Vaidya Harishankar Laxmiram Rajyaguru ... vs Pratapray Harishankar Rajyaguru Of ... on 13 April, 1988

Equivalent citations: 1988 SCR (3) 534, 1988 SCC (3) 21, AIRONLINE 1988 SC 9, 1988 ALL CJ 494, (1988) 2 GUJ LR 1182, 1988 (3) SCC 21, (1988) 2 JT 224, (1988) 2 JT 224 (SC), 1998 (8) SCC 465, (1993) 24 ATC 814, (1993) 2 CURLR 668, (1993) 2 LABLJ 1229, (1993) 2 LAB LN 825, (1993) 2 SCR 121 (SC), (1993) 2 SERVLR 31, (1993) 3 SCT 174, 1993 SCC (L&S) 874, 1993 SCC (SUPP) 2 628, 1993 UJ(SC) 1 406, (2006) 1 CURLR 729, (2006) 2 ALLMR 407, (2006) 2 BOM CR 564, (2006) 2 MAH LJ 526

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:
VAIDYA HARISHANKAR LAXMIRAM RAJYAGURU OF RAJKOT

Vs.

RESPONDENT:
PRATAPRAY HARISHANKAR RAJYAGURU OF RAJKOT

DATE OF JUDGMENT13/04/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 SCR (3) 534 1988 SCC (3) 21
JT 1988 (2) 224 1988 SCALE (1)955

ACT:
Arbitration Act, 1940: Sections 2, 14, 17, 30 and 33-Award-Main objection-No written agreement signed by both parties to refer the matter to arbitration-Conduct of parties-Whether can be construed as proper arbitration agreement-Whether civil court has jurisdiction to take cognizance of award.

Civil Procedure Code, 1908: Section 9- Award under Arbitration Act-Cognizance of-Civil Court-Whether has jurisdiction.

HEADNOTE:

The Petitioner and the respondent-father and son respectively referred certain disputes, which arose between them to the Arbitrator, who made the award. The award, duly signed by the parties and the Arbitrator, contained an endorsement to the effect that the award was agreed to and binding upon both the parties.

The respondent filed an application, which was later converted into special civil suit, for filing of the award, and sought a judgment in terms of the award under s. 17 of the Arbitration Act, 1940. Consequent upon the filing of the award, notice was issued to the petitioner, who filed objections. The trial court rejected the objections and passed decree in terms of the award.

The petitioner preferred a first appeal against the aforesaid decree and also filed a revision application, but later withdrew them in pursuance of an agreement reached between the parties on August 14, 1978, reaffirming the appointment of the arbitrator and the award made by him and the trial court judgment became final.

Thereafter, the petitioner filed a suit for setting aside the decree passed by the trial court which was dismissed. The revision/appeal against the aforesaid decision was withdrawn.

During the execution proceedings, the petitioner filed a civil revision application, which was summarily rejected. The High Court held

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that the petitioner was not entitled to challenge the award and the revision before it suffered from res judicata. Hence the Special Leave Petition to this Court.

The main objection to the award was that there was no written agreement signed by both the parties to refer the disputes to arbitration. It was also contended that the previous proceedings were without Jurisdiction.

Dismissing the Special Leave Petition,

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HELD: 1.1 It is clear from the conduct of the parties that there was a proper arbitration agreement in terms of s. 2(a) of the Arbitration Act, 1940. By signing the award it could be said that the parties had agreed to refer the disputes in writing to the arbitration of the named arbitrator. This agreement was done twice, firstly by signing an endorsement below the award and secondly, by entering into an agreement in the form of a letter dated 14th August, 1978. [538E]

1.2 Section 9 of the Civil Procedure Code 1908 provides that the Courts shall, subject to the provisions contained in the Code, have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. [539B]

In the instant case there was no such express or implied provision nor any inability of the Judge concerned. The Civil Court, therefore, had jurisdiction to take cognizance of the award under sections 14 and 17 f the Arbitration Act [538G]

The High Court was, therefore, right in dismissing the application of the petitioner. [539E]

Rajah Amir Hassan Khan v. Sheo Baksh Singh, 11 I.A. 237; Seth Hira Lal Patni v. Shri Kali Nath, [1962] 2 SCR 747; Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others, [1971] 1 SCR 66; M/s. Guru Nanak Foundation v. M/s. Rattan Singh and Sons, [1982] 1 SCR 842; Prasun Roy v. The Calcutta Metropolitan Development Authority and another, A.I.R. 1988 S.C. 205 and Chowdhri Murtaza Hossein v. Mst. Bibi Bechunnissa, [1876] 3 Indian Appeal 209 at 220, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 4783 of 1988.

From the Judgment and order dated 23.2.88 of the High Court of Gujarat in Civil Rev. Appln. No. 1737 of 1982.

S.K. Dholakia, D.L. Kothari, R.C. Bhatia and P.C. Kapur for the Petitioners.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This is an application for leave to appeal under Article 136 of the Constitution of India from the judgment and order of the High Court of Gujarat dated 23rd February, 1988. By the impugned judgment, the High Court has dismissed the civil revision application which challenged the award made in this case.

The petitioner is the father of the respondent. Both of them are established Vaidyas in Rajkot. They come from a well-to-do family. The petitioner is advanced in age and both the father and the son have been fighting between themselves since more than a decade. The High Court found that the petitioner and the respondent had referred their disputes to one Kantibhai Vaidya (Shri Kantilal Dayaram Jani) who had intervened between them with the good intention to bring their disputes to an end. He made an award. The award was produced. It appears that the award was endorsed and signed by both the parties. In the award, it was stated by the arbitrator that he had called both the father and the son at his residence on 18th January, 1977. He had discussed the matter with both of them and had warned them that both of them would ruin themselves in the property disputes, if they did not solve the matter amicably. In the award, it was stated that the entire responsibility of solving the dispute was entrusted to him and the petitioner and the respondent had agreed to such entrustment. Accordingly, he made the award on 18th January, 1977. Below the award, both the parties and the arbitrator had signed. The endorsement reads, when translated in English, as found by the High Court that the award is agreed to and binding upon both the parties and that the entire responsibility of the arbitrator will lie on Shri Kantibhai Vaidya and that he has taken the

responsibility. Thereafter followed a spell of litigation. The respondent applied on 20th June, 1977 for filing the award and sought the judgment in terms of the award under section 17 of the Arbitration Act, 1940 (hereinafter called 'the Act'). A notice consequent upon the filing of the award was issued to the petitioner. The application was converted into Special Civil Suit No. 84 of 1977. It was stated in the application to file the award, that the petitioner had torn off the award and, therefore, the respondent was compelled to rely upon a photo-copy of the original award, which was produced with the application. The petitioner filed his objections to the application but did not file any application within the prescribed limitation of 30 days. The learned trial Judge rejected the objections filed beyond the period of limitation and for the reasons that (1) the notice was already given to the party concerned about the filing of the award, (2) the time for making an application to set aside the award had expired and no such application was made (3) the award was not set aside under section 30 and (4) that the award was not remitted under section 16(5) of the Act. The learned trial Judge made a decree in terms of the award.

The petitioner preferred a Civil First Appeal against the judgment and decree passed in Special Civil Suit No. 84 of 1977 and had also preferred Civil Revision Application No. 655 of 1978. Both these legal proceedings were, however, withdrawn by the petitioner and thus the judgment of the trial court in Special Civil Suit No. 84 of 1977 became final. The High Court had recorded that the First Appeal and Civil Revision Application were withdrawn in pursuance of an agreement reached between the parties on or about 14th August, 1978. A copy of the said agreement was also produced before the Court as Exhibit 40. It was signed by both the parties as well as their respective advocates. The agreement was in the form of a letter addressed to the arbitrator wherein it was stated that both of them had appointed him as an arbitrator to resolve the disputes between them and that he had given an award dated 20th January, 1977 in respect of which award, there had been continued objections but now they have agreed that both of them should abide by the award dated 20th January, 1977 and that its interpretation should be left to the arbitrator himself. It was also categorically mentioned therein that its interpretation by the arbitrator would be binding on both the parties. It was clear, therefore, that both of them had re-affirmed the acceptance of the award.

This letter of 14th August, 1978 was replied in the form of a letter dated 4th September, 1978 addressed to the petitioner by the arbitrator, that is Exhibit 137. The petitioner thereafter filed a civil suit for setting aside the decree passed in Special Civil Suit No. 84 of 1977 and had also submitted an application to obtain interim orders. That application was decided against him, against which he preferred an appeal/revision but later on, he withdrawn the said appeal/revision.

During the course of the execution proceedings, the petitioner preferred a civil revision application against the judgment and order passed by the Civil Judge raising practically all the disputes which had been raised by the petitioner in this civil revision application. The same was rejected summarily.

The main objection to the award is that there was no written agreement signed by both the parties to refer the disputes to arbitration. It is clear from the narration of facts that the parties had agreed to refer the dispute to the arbitrator. The award was signed by both the parties, about which there is no factual dispute, reiterated the fact that the parties had agreed to refer the dispute to the arbitration of the said arbitrator and that he made an award. All these are in writing and signed by all the

parties. This, in our opinion, in the light of the facts and circumstances of the case can certainly be construed to be a proper arbitration agreement in terms of section 2(a) of the Act. In this connection reference may be made to the observations of this Court in Prasun Roy v. The Calcutta Metropolitan Development Authority and another, A.I.R. 1988 S.C. 205 where all the relevant authorities on this point have been discussed. See also in this connection the decision of the Judicial Committee in Chowdhri Murtaza Hossein v. Mst. Bibi Bechunnissa, [1876] 3 Indian Appeal 209 at 220. The observations in the said decision were made in different context. But in the present context, it is clear that the conduct of the parties that there was an arbitration agreement and by signing the award it could be said that the parties had agreed to refer the disputes in writing to the arbitration of the named arbitrator. This agreement was done twice, firstly by signing an endorsement below the award and secondly, by entering into an agreement in the form of a letter dated 14th August, 1978 (Exhibit

40).

In that view of the matter, we are in agreement with the High Court that on this aspect the petitioner is not entitled to challenge the award. The High Court has further held that the revision before the High Court suffered from res judicata. The High Court, in our opinion, was right in doing so. It was contended that the previous proceedings were without jurisdiction. We are unable to accept this contention. The Civil Court had jurisdiction to take cognizance of the award under sections 14 and 17 of the Act. This question had come up for consideration before the Judicial Committee in Rajah Amir Hassan Khan v. Sheo Baksh Singh, 11 I.A. 237. The Judicial Committee held that they had perfect jurisdiction to decide the question which was before them (namely, whether the suit was barred as res judicata) and they did decide it. It was not relevant according to the Judicial Committee, whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.

Section 9 of the Civil Procedure Code provides that the Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In this case, there was no such express or implied prohibition nor any inability of the Judge concerned. In this connection, it may be useful to refer to the observations of this Court in Seth Hira lal Patni v. Shri Kali Nath, [1962] 2 SCR 747, where this Court observed that the validity of a decree could be challenged in execution proceedings only on the ground that the Court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seizing of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree was passed or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it. In this connection reference may be made to the observations of this Court in Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others, [1971] 1 SCR 66.

Having regard to all these factors, we are of the view that the High Court was right in dismissing the application in the manner it did.

In M/s. Guru Nanak Fundation v. M/s. Rattan Singh and Sons, [1982] 1 SCR 842, where this Court observed that interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to the Arbitration Act. However, the way in which the proceedings under the Act are conducted and without an exception challenged in Courts, has made lawyers laugh and legal philosophers weep. This Court further observed that experience shows and law reports hear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. With respect, we could not agree more in the facts and the circumstances of this case.

In the view, however, we have taken of the matter indicated above, we decline to interfere with the order of the High Court. The special leave petition fails and is accordingly dismissed.

N.P.V. Petition dismissed.