

Before R. N. Mittal, J.

M/S RAM CHANDER ARJAN DASS, COTTON MERCHANTS,  
HANSI,—Petitioner.

*versus*

M/S. NATIONAL TEXTILE CORPORATION LTD.,—Respon-  
dents

Civil Revision No. 1972 of 1981.

August 23, 1982.

*Arbitration Act (X of 1940)—Sections 20 and 41(a)—Code of Civil Procedure (V of 1908)—Order 47 Rule 1—Dispute referred to Arbitration under section 20—Order of reference—Whether could be reviewed.*

*Held*, that from a perusal of section 41(a) of the Arbitration Act, 1940 it is clear that all the provisions of the Code of Civil Procedure have been made applicable to all the proceedings under the Arbitration Act pending before the courts. There is, however, one exception to the rule and that is, if there is a specific provision in the Act which is inconsistent with the provisions of the Code, the former will apply. It is not disputed that there is no provision in the Act which takes the power of review from the Court acting under the Arbitration Act. In that situation, the power of review is applicable to the courts when they decide matters under the Arbitration Act. An order referring a dispute to arbitration can, therefore, be reviewed.

(Para 7).

*Petition under section 115 CPC for revision of the order of the Court of Shri B. K. Gupta, H.C.S. Sub-Judge, 1st Class, Hansi dated 31st July, 1981 allowing the application of the respondents, and setting aside the impugned order.*

Jaswant Jain, Advocate, for the Petitioner.

B. S. Gupta, with S. K. Mittal, Advocate, for the Respondents.

#### JUDGMENT

*Rajendra Nath Mittal, J. (Oral).*

(1) This revision petition has been filed against the order of the Subordinate Judge 1st Class, Hansi, dated 31st July, 1981, allowing the application for review filed by M/s. National Textile Corporation Ltd., respondent.

(2) Briefly, the facts are that a petition under section 20 of the Arbitration Act was filed by the petitioner against the respondent stating that the petitioner supplied cotton worth thirty eight thousand

odd rupees to Sri Bharathi Mills Ltd., Pondicherry, out of which the latter paid an amount of thirty two thousand rupees; thus, leaving a balance of Rs. 6,100. It is alleged that a compromise was effected between the petitioner and Sri Bharathi Mills Ltd., according to which it was agreed that the latter would pay Rs. 6,100 to the petitioner in instalments with interest calculated at the rate of 12 per cent per annum. Later, Sri Bharathi Mills Ltd. was nationalised with effect from 1st April, 1974, and the respondent took over all the liabilities and assets of the said mills. Sri Bharathi Mills Ltd. had not paid the balance amount as agreed upon and consequently a dispute arose between them. The parties agreed to refer the dispute to an arbitrator. Then a registered notice was served upon the respondent to refer the matter to the arbitrator, but it failed to do so. Consequently, the petitioner filed an application under section 20 of the Arbitration Act directing the respondent to file the agreement and make a reference to the arbitrator for adjudication.

(3) The respondent denied the allegations of the petitioner. It expressed ignorance about the agreement. It further pleaded that if there was any agreement between the petitioner and Sri Bharathi Mills Ltd., that was not binding upon the respondent under section 5(1) and (2) of the Sick Textile Undertakings (Nationalisation) Act, 1974.

(4) The learned Subordinate Judge ordered the matter to be referred to the arbitrator, on 27th March, 1981. In view of that order, it is alleged that the counsel for the respondent did not raise any objection to the appointment of Shri Amar Singh as arbitrator. Consequently, the Court referred the matter to Shri Amar Singh, Advocate, as arbitrator.

(5) The respondent later made an application for review of the said order *inter alia* on the ground that under section 5 of the said 1974 Act, the agreement entered into by the petitioner with Sri Bharathi Mills Ltd. was not binding upon it and the Court, even though there was an arbitration agreement, could not refer the matter to an arbitrator. That application was contested by the petitioner. The learned Subordinate Judge accepted the application and set aside the order appointing Mr. Amar Singh, Advocate, as arbitrator. The petitioner has come up in revision petition against that order to this Court.

M/s. Ram Chander Arjan Dass, Cotton Merchants, Hansi v.  
M/s. National Textile Corporation Ltd., (R. N. Mittal, J.)

(6) It is contended by the learned counsel for the petitioner that the Court had no power of review under the Arbitration Act and consequently the impugned order is liable to be set aside.

(7) I have heard the learned counsel for the parties at a considerable length and considered their arguments. However, I do not agree with the said contention. Section 41(a) of the Arbitration Act makes the Code of Civil Procedure (hereinafter called the Code), applicable to all the proceedings before the Court under the Arbitration Act. The section reads as under:—

“41. Procedure and powers of Court.—Subject to the provisions of this Act and of rules made thereunder—

(a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals, under this Act, and

(b) \* \* \* \* \*

From a perusal of the above section it is clear that all the provisions of the Code have been made applicable to all the proceedings under the Arbitration Act pending before the Courts. There is, however, one exception to the rule and that is, if there is a specific provision in the Act which is inconsistent with the provisions of the Code, the former will apply. It is not disputed that there is no provision in the Act which takes the power of review from the Court acting under the Arbitration Act. In that situation, in my view, the power of review is applicable to the Courts when they decide matters under the Arbitration Act. In the above view, I get support from the observations of the Supreme Court in *Sree Meenakshi Mills Ltd. vs. Their Workmen*, (1). In that case, the Court was dealing with the powers of review of an Appellate Tribunal under the Industrial Disputes (Appellate Tribunal) Act, 1950, which contains a similar provision. Section 9 of that Act relates to powers and procedure of the Appellate Tribunal. Sub-section (10) thereof provides that the Appellate Tribunal shall follow such procedure as may be prescribed and subject thereto, it may, by order, regulate its practice and procedure and the provisions of the Code of Civil Procedure shall so far as they are not inconsistent with this Act, or the rules or orders made thereunder, apply to all proceedings

(1) A.I.R. 1958 S.C. 153.

before the Appellate Tribunal. Gajendragadkar, J., as he then was, speaking for the Court, observed as follows:—

“..... The first point which has been raised in this appeal by the appellants is about the jurisdiction of the appellate tribunal to review its own orders in appropriate cases under Order 47 of the Code of Civil Procedure. This Court has recently had occasion to consider the question about the applicability of the Code of Civil Procedure to the proceedings before the Labour Appellate Tribunal in *M/s. Martin Burn Ltd. v. R. N. Banerjee* (2). Section 9(1) and Section 10 of the Industrial Disputes (Appellate Tribunal) Act, 1950, as well as the relevant rules and orders framed under the Act, were considered and it was held that the Code of Civil Procedure applies to the proceedings before the appellate tribunal with the result that the appellate tribunal can exercise its powers under Order 41, rule 21 as well as under section 151 of the Code. It is true that in this case there was no occasion to consider the applicability of the provisions of Order 47 of the Code but that does not make any difference. If the Code of Civil Procedure applies to the proceedings before the Labour Appellate Tribunal, it is clear that the provisions of Order 47 would apply to these proceedings as much as Section 151 of the Code or the provisions of Order 41, We must accordingly hold that the appellate tribunal erred in law in coming to the conclusion that it had no jurisdiction to review its own order under the provisions of Order 47 of the Code.” (Emphasis supplied by underlining.).

I consequently reject the contention of the learned counsel.

(8) The next submission of the learned counsel for the petitioner is that the review application was not within limitation. I am not impressed with this contention as well. After taking into consideration the days for obtaining copy of the order, the application was filed within thirty days. Thus, it is within limitation.

(9) For the aforesaid reasons, I do not find any merit in the revision petition and dismiss the same. No costs.

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(2) A.I.R. 1958 S.C. 79.

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