Kamta Pd. Nigam vs Ram Dayal And Ors. on 12 April, 1951

Equivalent citations: AIR1951ALL711, AIR 1951 ALLAHABAD 711

JUDGMENT

Mushtaq Ahmed, J.

1. These are appeals, each filed by a particular party, Under Section 39, Arbitration Act, against orders one Under Section 14 & the other Under Section 33 of the Act.

2. The applt. is a teacher & author of certain books. The resp. 1 is a publisher who undertook to print & publish those books on condition of payment of royalty at a certain percentage. The respt. 2 is related to resp. 1 as his son. The remaining resps. 3 & 4 were the arbitrators.

3. According to the case of the applt. the publishers had printed & published extra copies by printing wrong dates on them to avoid detection by the applt. who having come to know of this filed a complaint against the publishers. Pending the complaint, on 11-10-1945, there was an agreement between the parties that the matter in dispute would be refd. to the arbitration of two persons, & accordingly the complaint was got dismissed the following day. As one of the arbitrators had declined to act, another agreement on the same lines was executed by the parties on 30-10-1945. The agreement 'inter alia' provided that the entire matter was left to the arbitrators for their "decision" & that they would "look into the matter & give their decision within a fortnight". The agreement also provided that the arbitrators would "be fully entitled to go through the accounts of royalty in all editions". On 23-9-1946, an award was actually given by the arbitrators that the publishers would pay Rs. 3250/- as compensation to the applt. On 18-1-1947, the applt. applied for the filing of the award Under Section 14 of the Act & the proceedings initiated on that appln. came to be numbered as 48 of 1947. Another appln. Under Section 33 of the Act for setting aside the award was made by the publishers, & the case initiated on that was regd. as No. 12 of 1947. Appeal No. 47 of 1949 arises out of the former & Appeal No. 48 of 1949 arises out of the latter proceedings. The Ct. below set aside the award on the ground of misconduct. By that word it of course meant legal misconduct. The grounds on which it came to that conclusion were (1) that the arbitrators had without any justification refused to record the oral evidence offered by the publishers & (2) that they had delivered their award after the time fixed, even though the same had not been extended by the Ct.

4. Learned counsel on behalf of the applt. has challenged both these grounds of the Ct. below, & we proceed to examine his arguments in respect of them seriatim.

5. In recording his finding on the first question the learned Civil Judge reld. mainly on a statement made by Kamta Prasad himself. That was :

> "The arbitrators had ruled out in the beginning that they would not take down any oral evidence. There were 40 witnesses on my behalf & an equal number of Rai Sahib Ram Dayal Agarwal, but the arbitrators said that they had no time to examine so many witnesses. Rai Sahb Ram Dayal Agarwal wanted to produce evidence & I said that if he examined witnesses I would also do so. Then at the suggestion of the arbitrators we agreed to limit our cases to documentary evidence only".

6. Two points are specifically noticeable in this statement. One is that the publishers certainly desired to produce evidence before the arbitrators & the latter refused to record it. The other is that eventually the parties had come to agree that they might confine themselves only to documentary evidence. It is obvious that, while the publishers can rely upon the first portion of this statement, they can challenge the second. We may say at once that there was no evidence attempted to be given before the Ct. below that the publishers had at any stage of the proceedings before the arbitrators agreed to confine their case only to documents & not to produce any oral evidence at all. The learned Judge of the Ct. below on his part no doubt remarked that "the parties reluctantly agreed to rely upon their documentary evidence only". This may be true only in the sense that the arbitrators having quite unreasonably refused to record the oral evidence adduced by the publishers the latter found themselves in a tight corner, & under a mere sense of despair, agreed to the arbitrators proceeding only on the documentary evidence. This by no means amounted to saying that the publishers meant to waive their right of objection to the attitude already taken by the arbitrators in refusing to record their oral evidence, Be that as it may, the fact remains that there was a refusal on the part of the arbitrators to record the statements of a large number of witnesses whom the publishers wished to examine before them.

7. Apart from the case law relating to the matter, we cannot help remarking that it is the inherent right of a party in any judicial proceeding to offer all his relevant & material evidence before the authority seized of the matter to prove his claim or title. Where, therefore, the arbitrator without any rhyme or reason refuses to admit such evidence, he is certainly guilty of disregarding a most elementary rule, namely of permitting all reasonable opportunities to the parties to prove their case. The learned counsel for the applt. in this case mainly based his arguments on the ground that the publishers had participated in the proceedings before the arbitrators & were thereby estopped from challenging the award. No such suggestion of participation by the publishers appears to have been made in the Ct. below, nor was it m the slightest degree to be noticed in the statement of the applt. who was his only witness in the case in the Ct. below. We asked the learned counsel to refer us to the proceedings before the arbitrators & he admitted that the only documents on the record which might throw some light on the question were those filed by the arbitrators. No indication whatsoever of such a position was to be found from those documents, except that on a particular date the publishers had applied to the arbitrators for time to produce their documents. Learned counsel could not say whether this appln. had been made before the arbitrators refused to record the oral evidence or it was made after he had done so. If the appln. had been made before such refusal it was of no consequence at all, for in that case the appln. could be no evidence of participation by the publishers in the proceedings before the arbitrators even after that refusal. On the other hand, if the appln. was made after the refusal, some argument in favour of the applt. may have been possible. In these circumstances, we cannot say that the appln. made by the publishers for time to file

documents has any bearing whatsoever on this case, so far as the question with which we are dealing at present is concerned.

8. Learned counsel put before us a number of rulings on this part of the arguments, & we propose to note them briefly.

9. He first cited the case of 'Rajendra Nath v. Abdul Hakim Khan', 39 IC 767. That was a case in which the arbitrator had refused to summon three particular witnesses sought to be produced by one of the parties. The Ct. held that, in the exercise of his discretion, he could certainly do so. That case surely is not at par with the present one where the arbitrators had pointblank refused to record any oral evidence offered by the resps. 1 & 2.

10. Learned counsel next cited the case of 'Ram Bahadur Jha v. Sree Kant Jha', A. I. R. (30) 1943 Pat. 285 where no doubt it was held that the fact that the arbitrator had decided the questions refd. to him without taking evidence or had not kept minutes of the proceedings did not amount to misconduct, where the reference to arbitration had not required him to do so. In the body of the judgment the following passage occurs:

> "There is nothing in the 'ekrarnama' which requires the arbitrators to take evidence, & there is nothing on the record to suggest that they refused to hear any evidence tendered on behalf of deft -". In the present case, we are of opinion, that when the abritrators had been required to decide the matter after looking into the accounts, it was not intended that they could do so without taking all such relevant evidence as either party wished to produce. In the second place, there was, as we have shown, an unqualified refusal by the arbitrators to record any oral evidence whatsoever. We cannot conceive how that case can afford a parallel to the present one.

11. Next learned counsel cited the case of 'Chandrabhan v. Ganpatrai' A.I.R. (31) 1944 Cal. 127. Nothing was decided in that case which in any way affects the judgment of the Ct. below. It was only held that an honest mistake by the arbitrator as to what the law of evidence was did not render the award invalid. It was nonetheless remarked that the arbitrator was not to adopt any means in deciding the case which was contrary to natural justice. Where an arbitrator, in spite of the parties wishing to examine oral evidence, refuses to record the same without exercising his discretion by way of merely reducing its volume or quantity, he surely assumes an attitude which is contrary to natural justice .

12. Then was cited the case of this Court in 'Debi Das v. Keshava Deo', (AIR (32) 1945 All 423) in which the parties in their agreement had allowed the arbitrator to proceed "in any manner he liked". That surely included the power not to examine any witnesses but to make the award even on other materials which the arbitrator could have before him.

13. Last of all learned counsel referred to the case of 'Manindra Nath v. Mohanunda Roy', (13 I C 161) where the complaint was that the arbitrator had omitted to examine a certain important witness. There was no question there of his having refused to examine all witnesses as in this case.

That ruling also therefore does not affect the judgment under appeal.

14. On a careful analysis of the various decisions & having regard to general principles, we are of opinion that the arbitrators in the present case were guilty of misconduct in refusing to record the evidence offered by the publishers & that such mis-conduct did affect the validity of the award.

15. As regards the point of limitation, we have already noticed that the agreement dated 30-10-1945 mentioned a fortnights time within which the award was to be made. Section 3, Arbitration Act, provides that unless a different intention is expressed therein an arbitration agreement should be deemed to include the provisions set out in Sch. 1 in so far as they are applicable to the reference. One of these provisions is contained in para. 3 of that Schedule, according to which the arbitrator "shall make his award within four months after entering on the reference or after having been called upon to act by notice in writing from any authority to the arbitration agreement or within such extended time as the Ct. may allow." The period fixed in the agreement is, therefore, the period within which the arbitrator must make his award, unless the same is extended by the Ct. Under Section 28 of the Act, That the award has to be made within the period fixed under the agreement is, therefore, a statutory provision.

16. Learned counsel for the applt. has argued that the publishers having participated in the proceedings before the arbitrators, even after their refusal to record oral evidence, are estopped from challenging the award. But this would be an argument in favour of a plea of estoppel by statute. This is not permissible, as there can in law be no such estoppel. On this question of limitation also learned counsel cited a number of cases which we may note in brief.

17. He first relied on the case of "Patto Kumari v. Upendra Nath", (50 I. C. 52), where no doubt it was held that, where parties attended & recognised that the arbitrator had jurisdiction to continue the arbitration, even though the time for making the award had expired, they were estopped by their conduct from seeking to impugn the award on the ground that it was invalid by reason of being filed out of time. In the first place, this ruling was based on the provisions of Sch. 2, Civil P. C. which had no provisions analogous to para 3, Sch. 1 to the Arbitration Act. In the second place, we have already pointed out that the materials on the record fall short of making out a case of participation by the publishers in the proceedings before the arbitrators. As we mentioned the only act which they appear to have done before the arbitrators was to make an appln. to them for time to file documents. We do not know whether that appln. had been made before the arbitrators refused to record evidence or was made after that, a matter which would have a material bearing on the question of estoppel.

18. Learned counsel then cited the case of 'Amar Nath v. Uggar Sen, A. I. R. (36) 1949 All. 399. It is enough to say that the award was given after time had been extended by the Ct. Section 28 of the Act itself allows such extension even where the time agreed between the parties has already expired.

19. We may also mention that the case of the publishers themselves was that the entire proceedings before the arbitrators had been behind their back & that they had had no knowledge of the steps, if any, taken by them (the arbitrators) in the course of the arbitration. Learned Counsel .for the applt.

himself has not teen able from the materials on the record to give us any indication of what the publishers did before the arbitrators, on which an argument that they had participated in the proceedings could be founded. We were refd to a notice dated 22-10-1944, purporting to have been given by the arbitrators to each of the parties to present his case before them, otherwise the proceedings would be taken 'ex parte.' We do not know what happened after that date. in this state of the record, we are altogether unable to accede to the argument that the publishers had in any way taken part in the proceedings before the arbitrators so as to be estopped from challenging the award, though it was inherently invalid and had filed beyond time.

20. For these reasons there is no ground to disturb the judgment of the Ct. below, & we dismiss these appeals, but make the parties bear their own costs in this Ct.