Jawala Prasad vs Amar Nath on 31 July, 1950

Equivalent citations: AIR1951ALL474, AIR 1951 ALLAHABAD 474

JUDGMENT

Sapru, J.

1. This application in revision has been presented to this Court by the defendant. On 12-12-1946 the plaintiff opposite-party, Lala Amar Nath, filed a suit for recovery of a sum of RS. 4,000 from the present applicant in the Court of the civil Judge of Hardoi. On 25-3-1947 the suit was, by mutual agreement, refer red to the arbitration of the persons, namely, Shri Sundar Lal Gupta and Shri Shiva Govind Mehrotra. The first of these two persons was counsel for the plaintiff and the second was counsel for the defendant. Three days later, i. e., on 28-3-1947, the defendant intimated to both the arbitrators that it was his desire that they should not proceed with the case because he had, subsequent to their appointment, gathered some information to the effect that his own counsel was related to the plaintiff and that the plaintiff's counsel was a friend of the plaintiff and had had money dealings with him. The defendant followed up this notice to the arbitrators by an application to the Court on 30-3-1947. In that application he prayed that the Court might be pleased to recall the reference. He intimated that he had strong objection to the arbitrators, proceeding with the arbitration.

2. This application was rejected by the Court on 1-4-1947 on the ground that it was not competent for it, after having referred the matter to arbitrators, to revoke the arbitration order.

3. The second application was presented by the defendant on 9-4-1947, praying that the authority granted to the arbitrators to enter upon the arbitration be revoked. This application too was rejected by the Court.

4. On 25-4-1947 the arbitrators announced their award. They decreed the plaintiff's claim for a sum of Rs. 2,070 and awarded his proportionate costs and future interest at 3 per cent. per annum.

5. Subsequent to this award, objections were filed by the defendant before the civil Judge who had referred the matter to arbitration. Those objections were disposed of by an order of 7-7-1947. The learned civil Judge was satisfied that there was no substance in those objections and a decree was directed to be prepared in accordance with the award.

6. From this judgment and decree, of the learned civil Judge, the defendant went in appeal to the District Judge under Section 39(l)(vi), Arbitration Act. On 22-9-1947, the learned District Judge came to the conclusion that there was no force in the appeal. He upheld the order of the learned civil Judge directing that the award be made a rule of the Court. It is against that order of the learned District Judge that the present application in revision has been filed.

7. Far the most important question which this application raised is as to whether, the reference being to an even number of arbitrators, it was obligatory on the arbitrators to appoint an umpire within one month of their appointment. It was urged that inasmuch as the arbitrators had either failed or had not cared to appoint an umpire, the arbitration was invalid.

8. Section 3, Arbitration Act (x [10] of 1940), is to be found in chap. II of that Act. Chapter II deals with arbitration without intervention of a Court. Section 3 is in the following terms:

> "An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference."

The reference to arbitration in this case was made Under section 21 of the Act. Section 21 is to be found in chap. IV of the Act which deals with 'arbitration in suits.' Section 25 is also to be found in chap. IV. The first part of that section lays down that "the provisions of the other chapters shall, so far as they can be made applicable, apply to arbitrations under this chapter." It is clear, therefore, that Section 3 is applicable to arbitration in suits also, This is not disputed by learned counsel for the opposite party.

9. We come now to Sechedule I. This deals with implied conditions of arbitration agreements. Paragraph 2 of Sechedule I lays down that "If the reference is to an even number of arbitrators, the arbitrators shall appoint an umpire not later than one month from the latest date of their respective appointments."

It is clear that the arbitrators, where there is a reference to an even number of arbitrators, are under a statutory obligation to appoint an umpire not later than one month from the latest date of their respective appointments. It Strikes us that the arbitrators had no option in the matter of the appointment of an umpire. The provisions of Para. 2 of Sechedule I are of a mandatory character and it was clearly the duty of the arbitrators to appoint an umpire.

10. This, of course, is on the footing that there was no express provision to the contrary in the agreement. We may also refer to para. 1 of Sechedule I which is in the following terms. "Unless otherwise expressly provided, the reference shall be to a sole arbitrator." The point is that it was open to the parties by their agreement to waive this condition, about the appointment of an umpire. This is not denied by learned counsel for the opposite party.

11. The simple question, therefore, before us is whether there is any express provision in the arbitration agreement that it shall not be obligatory on the arbitrators to appoint an umpire within one month of the reference. We have read the reference carefully and we are clearly of the opinion that there is no express provision waiving the appointment of an umpire. It is absolutely silent on the question of the appointment of an umpire. What the reference recites is that the parties had agreed to refer the case for decision jointly to two arbitrators, that they had nominated those two arbitrators and that the arbitrators had been authorised by them to decide the case after making such inquiries as they liked and after satisfying themselves in such manner as suits them. The

so-called wide powers given to the arbitrators under the agreement are no larger than powers generally given by arbitration agreements to arbitrators. They are not of such a nature as to make us hold that the condition requiring that the arbitrators shall appoint an umpire was dispensed with. That being our view, it is clear that in the circumstances of this particular case, the award made is not valid. It is unnecessary to discuss the other points which have been raised by learned counsel for the applicant in this case.

12. For the reasons given above, we allow this application in revision and setting aside the judgments and decrees of the Courts below, declare the award to be invalid. The applicant shall be entitled to his costs in all the Courts.