Wazirchand Mahajan And Anr. vs Union Of India (Uoi) on 12 September, 1966

Equivalent citations: AIR1967SC990, (1967)69PLR423, [1967]1SCR303

Bench: J.C. Shah, K.N. Wanchoo, R.S. Bachawat

JUDGMENT

Shah, J.

1. Under an agreement dated November 1, 1950, with the State of Himachal Pradesh, Triloknath Mahajan - second appellant in this appeal - purchased the right to extract and collect certain medicinal herbs from the forests of Chamba District. The period of the agreement was one year from September 1, 1950. By clause 22 of the agreement it was provided that all disputes between the parties arising under the agreement or under any clause thereunder or in any manner connected with or arising out of the agreement or the operation thereof, or the rights, duties or liabilities of either parties thereunder including the dispute or difference as to the construction of the agreement shall be referred to the sole arbitration of the Deputy Commissioner, Mandi District, Himachal Pradesh, and if that officer be unable or unwilling to act, to such Assistant as the Deputy Commissioner shall appoint as the sole arbitrator. Triloknath Mahajan transferred all his rights, title and interest under the agreement to Wazirchand Mahajan - the first appellant - with the permission of the State of Himachal Pradesh.

2. Disputes arose in October 1950 between the appellants and the State of Himachal Pradesh regarding the right to collect herbs from certain areas and the failure of the State authorities to prevent trespassers from removing herbs, the right to which was granted to the second appellant. The appellants addressed a letter on May 30, 1952 to the Chief Conservator of Forests, Himachal Pradesh, requiring that Officer to submit the matters in difference to the arbitration of the Deputy Commissioner, Mandi District. By his reply dated June 23, 1952, the Chief Conservator declined to agree to a reference contending that the matters desired to be referred to were outside the arbitration clause. On June 22, 1955 the appellants applied to the District Court of Chamba for an order that the agreement dated November 1, 1950 be filed in the Court and that the disputes between them and the State be referred to the sole arbitration of the Deputy Commissioner, Mandi District. The State of Himachal Pradesh, contended, inter alia, that the application for filing the arbitration agreement was barred by the law of limitation as the right to apply, if any, arose in the year 1950 and not on June 23, 1952, as alleged. The Court of First Instance held that the Limitation Act did not govern an application for filing an arbitration agreement under s. 20 of the Arbitration Act, 1940, and that even if the application was governed by Art. 181 of Sch. I of the Limitation Act, 1908, since the application was made within three years from the date on which the Chief Conservator of Forests, Himachal Pradesh, declined to make a reference, it was not barred. The

Court accordingly ordered that the agreement be filed and the disputes be referred to the arbitrator named in the agreement. During the pendency of this application before the Trial Court, the Part 'C' State of Himachal Pradesh became Union Territory, and the Union of India was substituted as a party in place of the State of Himachal Pradesh. In appeal by the Union of India, the Judicial Commissioner, Himachal Pradesh, reversed the order of the Trial Court. In the view of the Judicial Commissioner an application for filing an arbitration agreement under s. 20 of the Arbitration Act is governed by Art. 181 of the Limitation Act, and since the period of three years prescribed thereby commences to run from the date on which the differences arose between the parties, i.e., about the month of September - October 1950, and in any case on September 1, 1951, the application for reference filed by the appellants was barred.

3. The terms of Art. 181 are general, and are apparently not restricted to applications under the Code of Civil Procedure. But that Article is included in the group of articles which fall under the head "Third Division Applications". As originally enacted all applications contemplated to be made under Arts. 158 to 180, were applications made under the Code of Civil Procedure and there was a catena of authorities holding that in Art. 181 the expression "under the Code of Civil Procedure" must be deemed to be necessarily implicit.

4. In Hansraj Gupta and Others v. Official Liquidators of the Dehradun - Mussoorie Electric Tramway Company Ltd. (L.R. 60 I.A. 13.) the Judicial Committee of the Privy Council observed at p. 20 :

> "... but a series of authorities commencing with Bai Manekbai v. Manekji Kayasji (I.L.R. 7 Bom. 213) has taken the view that art. 181 only relates to applications under the Code of Civil Procedure, in which case no period of limitation has been prescribed for the application."

5. In Sha Mulchand & Company Ltd. (In liquidation) v. Jawahar Mills Ltd., ([1953] S.C.R. 351.) this Court observed after referring to certain decisions :

> "This long catena of decisions may well be said to have, as it were, added the words 'under the Code' in the first column of that article (Art. 181).", and in Bombay Gas Company Ltd. v. Gopal Bhiva & Others () this Court observed :
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> "It is well settled that art. 181 applies only to applications which are made under the Code of Civil Procedure,..."

6. "It is true that in Hansraj Gupta's case, (L.R. 60 I.A. 13.) the Judicial Committee was dealing with the period of limitation for filing an application under s. 186(1) of the Indian Companies Act, 1913, to order a contributory in a winding-up to pay a debt; and Sha Mulchand's case ([1953] S.C.R. 351.) related to an application under the Indian Companies Act, 1913, for rectification of the share-register and restoration of the name of a member whose shares were forfeited for non-payment of calls. In the Bombay Gas Company's case this Court was dealing with an application for enforcement of an order under s. 33C(2) of the Industrial Disputes Act 14 of 1947 for

computation of benefit in terms of money and for a direction to the employers to pay the same. But in each case the decision of the Court proceeded upon the general ground that Art. 181 of the Limitation Act, 1908, governed applications under the Code of Civil Procedure. This Court impliedly rejected in each case the argument that merely because powers under the Code of Civil Procedure may be exercised by a Court entertaining an application, the application could not be deemed to be one under the Code. It is true that in the Limitation Act originally enacted in 1908, by the group of Arts. 158 to 180 only applications under the Code of Civil Procedure were dealt with. By the amendment made by the Arbitration Act 10 of 1949, Arts. 158 and 178 were modified and in the articles for the expression "under the Code of Civil Procedure, 1908" the words "under the Arbitration Act 1940" were substituted. The reason which persuaded the Courts from time to time to hold that the expression "under the Code" must be deemed to be added in Art. 181 did not continue to apply after the amendment of Arts. 158 and 178. It may be recalled that the law relating to consensual arbitration, except in respect of cases governed by Arbitration Act, 1899, was enacted in Sch. II of the Code of Civil Procedure, 1908. By the enactment of Act 10 of 1940, Sch. II of the Code of Civil Procedure and the Indian Arbitration Act, 1899, were repealed and an Act dealing with all arbitrations was enacted, and it was found necessary on that account to amend Arts. 158 and 178 so as to make them consistent with the legislative changes. The reason which persuaded the Courts to hold that the expression "under the Code" was deemed added to Art. 181 has now disappeared, but on that account the expression "applications for which no period of limitation is provided elsewhere in this Schedule" in Art. 181 cannot be given a connotation different from the one which prevailed for nearly 60 years before 1940.

7. If Art. 181 of the Limitation Act only governs applications under the Code of Civil Procedure for which no period of limitation is provided under the Schedule, an application under the Arbitration Act, 1940 not being an application under the Code of Civil Procedure, unless there is some provision, which by express enactment or plain intendment to the contrary in the Arbitration Act, will not be governed by that Article.

8. Counsel for the Union of India contended that s. 37(1) of the Arbitration Act, 1940, indicates a contrary intention. That sub-section provides :

> "All the provisions of the Indian Limitation Act, 1908, shall apply to arbitrations as they apply to proceedings in Court."

9. In our judgment, this clause does not govern an application for filing an arbitration agreement under s. 20 of the Arbitration Act. In terms, it provides, that the provisions of the Indian Limitation Act apply to arbitrations as they apply to proceedings in Court. In other words, an arbitrator in dealing with a matter submitted to him is bound to apply the provisions of the Limitation Act : s. 37(1) has no reference to an application under the Arbitration Act for effectuating a reference to the arbitration, such as an application for filing an arbitration agreement. The genesis of this sub-section is to be found in the judgment of the Judicial Committee of the Privy Council in Ramdutt Ramkissendass v. F.D. Sasson and Company (L.R. 56 I.A. 128.). In that case the Judicial Committee observed that even though s. 3 of the Limitation Act deals primarily with suits, appeals and applications made in law courts and makes no reference to arbitration proceedings and,

therefore, the Limitation Act does not in terms apply to arbitrations in mercantile references, it would be "an implied term of the contract that the arbitrator must decide the dispute according to the existing law of contract, and that every defence which would have been open in a Court of law can be equally proponed for the arbitrator's decision unless the parties have agreed to exclude that defence. Were it otherwise, a claim for breach of a contract containing a reference clause could be brought at any time, it might be twenty or thirty years after the cause of action had arisen although the Legislature had prescribed a limit of three years for the enforcement of such a claim in any application that might be made to the law courts." In enacting the Arbitration Act, 1940 the Legislature incorporated, with some modification, the rule which was regarded by the Judicial Committee as implicit in a commercial reference under an arbitration agreement. The Legislature provided that all the provisions of the Limitation Act, 1908, shall apply to arbitrations as they apply to proceedings in Court.

10. There is no doubt that clause(1) of s. 37 of the Arbitration Act deals only with the authority of the arbitrator to deal with and decide any dispute referred to him it has no concern with an application made to the Court to file an arbitration agreement and to refer a dispute to the arbitrator. After an agreement is filed in Court and the matter is referred to the arbitrator, it is for the arbitrator to decide by the application of the law contained in the Limitation Act, whether the claim is barred. But s. 37 (L.R. 56 I.A. 128.) does not confer authority upon the Court to reject the application for filing of an arbitration agreement under s. 20 of the Arbitration Act because the claim is not made within three years form the date on which the right to apply arose. In dealing with an application for filing an arbitration agreement, the Court must satisfy itself about the existence of a written agreement which is valid and subsisting and which has been executed before the institution of any suit, and also that a dispute has arisen with regard to the subject-matter of the agreement which is within the jurisdiction of the Court. But the Court is not concerned in dealing with that application to deal with the question whether the claim of a party to the arbitration agreement is barred by the law of limitation : that question falls within the province of the arbitrator to whom the dispute is referred.

11. The Judicial Commissioner was, in our judgment, in error in rejecting the application of the appellants for filing the arbitration agreement as barred under Art. 181 of the Limitation Act, 1908.

12. We direct that the appeal be allowed, the order passed by the Judicial Commissioner be set aside and the order passed by the Trial Court for filing the arbitration agreement and referring the matters to the arbitrator be restored. The appellants will be entitled to their costs in this Court and in the Court of the Judicial Commissioner.

G.C.

13. Appeal allowed.