

Jai Dayal Pearey Lal vs Chunni Lal Parsotam Dass And Anr. on 4 August, 1950

Equivalent citations: AIR1951ALL359, AIR 1951 ALLAHABAD 359

JUDGMENT

Sankar Saran, J.

1. This is a revision against an order by the Civil Judge of Kanpur reversing the decree of the trial Court and remanding the case to the Court below for ordering an award to be filed and for making it the rule of the Court.

2. The plaintiff-applicant Jai Dayal Pearey Lal and the defendant opposite party Chunni Lal Parsotam Das are two firms, members of the Kanpur Sugar Merchants' Association here-after to be referred to as the Association. There was a dispute between the parties and according to the rules and bye-laws of the Association it was referred to arbitration. On 7th May 1941 one Ram Sahai was appointed the sole arbitrator by the parties and he accepted that office. Earn Sahai could not, however, finish the work of arbitration. On 2nd September 1943, the firm Chunni Lal Parsotam Das nominated one Charan Das as its arbitrator. On 3rd September 1943, the Secretary of the Association sent a notice to the applicant firm Jai Dayal Pearey Lal that Charan Das was appointed the sole arbitrator. The applicant protested against Charan Das being appointed the sole arbitrator. Thereupon, on 9th September 1943 the Secretary of Association gave three days' time to the applicant to nominate another arbitrator. On 5th January 1944, the applicant protested telegraphically saying that Charan Das could not act as an arbitrator and that the arbitrator was Ram Sahai. The applicant followed up this protest by applying under Section 33, Arbitration Act praying the Court to stay proceedings. Subsequently, there appears to have been a compromise between the parties and the applicant was allowed to appoint an arbitrator.

3. On 12th April 1944, the applicant firm appointed one Man Singh as its arbitrator. According to the rules of the Association only a nominee of a firm which was on the list of members of the Association could be appointed an arbitrator. On 20th April 1944, the Secretary of the Association informed the applicant that Man Singh could not act as an arbitrator because the firm which he represented had withdrawn his name. In the circumstances the Secretary of the Association asked the applicant to appoint another arbitrator. Upon this, the applicant protested saying that Man Singh was still competent to function as an arbitrator. On 16th May 1944, the Secretary of the Association appointed Charan Das, who was the nominee of the defendant opposite party, as the sole arbitrator.

4. On 26th May 1944, Charan Das gave his award ex parte. On 22nd August 1944, Charan Das made an application to the Court under Section 14. Arbitration Act, praying that a decree be passed in terms of his award. As has been mentioned above, this prayer of Charan Das was not accepted by the

trial Court which set aside the award and the lower appellate Court reversed the decree of the first Court and ordered that the award be made a rule of the Court.

5. Shri Gopi Nath Kunzru, learned counsel for the opposite party, raised a preliminary objection that this revision was incompetent. His contention was that the lower appellate Court exercised a jurisdiction vested in it by law and it acted in the exercise of that jurisdiction without illegality or material irregularity. He has placed reliance upon the well known case of Amir Hassan Khan v. Sheo Baksh Singh, 11 I. a. 237 : (11 Cal. 6 P.C.) and upon two other recent cases of their Lordships of the Privy Council, Venkatagiri Ayyangar v. Hindu-Religious Endowments Board, Madras, 1949 A. L. J. 213 : (A.I.R. (36) 1949 P.C. 156) and Joy Chand Lal v. Kamalaksha Chaudhry, 1949 A. L. J. 278 : (A.I.R.) (36) 1949 P.C. 239). For the reasons to be detailed hereafter I am unable to accept this contention of the learned counsel.

6. The question that has to be considered is-whether the award by Charan Das, the sole arbitrator, was within his jurisdiction. If the answer is in the affirmative, there would be an end to this application. I am, however, of the opinion that Charan Das, in the circumstances of the case, could not give an award as the sole arbitrator. The question that needs declaration is whether when Man Singh, who was appointed an arbitrator by the Secretary of the Association, ceased to represent the firm Onkar Prasad Mahadeo Prasad be ceased also ipso-facto to be the arbitrator in these proceedings. Article 21 of the Memorandum of Association reads as follows:

"Every member will have to nominate one adult-person as his representative, and the names of such representatives will be duly entered in the register of members of the Association. . . . "

7. According to bye-law 63 of the Association only such persons could act as arbitrators who were representatives of the members of the Association. Now, Man Singh was appointed an arbitrator as a representative of a member of the Association and when he ceased to be the representative of the member did he cease to be an arbitrator ? There are no provisions in the rules to that effect and the law of arbitration does not contemplate the removal of an arbitrator in such a manner. Section 5, Arbitration Act, reads as follows :

"The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement."

8. There is no contrary intention expressed in the agreement by which the arbitrators were-appointed in the case and no steps were taken to move the Court for the revocation of the authority given to Man Singh. Section 9, Arbitration Act provides for the parties in certain eventualities to appoint fresh arbitrators. Those provisions are specific. They provide for certain contingencies, for example, if the arbitrator neglects or refuses to act, or is incapable of acting, or dies, the party which appoints him may appoint a new arbitrator in his place. None of these contingencies arise in this case and, therefore it cannot be said that the intimation given by the Secretary of the Association that Man Singh had ceased to be an arbitrator, was proper.

9. For the reasons given above, I would allow this revision with costs, set aside the order of the lower appellate Court and affirm the decree of the trial Court.

Bind Basni Prasad, J.

10. I agree and desire to add a few words. Three points are involved in the present revision. The first point arises from the preliminary objection taken by learned counsel for the opposite party, namely, whether or not the revision is maintainable. It is now a well established rule of law that a revision is maintainable only when the question of the exercise of jurisdiction by the Court below is involved. In the present case, from the facts stated by my learned brother, it will be evident that the point raised consistently by the applicant has been that Charan Das had no authority or jurisdiction to deal with the case as a sole arbitrator and for that reason the award given by him was null and void. If Charan Das had no authority to give an award, the document filed by him in the Court below purporting to be an award was a waste paper, and, as such, the trial Court or the lower appellate Court had no jurisdiction to pass a decree in terms of that award. It is thus clear beyond doubt that a question of jurisdiction is involved.

11. Learned counsel for the opposite party contended that this Court could not go into the powers of Charan Das for giving an award. I do not agree with this contention. When an application is made under Section 14, Arbitration Act it has to be seen whether the award was made by a competent person. If what purports to be an award was made by a person who had no authority to make it, it is not an award and no decree in terms of it can be passed. The jurisdiction of the learned Munsif rested upon the fact whether Charan Das had the authority to act so as a sole arbitrator. The preliminary objection, in my view, has no substance because the point of jurisdiction clearly arises in the present case.

12. The second point is whether Charan Das could act as sole arbitrator. As a result of the compromise arrived at between the parties in the proceedings under Section 83, Arbitration Act each party was entitled to appoint an arbitrator and the case was to be decided by both the arbitrators collectively. The applicant appointed Man Singh and the opposite party appointed Charan Das. The applicant maintained throughout that Man Singh should be a party to the decision of the case, but the Secretary of the Association thought otherwise. He was of the view that as Man Singh had ceased to be a representative of a member of the Association he had no authority to act as an arbitrator. This view has found favour with both the Courts below. I am clearly of opinion that the conclusion at which the Courts below reached was not correct. Bye-law 60 framed by the Kanpur Sugar Merchants' Association provides that if there is anything inconsistent between the bye-laws and the provisions of the Arbitration Act, the latter shall prevail. I must, therefore, look to the Arbitration Act to decide whether the contention that Man Singh ceased to have authority to act as an arbitrator is correct or not. Section 6, Arbitration Act provides that the authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement. No arbitration agreement was drawn up in the present case. The arbitration proceedings started by virtue of the parties being members of the Association which provided that the dispute among the members shall be decided by arbitration. The bye-laws do not provide in express terms that an arbitrator shall cease to have authority as

such by ceasing to be the representative of a member of the Association. Then Section 9 of the Act provides that another person can be appointed in place of a duly appointed arbitrator only in certain specified circumstances, namely, neglect or refusal by the arbitrator to act, his incapacity of acting or his death. There is nothing on the record to show that Man Singh ever neglected or refused to act as an arbitrator that he became incapable of acting. Needless to say that he is alive. None of the contingencies contemplated by Section 9, Arbitration Act exist in the present case. Man Singh was eligible to be appointed as an arbitrator on the date on which the applicant appointed him as such. His subsequent disqualification has not the effect of taking away from him the authority of an arbitrator because the Arbitration Act makes no such provision. He was a *persona designata* and there was nothing in his appointment to show that he was to act as an arbitrator only so long as he was a representative of a member of the Association.

13. What purports to be an award in the present case is a waste paper because it has been made by Charan Das alone and the other arbitrator is no party to it. I am of opinion that Man Singh who was nominated by the applicant as an arbitrator, has still the authority to act as such.

14. The third point raised was whether the appointment of Charan Das as the sole arbitrator was correct. In this contention learned counsel for the applicant argued that the notice which was sent by the Secretary of the Association to the opposite party was not one contemplated by Section 9, Arbitration Act and, therefore, a sole arbitrator could not be appointed. I am of opinion that the Secretary of the Association is the agent of all the members of the Association and the notice sent by him should be regarded as a notice from the party concerned. I see no invalidity in the notice.

15. By the Court.--The revision is allowed with costs, the decree of the lower Appellate Court is set aside and that of the trial Court is restored.