
(20) In view of the above, we find no merit in this writ petition. It is, consequently, dismissed. The respondents shall be entitled to their costs which are assessed at Rs. 5,000.

R.N.R.

Before Sat Pal, J

RAJ KUMAR AND OTHERS,—*Petitioners*

versus

NARAIN DASS AND OTHERS,—*Respondents*

C.R. No. 1199 of 1998

29th June, 1998

*Code of Civil Procedure, 1908—S.115—Arbitration Act, 1940—
Suit pending in respect of subject matter of dispute—During pendency
of suit, dispute referred to arbitration by parties without order of Court—
Such reference not valid without order of the Court.*

Held that, it is true that it is open to the parties to refer the dispute to arbitration without the intervention of the Court but this can be done only if no suit is pending with respect to the subject matter of dispute. However, in case a suit is pending in respect of the subject matter of the dispute, there can be no valid reference during the pendency of the suit to arbitration without the order of the Court.

(Para 10)

S.P. Gupta, Sr. Advocate with K.G. Sehajpal, Advocate, *for the Petitioner.*

C.B. Goel, Advocate with R.C. Chauhan, Advocate, *for the Respondent.*

JUDGMENT

Sat Pal, J.

(1) This petition has been directed against the order dated 29th November, 1998 passed by Civil Judge (JD) Panipat. By this order, the learned Civil Judge has dismissed the objections filed by the petitioners-judgment debtors under section 47 of Code of Civil procedure. In this case the respondents-Decree Holders filed a suit for possession of certain land. The suit was decreed by the learned trial court.

Aggrieved by the judgment and decree passed by the learned trial court, the petitioners-judgment debtors filed appeal bearing No. 123 of 1992 in the court of learned Additional District Judge, Panipat. During the pendency of the appeal, the petitioners-judgment debtors moved an application for withdrawal of the appeal on the ground that the parties to the appeal had referred their dispute to the Arbitrators who had already started the proceedings. The learned counsel for the respondents gave a statement that he had no objection in case the appeal is allowed to be dismissed as withdrawn. After recording the statement of the parties, the learned Additional District Judge, Panipat by his order dated 18th December, 1992 (Copy annexure P-3) dismissed the appeal as withdrawn.

(2) According to the respondents-Decree Holders, due to non-cooperation of the judgment debtors, the arbitration proceedings could not be completed. Accordingly, they filed the execution petition for executing the decree passed in 1987. After initiation of the execution proceedings, the petitioners-judgment debtors filed the objections which have been dismissed by the impugned order dated 29th January, 1998, as stated herein above.

(3) Mr. S.P. Gupta, the learned Senior counsel appearing on behalf of the petitioners submitted that the proceedings before the learned lower appellate court were in continuation of the suit and since during the pendency of the appeal before the learned lower appellate court, the dispute between the parties, with the consent of the parties, was referred to arbitration, the respondents could not initiate the execution proceedings. He also submitted that the petitioners were ready and willing to cooperate in the proceedings before the learned Arbitrators and the Arbitrators may be directed to pass the award within a stipulated period. In support of his submissions, the learned counsel placed reliance on the following judgments :—

(i) *Financiers and Fibre Dealers Ltd. v. Sankar Lal Sardar* (1)

(ii) *Shah Jagjivan Jetha v. Doshi Talak Chand Hirachand* (2)

(iii) *Moradhwaj v. Bhudar Das* (3)

(4) The learned counsel further submitted that it was always open to parties to refer a dispute to arbitration without the intervention of

(1) A.I.R. 1961 Cal. 46

(2) A.I.R. 1955 Saurashtra 88

(3) A.I.R. 1955 Allahabad 353 F.B.

the court. He, therefore, contended that even if the dispute has not been referred to arbitration by the learned Additional District Judge, Panipat and has been referred to arbitration out of the court, yet it was binding on the parties. In support of this submission, the learned counsel placed reliance on a judgment of the Supreme Court in *Narain Dass v. Vallabh Dass* (4).

(5) Mr. C.B Goel, the learned counsel appearing on behalf of the respondents, however, submitted that in the present case the suit of the respondents has already been decreed and during the pendency of the appeal, the dispute was referred to arbitration out of the court. He submitted that since the dispute was not referred by the court, the reference itself was contrary to law. In support of his submissions, the learned counsel placed reliance on a judgment of the Supreme Court in *Ct. A. Ct. Nachiappa Chettiar and others v. Ct. A. Ct. Subramaniam Chettiar* (5).

(6) The learned counsel further submitted that during the pendency of the appeal, the petitioners themselves had filed an application for withdrawal of the appeal and accordingly at the instance of the petitioners, the appeal was dismissed as withdrawn. He, therefore, contended that there was no infirmity in the order passed by the learned executing court.

(7) I have given my thoughtful consideration to the submissions made by the learned counsel of the parties and have perused the record. Admittedly, the suit of the respondents was decreed by the learned trial court in 1987. The judgment of the trial court was challenged by the petitioners-judgment debtors before the learned Additional District Judge, Panipat and during the pendency of the appeal the petitioners and the respondents mutually referred the dispute to arbitration. After referring the matter to arbitration, an application was filed by the petitioners before the learned lower appellate court for the withdrawal of the appeal and after no objection was given by the respondents, the appeal was dismissed as withdrawn. It is true that it is open to the parties to refer the dispute to arbitration without the intervention of the Court but this can be done only if no suit is pending with respect to the subject matter of dispute. However, in case a suit is pending in respect of the subject matter of the dispute, there can be no valid reference during the pendency of the suit to arbitration, without the order of the court. It is not disputed that the appeal is the continuation of the proceedings of the suit. Since the proceedings were still pending

(4) 1971 (5) S.C.C. 643

(5) A.I.R. 1960 S.C. 307

before the learned appellate court when the dispute in the present case was referred to arbitration, there was no valid reference since the same was made without the order of the Court. Here reference may be made to the following observations of the Supreme Court in the case of *Narain Dass* (supra).

“It is always open to parties to refer a dispute to arbitration without the intervention of the court. In case the suit is pending in respect of the subject matter of the dispute, there can be no valid reference during the pendency of the suit, to arbitration without the order of the court. The underlying reason for that is to avoid conflict of jurisdiction by both the court and the arbitrators dealing concurrently with the same dispute.”

(11) In the present case since the appeal was still pending and the dispute was referred to arbitration without the order of the Court, I am of the opinion that the reference itself was not valid. Besides since the learned appellate court only dismissed the appeal of the petitioners as withdrawn but did not disturb the judgment and decree passed by the learned trial court in 1987, I do not find any substance in this petition. Accordingly, the petition is dismissed. Parties are, however, left to bear their own costs.

J.S.T.

Before Dr. Sarojnei Saksena, J

RAVINDER KUMAR MAHAJAN,—*Petitioner*

versus

SOHAN LAL AND ANOTHER,—*Respondents*

CrI. R. 629 of 1997

The 3rd April, 1998

Negotiable Instruments Act, 1881—S.138—Cheque dishonoured—Notice demanding payment of cheque within 7 days—Statute requiring 15 days period for payment—Notice for 7 days if invalid.

Held that, even if the complaint gave a notice demanding payment of the cheque amount within seven days that will not invalidate the notice under Section 138(b) of the Act as the respondent-accused were entitled to make the payment within 15 days of the receipt of this notice. Resultantly, this revision is allowed. Impugned order of Addl. Sessions Judge is hereby set aside.

(Para 18)