;

in cases of technical jurisdiction, however, which is based on the factors (ii); (iii) and (iv) mentioned above, the waiver by a party or consent by him

may attribute to the decree immunity from challenge on the ground of lack of jurisdiction. We would like to add, at this stage, that although Section

2(c) of the Arbitration Act defines a Court, the jurisdiction of such Court has been judicially accepted to be determinable by application of the

provisions of Sections 15 to 21 of the Code of Civil Procedure. By way of authorities for the above propositions of law, reference may be made

to the cases of Jyotiprakash Chatoraj and Anr. v. Bagala Kanta Chowdhury and Ors. 36 C.L.J. 124 , The Bahrein Petroleum Co. Ltd. Vs. P.J.

Pappu and Another, and Seth Hiralal Patni Vs. Sri Kali Nath, which followed the ratio pronounced in Ledgard v. Bull 13 LA. 134, Vasudev

Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, and Hakam Sing Vs. Gammon (India) Ltd.,

5. Applying the aforesaid ratio to the facts of the present case, we are of the view that the Revisional Petitioner failed to make out a case for

interference by us. The trial Court was right in its reason that the decree in question cannot be said to be one amounting to nullity and as executing

Court, it had no jurisdiction to go behind the decree and refuse its execution. The nature of contention, raised on behalf of the Petitioner, clearly

shows that the jurisdiction, which was alleged to be absent, was of a technical nature, as distinct/distinguished from that which is inherent. Records

of the proceedings further indicate that the Petitioner, although raised the technical point of lack of jurisdiction, had participated in the proceedings,

and such participation could be treated to be an acquiescence on its part. Secondly, if we go to the merit of the contention without hesitation, we

can say that the contention is devoid of any merit. The Court, which passed the decree, on the allegations in the plaint, did have jurisdiction. We

would like to refer to our decision in the case of M/s. National Hydroeletric Power Corporation Ltd. Vs. M/s. Sova Enterprises, The above

finding of ours shows that notwithstanding a technical default on the part of the trial Court, the Defendant cannot be said to have suffered a failure

of justice within the meaning of Clause (3) of Section 21 of the Code of Civil Procedure.

6. For the aforesaid reasons, the application fails and is dismissed. The order of the learned Asstt. District Judge impugned in the revisional

application is affirmed. There will be no order as to costs.

A.M. Sinha, J.

7. I agree

8. Application dismissed.