Kashi Prasad Singh vs Gupteshwar Singh And Anr. on 8 November, 1955

Equivalent citations: AIR1956ALL431, AIR 1956 ALLAHABAD 431

JUDGMENT

Brij Mohan Lall, J.

1. This Civil Revision is connected with First Appeal from Order No. 328 of 1952.

2. It appears that the applicant, Thakural Kashi Prasad Singh and two of the opposite parties, viz., Thakurai Gupteshwar Singh and Thakurai Jagdish Prasadi Singh, executed an arbitration agreement on 29-4-1950. They appointed two persons, viz., Sri Raj Kishore Singh and Sri Mutun Behari Singh, as arbitrators and a third person, Sri Jai Shankar Lal Vakil, as Sarpanch. As no suit was pending, the arbitration was intended to take place without the intervention of the court.

It so happened that Sri Raj Kishore Singh and Sri Mutun Behari Singh refused to act as arbitrators. Thereupon Thakurai Gupteshwar Singh served notices on the other two executants of the arbitration agreement calling upon them to nominate fresh arbitrators. No step was taken by t executants on receipt of these notices, whereupon Thakurai Gupteshwar Singh made an application to court under Section 8(2), Indian Arbitration Act (X of 1940) for the appointment of arbitrators in place of the two arbitrators mentioned in the arbitration agreement who had refused to act.

This application was registered as Miscellaneous Case No. 65 of 1950. It was opposed by the present applicant, Thakurai Kashi Prasad Singh, Ultimately the learned Civil Judge appointed two Vakils, viz., Sri Vishwanath Prasad and Sri Ram Chandra Das, as arbitrators. He added that 'their fees will be paid by the parties which will be determined afterwards". Dissatisfied with this decision Thakurai Kashi Prasad Singh has come up in revision.

3. This revision was filed on 1-4-1952. An order was passed in this revision on 16-10-1952 for stay of proceedings in Miscellaneous Case No. 65 of 1950. Meanwhile, an award had been made by the arbitrators appointed by the court and an application had been made on 10-10-1952 by Thakurai Gupteshwar Singh under Section 14, Arbitration Act for filing the award and for making it a rule of

the court under Section 17. This was registered aa Case No. 76 of 1952. On 17-11-1952 Thakurai Gupteshwar Singh made an application to the court for appointment of a receiver. Thakurai Kashi, Prasad Singh objected that the proceedings had been stayed. The learned Civil Judge, by his order dated 24-11-1952, held that the stay order passed) by this Court related to Miscellaneous Case No. 65 of 1950 and not to Case No. 76 of 1952.

But he granted twelve days' time to Thakural Kashi Prasad Singh to obtain a fresh stay order from this Court, if he so desired. Against this order First Appeal from Order No. 328 of 1952 has been filed.

4. The main point for decision in these cases is that involved in the revision, i. e., whether the court below had jurisdiction to appoint arbitrators in place of those who had refused to act as such. If the revision fails, the First Appeal From Order will fail automatically.

5. The contention put forward by the learn-ed counsel for the applicant is that had there been a single arbitrator and had he refused to act as such, the court could appoint a fresh arbitrator In his place, but that if more than one arbitrator had been named by the parties and if they had refused to act as such the court had no jurisdiction to appoint their substitutes.

In support of this contention the learned counsel has cited the cases of -- 'Gopalji Kuverji v. Morarji Jeram', 1919 Bom 24 (AIR V 6) (A), and -- 'Ram Chandra & Bros. v. Continental Stores and Agency Co., Ltd.', 1935 Oudh 28 (AIR V 22) (B). It may, however, be pointed out that both these cases were decided prior to the enactment of the Arbitration Act (X of 1940).

These cases were decided under the Arbitration Act of 1899, and they purport to interpret the language of Section 8 of that Act. This language, as will presently be pointed out, was different from the language of Section 8 of the present Act.

6. The relevant portion of Section 8, Arbitration Act (IX of 1899) was as follows:

> "8. (1) In any of the following cases-
>
> (a) ....
>
> (b) If an appointed arbitrator neglects or refuses to act, or is incapable of acting, or dies, or is removed, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy;
>
> (c) ....
>
> (d) ....
>
> (2) If the appointment is not made within seven clear days after the service of the notice, the Court may, on application by the party who gave the notice, and after

giving the other party an opportunity of being heard, appoint an arbitrator, umpire or third arbitrator, who shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties."

7. The language of Section 8 of the present Act is materially different. The relevant portion thereof runs as follows:

"8. (1) In any of the following cases-

(a) ....

(b) If any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbi-trators, as the case may be, do not supply the vacancy; or

(c) ....

(d) ....

(2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as it he or they had been appointed by consent of all parties."

8. On a comparison of the language of Section 8 of the aforesaid two Acts, it follows that under Section 8 of the Act of 1899 the power of appointment of an arbitrator by court was to be exercised it "an arbitrator" refused to act. Under the present Act, it can be exercised when "any arbitrator" refuses to act. Again, in Sub-section (2) of Section 8 of the former Act, the power of the court was confined to the appointment of "an arbitrator" whereas under the present law the power extends to the appointment of "an arbitrator or arbitrators".

In other words, under the present law, the court can appoint not only a single arbitrator but also more than one arbitrator. It will thus appear that there is a material difference between the language of Section 8 of the old Act and Section 8 of the present Act, Therefore, even if it be taken for granted that the view taken in the aforesaid Bombay and Oudh cases was good law when those cases were decided, it has ceased to be so after the enactment of the present Arbitration Act (X of 1940).

It may also be pointed out that even before 1940 the Calcutta High Court had taken a different view in the case of -- 'General Electric Trading Co. v. Siemens (India) Ltd.', 1929 Cal 177 (AIR V 16) (C), and had differed from the Bombay view. The Oudh case had not till then been decided. It is however unnecessary for us to express any opinion as to whether the Calcutta view or the contrary view contained in the Bombay and Oudh cases was correct.

For the purposes of this case it is sufficient to hold that under the present law as embodied in Section 8 of Act X of 1940 the court is seized of the power to appoint more than one arbitrator if the arbitrators appointed by the parties have refused to act.

9. In this connection, reference may also be made to Section 13(2), General Clauses Act (X of 1897), which says that, in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words in the singular shall include the plural and vice versa. In the language of Section 8 of the present Act there is absolutely nothing to suggest that there is anything repugnant to the adoption of the rule embodied! in Section 13(2), General Clauses Act.

On the contrary, the use of words "an arbitrator or arbitrators" indicates beyond doubt that it is open to the court to appoint as many arbitrators as may have refused to arbitrate regardless of their number. We are, therefore, of the opinion that the order passed by the learned! Civil Judge was within his jurisdiction.

10. It has been pointed out that the learned Civil Judge left the question of fee payable to the arbitrators undetermined and the applicant may not be able to pay the fee ultimately fixed by the court. In respect of that point the learned counsel for the opposite parties has to-day made a statement that the fee, of the arbitrators appointed by the court has been paid by his clients and that they have no intention to claim any portion thereof from the applicant. Therefore, this objection of the applicant also loses all force.

11. The result is that we dismiss the revision with costs. The First Appeal From Order also fails and is dismissed with costs. The stay order dated 6-10-1952 passed in the Civil Revision and that dated 11-12-1952 passed in the First Appeal From Order have already been discharged by an order dated 6-3-1953 of this Court. No order is therefore necessary in regard to them. The record shall be sent down to the court below without unreasonable delay.