

Mst. Hardevi
and others
v.
Harjinder Singh
and others
Chopra, J.

The above construction becomes all the more clear when clause (c) is read along with clause (d) of the subsection. Clause (d) expressly provides that *if the deceased tenant left a widow or widowed mother*, then on the termination of her interest under clause (b) or clause (c) of the subsection, the right shall devolve upon his male collateral relatives in the male line of descent from the common ancestor. The absence of any such provision in clause (c) cannot be regarded as a mere oversight, and it cannot be imported into the clause. The conjunction 'or' connecting the words 'widow' and 'widowed mother' used twice in clause (d) is not the less significant. Use of the singular 'her' in the phrase 'then when her interest terminates' in clause (d) also has its own importance. All this clearly indicates that the Legislature envisaged the succession of the widow or widowed mother of the deceased tenant and not of both one after the other. It is an elementary rule that construction is to be made of all the parts of a section of the statute together and not of one part only by itself. The section must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with the other provisions, 'so long as that interpretation does no violence to the meaning of which they are naturally susceptible. The second contention of the appellant, must, therefore, fail.

In the result the appeal is dismissed, but in view of the facts of the case the parties are directed to bear their own costs throughout.

D. K. M. REVISIONAL CIVIL

Before Falshaw, J.

INDER CHAND JAIN,—Petitioner

versus

POORAN CHAND-BANSI DHAR,—Respondents

Civil Revision No. 12-D/57.

Arbitration Act (X of 1940)—Sections 2(c), 31(2), and

1957

Sept., 16th 33—Court—Jurisdiction—Application under sections 32

and 33, challenging the existence and validity of the Arbitration agreement where to be filed—Rule stated.

Held, that the Delhi Court will have jurisdiction to determine the applications under sections 32 and 33 only if a part of the cause of action relating to the subject-matter of the reference arose within its jurisdiction. The combined effect of section 2(c) and section 31 of the Act would appear to be this : In order to determine which is the Court having jurisdiction in the matter, you should first of all ascertain what the questions are, which form the subject-matter of the reference to arbitration. You then proceed to ask; supposing those questions had arisen in a suit, which is the Court which would have jurisdiction to entertain the suit. That Court would be the Court having jurisdiction under the Arbitration Act also. There is no reference either in section 2(c) or section 31(1) of the Act to the place where the parties dwell, or carry on business, or personally work for gain. The jurisdiction of the Court is made to depend not on any of these factors but solely on the subject-matter; there is no reference to any other circumstances. If the intention of the Legislature had been to confer jurisdiction not merely with reference to the subject-matter of the dispute between the parties, but also with reference to the residence of parties or their place of business, it should not have been difficult to insert appropriate words in section 2(c) and section 31(1) of the Act.

Petition under section 115 of Act C.P.C. for the revision of the order of Shri Tilak Raj Handa, Sub-Judge, 1st Class, Delhi, dated the 8th December, 1956, holding that this Court has not the territorial jurisdiction to entertain this application and hence return the application for presentation to the Court of competent jurisdiction.

GURBACHAN SINGH, YOGESHWAR DAYÁL, for Petitioner.

D. K. KAPUR, for Respondent.

JUDGMENT

FALSHAW, J.—This is a revision petition against the order of Court at Delhi returning the application under sections 32 and 33 of the Indian Arbitration Act to the present petitioners on the ground that it had no jurisdiction to entertain it.

Falshaw, J.

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The petitioners are the firm Chhunnu Mal-Kishan Chand and its partners Indar Chand Jain, Kishan Chand Jain and Dharam Pal Jain, and a dispute has arisen regarding some dealings which they had with Bombay firm Messrs Puran Mal-Bansi Dhar respondent No. 1. The petitioners received a letter, dated the 16th of April, 1956, from the Bombay firm stating that whereas claims, disputes and differences had arisen and were pending between them the Bombay firm had appointed Mr. N. N. Dubash, respondent No. 2 as its arbitrator and calling on the petitioners to appoint their arbitrator within seven days. The petitioners sent a reply, dated the 20th of April, 1956, contending that any reference to arbitration was illegal and inoperative on various grounds. However, respondent No. 4 the Native Share and Stock Brokers Association of Bombay proceeded to appoint Jayant Amar Chand respondent No. 3 as a second arbitrator on behalf of the petitioners, this appointment being communicated by a letter, dated the 7th of May, 1956.

The petitioners then filed their application in the Court at Delhi under sections 32 and 33 of the Indian Arbitration Act on the 4th of June, 1956, denying the existence and validity of the alleged agreement under which the Bombay firm had caused the matters in dispute to be referred to arbitration. The Bombay firm raised the objection that the Delhi Courts had no jurisdiction to entertain the application, and the present petition has been filed challenging the order of the lower Court by which this contention was upheld.

Section 32 of the Arbitration Act provides that notwithstanding any law for the time being in force no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any

arbitration agreement or award be set aside, amended, modified or in any way effected otherwise than as provided in this Act. The first part of section 33 reads—

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“Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits.”

The meaning of the term “Court” is defined in section 2(c) which reads—

“ ‘Court’ means a civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been subject-matter of a suit but does not except for the purpose of arbitration proceedings under section 21, include a Small Cause Court.”

The lower Court proceeded to decide the matter on the basis that it was admitted that the contracts in dispute were entered into at Bombay and that no part of the cause of action arose within the jurisdiction of the Delhi Court, and the contention advanced on behalf of the petitioners that since they were residents of Delhi a suit on the basis of the contracts in dispute could have been filed by the Bombay firm in the Delhi Court, was repelled.

On behalf of the petitioners it is denied that there was any admission in the Court below that no part of cause of action arose at Delhi in any suit which the Bombay firm could have brought

~~Inder Chand Jain~~ on the basis of the contracts and the argument
 v. has again been advanced that since any person
 Pooran Chand- can bring a suit either in a Court located where
 Bansf Dhar all or part of the cause of action arose or else
 Falshaw, J. where the defendant resides a suit based on the
 disputes which have been referred to arbitration
 by the Bombay firm could have been brought at
 Delhi and therefore, the Court here had jurisdic-
 tion to entertain the application under section 33
 of the Arbitration Act. Support of this conten-
 tion was sought to be derived from certain obser-
 vations made by Abdul Rahman, J., in *Radha*
Kishan v. Bombay Company Limited (1), and by
 Kania, J., in *Cursetii Jamshedji Ardaseer Wadia*
and others v. Dr. R. D. Shiralee (2). Actually in
 the first case Abdul Rahman, J., decided the
 matter on the grounds but undoubtedly on page
 297 he has remarked—

“Since an application like this is not covered
 by clause 9 of the agreement such Courts
 would have jurisdiction to entertain it
 under section 2(c), Arbitration Act, as
 could have decided ‘the questions form-
 ing the subject-matter of the reference’
 and as a suit for damages which is now
 proposed to be the subject-matter of the
 reference could have been instituted at
 Amritsar, both because the contract had
 been taken place at Amritsar and the
 defendants were residing at that place,
 the Courts in Amritsar would be compe-
 tent to entertain the application under
 section 33, Arbitration Act.”

In the other case Kania, J., has observed—

In my opinion the construction sought to be
 put on section 2(c) by the petitioners is

(1) A.I.R. 1943 Lah. 295.
 (2) A.I.R. 1943 Bom. 32.

erroneous. It does not mean that a Court has jurisdiction to receive an award only if the whole cause of action arose within the jurisdiction of the Court. Reading the subsection as worded, it is clear that any Court which would have jurisdiction to decide the question arising from the subject-matter of the reference, would be the proper court in which the award may be filed".

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In neither of these cases was the question being considered in the manner in which it has arisen in the present case.

The question, however, has been considered in this light in the case *M. Venkatasadiappa v. Srinidhi, Limited* (1), a decision by Horwill and Balakrishna Ayyar, J. The facts in that case were that a company with its office in the city of Madras had been carrying out some contracts at Bangalore for the Central P.W.D. The other party in the proceedings was a resident of Bangalore who had taken some part in carrying out these works as a sub-contractor and as a result of his dealings with the Madras company he claimed to be entitled to receive a sum of about Rs. 36,000. On the other hand the Madras company claimed that if the accounts were gone into a sum could be due to the company from the sub-contractor. The disputes between them were referred to arbitration by an agreement drawn up at Madras and the arbitrators were residents of Madras. By the terms of their award a sum of about Rs. 22,000 was found to be due to the Madras company and the arbitrators filed an application under section 14 (2) of the Arbitration Act on the original side of the Madras High Court of filing the award.

(1) 1950 M.L.J. 709.

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The matter came before Subba Rao, J., who rejected the objection of the Bangalore sub-contractor that the Madras High Court had no jurisdiction to receive the award. This decision was reversed in a Letters Patent Appeal.

The main judgment was delivered by Balakrishna Ayyar, J., and it seems to me that he has admirably, summed up the arguments against the case advanced on behalf of the present petitioners as follows :—

“Before us Mr. Ranganatha Sastri raised two points. The first is that the view of Subba Rao, J., that this Court has jurisdiction to receive the award and pass a decree in terms thereof is erroneous. To assess the validity of his objection it is necessary to examine the relevant provisions of the Arbitration Act. Section 2(c) of the Indian Arbitration Act (X of 1940) defines the word ‘Court’ as follows—

‘Court’ means a civil court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit but does not except for the purpose of arbitration proceedings under section 21, include a Small Cause Court.’

Section 31 (1) which contains another provision that has a bearing on this question, is in these terms :

‘Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.’

The combined effect of these two provisions would appear to be this : In order to determine which is the Court having jurisdiction in the matter, you should first of all ascertain what the questions are, which form the subject-matter of the reference to arbitration. You then proceed to ask; supposing those questions had arisen in a suit, which is the Court which would have jurisdiction to entertain the suit? That Court would be the Court having jurisdiction under the Arbitration Act also. It was admitted before us that in the present case the contract between the appellant and the respondent was entered into in Bangalore. The appellant supplied the labour and the materials in Bangalore; the respondent had also a subsidiary office in Bangalore and the payments made were also at Bangalore. The questions between the parties arose out of this contract and what the arbitrators had to determine was how much on a settlement of the accounts was due to one side or the other. Obviously, if these questions had arisen in a suit, the Court which would ordinarily have had jurisdiction in the matter is not this Court but the Court of Bangalore. That result cannot be avoided if the jurisdiction of the Court were made dependent on the subject-matter of the action. *Prima facie*, therefore, it would seem that this court has no jurisdiction in the matter. In coming to the conclusion that this Court has jurisdiction, Subba Rao, J., appears to have been swayed by the fact that the appellant,

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if he had so chosen could have filed a suit against the respondent in Madras because it is in Madras that the respondent company have their registered place of business. This is how the learned Judge viewed the matter:

As aforesaid the dispute between the respondents was that the first respondent claimed a sum of Rs. 36,000 from the 2nd respondent under the contract whereas the second respondent claimed that if the accounts were looked into a large amount would be due to him. Admittedly the second respondent is a registered firm having its office at No. 292, China Bazar Road, Madras. The first respondent, if he had wanted, could certainly have filed the suit with regard to the subject-matter of the reference on the original side of this High Court. Clause 12 of the Letters Patent governs the limits of the original jurisdiction of this Court. Under the said clause in regard to suits other than those for land, the High Court is empowered to receive, try and determine suits of every description of the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain within such limits. As admittedly the second respondent carries on business in Madras, the plaintiff could have filed the suit on the Original Side of this Court, in which case the subject-matter of the reference would have been the subject-matter of a suit pending in this

Court. In that view the Court has jurisdiction to receive the award filed under section 14 of the Arbitration Act. This passage will itself show that before this Court can acquire jurisdiction over the matter, it would have been necessary for the appellant before us to have figured as the plaintiff. Not merely that, he must have elected to sue the respondent not in Bangalore, where the suit could normally have been filed, but in Madras. The jurisdiction of this Court would have been contingent on these two factors and we doubt whether the jurisdiction conferred by sections 2(c) and 31(1) is such a contingent jurisdiction. Mr. Viswanatha Aiyar attempted to surmount this difficulty by saying that in arbitration proceedings both the parties are in the position of plaintiffs and also defendants and for that reason the suit could have been filed in Madras. Assuming, without granting, that either party could have laid the action Madras, it will be realised, if one pauses to think over the matter, that the contention, that in arbitration proceedings both the parties simultaneously fill the role of plaintiff and defendant, makes it more difficult than ever to construe sections 2(c) and 31(1) in the manner that Mr. Viswanatha Aiyer desires. Because in that view the intention which Mr. Viswanath Aiyer now attributes to the Legislature could

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have been sufficiently and more simply expressed in the statute by saying that the Court having jurisdiction is the Court within the limits of whose territorial jurisdiction any of the parties resides. The conclusion which Subba Rao, J., arrived at, does not, it seems to us, necessarily follow from the words employed in the Act. It will be noticed that there is no reference either in section 2(c) or section 31(1) of the Act to the place where the parties dwell, or carry on business, or personally work for gain. The jurisdiction of the Court is made to depend not on any of these factors but solely on the subject-matter; there is no reference to any other circumstances. If the intention of the Legislature had been to confer jurisdiction not merely with reference to the subject-matter of the dispute between the parties, but also with reference to the residence of parties or their place of business, it should not have been difficult to insert appropriate words in section 2(c) and section 31 (1) of the Act. Analogy and precedent are to be found in some very familiar provisions of the Civil Procedure Code. The words employed in the Act lay stress on the subject-matter of the reference; there is such an avoidance of words having reference to the place of residence or place of business of the parties that the omission must have been deliberate and we can think of at

least one good reason why the Court having jurisdiction should have been defined in relation to the subject-matter of the dispute or action. Otherwise, the Court having jurisdiction might depend on the accident as to who first raised the dispute or decides to file a suit.”

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—————
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In the following passage the judgment of the Allahabad Court in *Guardian Assurance Co. v. Mangal Singh* (1), interpreting similar words in the Act of 1899 in the same way is cited with approval. I find myself in entire agreement with the view set out above and I have quoted the passage *in extenso* because I think the argument could not possibly be more clearly or cogently expressed.

It is, however, contended that the lower Court wrongly observed that it was admitted that no part of the cause of action in any suit which the Bombay firm could have brought arose at Delhi. In this connection it is stated that after the announcement of the order of the lower Court the petitioners filed an application there pointing out that this observation was incorrect and this matter is still before the lower Court for decision. On behalf of the respondents some attempt was made to argue that in fact no part of the cause of action in any suit which the Bombay firm might have brought arose at Delhi, but this is obviously a matter that requires decision by the lower Court after full consideration of the pleadings and affidavit of the parties. Accordingly while I uphold the correctness of the ground on which the lower Court has held that it has no jurisdiction to entertain the application, I consider that the case should be sent back and

(1) A.I.R. 1937 All.208.

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the question of jurisdiction decided after the lower Court has considered whether in fact any part of the cause of action in a suit which the Bombay firm might have instituted arising out of the subject-matter of the reference to arbitration arose at Delhi. The parties have been directed to appear in the lower Court on the 14th of October, 1957. There will be no order as to costs in this revision petition.

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APPELLATE CIVIL.

Before Chopra and Gosain, JJ.

BRAHAM DUTT,—*Plaintiff-Appellant*

versus

EAST PUNJAB PROVINCE AND OTHERS,—*Defendants-Respondents.*

1957

Sept., 16th

Regular First Appeal No. 191 of 1949.

Civil Procedure Code (V of 1908)—Section 80—Notice under, object of—Larger amount claimed in notice—Reduction of the amount in suit, effect of—Notice as to future cause of action, whether permissible—Intention to file suit, whether must be stated in the notice.

East Punjab Evacuee's (Administration of Property) Act (XIV of 1947)—Section 19—Exemption under, when permissible—Mere allegation if sufficient.

Limitation Act (IX of 1908)—Schedule 1, Article 2—Scope of—Applicability of, if act not done in good faith.

Held, that the object and requirement of a notice under section 80 Civil Procedure Code is to afford the defendant an opportunity to reconsider his position with regard to the claim and to make amends or settle the claim, if so advised, without recourse to the trouble and cost of litigation. The object is sufficiently satisfied if the notice informs the defendant generally of the nature of the suit intended to be filed and the relief sought to be claimed. A claim for a