

Firm Jawahar Lal Sundar Lal vs Firm Jagdish Rai Baij Nath on 4 August, 1950

Equivalent citations: AIR1951ALL335, AIR 1951 ALLAHABAD 335

JUDGMENT

Misra, J.

1. These revisions are directed against two orders passed by the Munsif of Ramsanehighat, Bara Banki. By the first order dated 20th August 1948, he dismissed the objections of the defendant (firm Jawahar Lal Sundar Lal of Kanpur) against his previous order dated 1st May 1948, referring the suit of the plaintiff (firm Jagdish Rai Baijnath of Bara Banki) to arbitration. Section 115 application No. 119 of 1948 seeks to get that order revised. The second order issued on 18th November 1949, was one of injunction under Section 151, Civil P. C., restraining the defendant from proceeding with a cognate suit which firm Jawahar Lal Sundar Lal had filed at Kanpur against firm Jagdish Rai Baijnath. The Bara Banki suit was for recovery of Rs. 248-6 in respect of goods supplied to the Kanpur firm. It was at first filed on 7th January 1947, in the Court of the Munsif of Ramsanehighat exercising jurisdiction on the Small Cause Court side, but as it was held that the suit was not of a Small Cause Court nature it was registered as a regular suit on 27th February 1947. The litigation at Kanpur was launched by the defendant on firm on 7th February 1947 in the Court of the City Munsif, the prayer there being one of accounting in respect of the very same transaction to which the Bara Banki case related. Both suits gave rise to the same controversies and the issues were co-extensive, In view of this fact and on the representation of the defendant that the Kanpur suit was about to be disposed of the Bara Banki suit was stayed under Section 10, Civil P. C., and firm Jawahar Lal Sundar Lal were directed to inform the Court on 30th August 1947, regarding the result of the suit at Kanpur. On that date the defendant failed to appear and the learned Munsif Ramsanehighat, proceeded to examine the evidence ex parte. Finally he decreed the suit on nth October 1947, but the ex parte decree was set aside at the instance of the defendant and in the proceedings which followed the parties arrived on 1st May 1948, at an agreement to refer the dispute to arbitration. The statement of the parties was recorded by the learned Munsif in the proceedings of that date thus:

"We agree to refer the matter in dispute, i. e. the entire suit to the arbitration of Pandit Bishambhar Dayal of the Firm Lalman Hiralal, Collectorganj, district Kanpur. We further agree that the aforesaid arbitrator will have full authority to decide the suit either by recording evidence or without taking evidence or by making public or private enquiries. We further agree that his award will be acceptable to us."

Acting to this agreement the case was referred to pandit Bishambhar Dayal but he refused to undertake the task and the defendant thereupon filed an application in Court on 3rd August 1948,

and prayed that the reference should be set aside and the case should be restored to the regular s de and stated under Section 10, Civil P. C. The learned Munsif of Ramsanehighat dismissed the application and as stated above the order refusing to grant the defendant's request forma the subject-matter of Section 115, Application No. 119 of 1918. The learned Munsif on the same date (20th August 1948) directed the parties to nominate another arbitrator. The Bara Banki firm complied with the order and put forward the name of Pandit Vishnu Sahai. The defendant, however, took time till 1st September 1948, and finally declined to nominate any one. The Court accepted the plaintiff's suggestion and referred the dispute to Pandit Vishnu Sahai.

2. The suit instituted by Firm Jawahar Lal Sundar lal at Kanpur took its normal course till 10th October 1948. From that date onwards the case was adjourned from time to time on the representation of firm Jagdish Rai Baijnath. The injunction order passed by the Bara Banki Court was a Sequel to the attempt of the defendant to get the Kanpur suit decided in disregard of the order of reference. I may mention that firm Jawahar Lal Sunder Lal had meanwhile filed revision application No. 119 of 1948 in this Court and secured an order staying the arbitration proceedings. The defendant's attempt to secure a final decision from the Kanpur Court before the arbitrator gave his award appeared to the learned Munsif of Ramsanehighat to be unfair inasmuch as it was calculated to force the hands of firm Jagdish Rai Baijnath in spite of the reference order. Section 115, Application No. 7 of 1950 is directed against the injunction granted by the Bara Banki Court for the purpose of preventing the abuse of the process of Court.

3. A preliminary objection to the hearing of these revisions was urged on behalf of the opposite party on the ground that the orders to which they related were interlocutory in their nature. It was urged that they did not decide any "case" within the meaning of Section 115, Civil P. C. and therefore the revision applications were incompetent. As held in *Ambika Prasad Singh v. Jagdamba, Prasad Singh*, 1945 O. W. N. 238 : (A. I. R. (32) 1945 Oudh 289), there is no rule that all orders passed during the pendency of a suit must be deemed to be interlocutory orders and are not revisable under Section 115, Civil P. C. The Court has in each case to see the nature and the effect of the order on the rights of the parties and to determine whether the order amounts to a decision of a case or is merely interlocutory order in the sense that it does not finally dispose of the rights of the parties. It is of course not possible to give a precise definition to the word "case" occurring in Section 115, Civil P. C. As was remarked in *Lal Chand Mangal Sen v. Behari Lal Mehr Chand*, 5 Lah. 288 : (A. I. R. (11) 1924 Lah. 425 F. B.), though every suit is a "case" the latter expression is more comprehensive including, as it does not only suits but also other proceedings arising out of suits either before or after their conclusion. The refusal to vacate the order of reference and the injunction restraining the defendant from proceeding with the Kanpur suit determined the parties' rights finally in respect of a matter which may well be regarded as a branch of the suit or as a distinct case in itself. I overrule the preliminary objection.

4. On merits the two revisions were pressed at considerable length but in my view the points raised do not need elaborate discussion. Two contentions were urged in section 115 application No. 119 of 1948:

(1) That the learned Munsif having already passed an order on 31st July 1947, staying the suit under Section 10, Civil P. C., could not reopen the case and make the reference order complained of and (2) That the refusal of Pandit Bishambhar Dayal to arbitrate operated to put an end to the agreement to refer and the Court below was not empowered to call upon the parties to nominate another arbitrator and to make an order referring the dispute to Pandit Vishnu Sahai in default of the nomination of the arbitrator by the defendant.

5. So far as the first point is concerned, it is to be observed that the purpose of Section 10, Civil P. C. is to prevent the trial of two cognate suits simultaneously. Where, however, the parties agree to refer all or some of the common controversies between them a reference made by the Court would not militate against the principle on which 'the section is founded. The provisions of Section 10 do not deprive a Court of its jurisdiction to reopen the case at any stage, if the circumstances so warrant, more particularly if the parties agree to waive their rights and to have the whole dispute determined by a tribunal of their own choice. See *Jang Bahadur v. Bank of Upper India, Ltd.*, 55 I. A. 227: (A. I. R. (15) 1928 P. C. 162) and *Dulan Bai v. Sundersao*, I. L. R. (1987) Nag. 449 : (A. I. R. (25) 1938 Nag. 182). I am clear that the order refusing to set aside the reference does not suffer from any defect of jurisdiction.

6. The second point depends on the view which may be taken of the terms of the agreement dated 1st May 1948. On a careful reading of that agreement I am not able to persuade myself to hold that the reference depended on the availability of Pandit Bishambhar Dayal as an arbitrator. The underlying object of the agreement was to entrust the determination of the matters in difference to a person of their own choice and not that if the named arbitrator was unable to act for one reason or another, the arrangement would automatically come to an end Section 8 read with Section 25, Arbitration Act would seem to apply to the case. There was thus no illegality or irregularity in the exercise of jurisdiction which the learned Munsif undoubtedly possessed.

7. Coming to section 116 application No. 7 of 1950, two points which were raised in the lower Court on behalf of the defendant were repeated in this Court also. They were :

(1) That Section 151, Civil P. C , does not warrant the injunction order.

(2) That the order complained of is in the teeth of the order of this Court whereby farther proceedings in the Bara Banki Court were stayed.

8. On the first point the cases cited by the learned Munsif, viz., *Milton & Co. v. Ojha Automobile Engineering Co.*, 57 Cal. 1280 : (A. I. R. (18) 1931 Cal. 279); *Bhagat Singhji v. Jagbir Sawhney*, I. L. R. (1941) 1 cal. 490 : (A. I. R. (28) 1941 Cal. 670) and *Kanhaiyalal Harkarandas v. Mohanlal Ramvallabh*, A.I.R. (28) 1941 Bom. 219 : (194 I. C. 814), support his view. I have no doubt that the Court had inherent jurisdiction under Section 151, Civil P. C. to grant injunctions against the defendant in personam restraining him from proceeding with the other cognate suit in another Court provided the circumstances warrant such a course.

9. The second point is based upon a misconception of the order of stay passed by this Court on the application of firm Jawahar Lal Sunderlal. The order only said, "Let the arbitration proceedings remain stayed pending the disposal of the application." It did not prohibit the lower Court from doing anything incidentally necessary in the interest of the litigants or acting under Section 151, Civil P. C.

10. By a further argument the applicant's learned counsel challenged the validity of the agreement to refer and the order refusing to set aside the reference. The contention was that neither the agreement nor the order could be deemed to subsist in view of the fact that their validity was challenged in section 115 application No. 119 of 1948. The suggestion was that the existence of the agreement or the order could not be reasonably considered to constitute a hindrance in the way of progress of the Kanpur suit. The contention has merely to be stated in order to show its hollowness. The order of injunction only ended in saving the situation which the defendant's action in proceeding with the case at Kanpur was calculated to bring about namely to render the agreement and the reference order infructuous even if the defendant's revision against the order dated 20th August 1948, failed. The applications have no force. I dismiss them with costs.