

Before V. M. Jain, J

PUNJAB STATE CO-OPERATIVE SUPPLY AND MARKETING
FEDERATION LTD.—*Petitioner*

versus

M/S. SHIV RICE AND GENERAL MILLS AND
ANOTHER—*Respondents*

C. R. No. 29 of 1999

11th July, 2000

Arbitration and Conciliation Act, 1996—S.8(3)—Trial Court passing an order restraining the Federation from recovering the disputed amount during the pendency of suit—Federation referring the dispute to the Arbitrator—Trial Court staying the arbitration proceedings—Whether arbitration proceedings can be initiated during the pendency of a civil suit—Held, Yes—However, the aggrieved party can challenge the award of the arbitrator.

Held that no case was made out for the Courts below to have restrained the Arbitrator from proceeding with the arbitration proceedings or to have restrained the defendants from proceeding with the arbitration proceedings before the Arbitrator. The plea regarding the jurisdiction of the Arbitrator could be raised before the Arbitrator and if the Arbitrator did not agree with the plea raised before him and an award was given against the plaintiff, then the plaintiff was competent to challenge the same under Section 34 of the 1996 Act. Thus, even if the Civil suit in question was pending in the civil court, yet the matter could be referred to the Arbitrator and the Arbitrator could proceed with the arbitration proceedings and the aggrieved party had the remedy to challenge the award under section 34 of the 1996 Act.

(Para 10)

H. S. Bakshi, *Advocate, for the Petitioner.*

P. S. Dhaliwal, *Advocate, for Respondent. No. 1.*

JUDGMENT

V. M.Jain, J

(1) This order shall dispose of the above mentioned two revision petitions, having common questions of law and fact. For the purpose of convenience, the facts of Civil Revision No. 29 of 1999 are being given below.

(2) This is a revision petition against the orders dated 22nd September, 1998 and 16th May, 1997 passed by the Courts below restraining the defendants from proceeding with the arbitration proceedings with the Arbitrator and staying the proceedings before the Arbitrator till the decision of the suit.

(3) The facts which are relevant for the decision of the present revision petition are that M/s Shiv Rice and General Mills (plaintiff) had filed a suit for declaration and injunction against the defendants (Punjab State Co-operative Supply and Marketing Federation Limited and another), challenging the recovery notice dated 8th September, 1995 issued by the defendant—Federation and for restraining the defendants from recovering the disputed amount during the pendency of the suit and order dated 10th November, 1996 was passed restraining the defendants from recovering the suit amount from the plaintiff during the pendency of the suit. It was alleged that in order to make the suit infructuous, the defendants had referred the matter in dispute to the Arbitrator,—*vide* order dated 22nd November, 1996 and the Arbitrator had summoned the plaintiff to appear before him and to file a claim. It was accordingly prayed that the defendants be restrained from proceeding with the arbitration proceedings during the pendency of the suit. The said application was contested by the defendants, taking up various preliminary objections, including the maintainability of the said application alleging therein that initiating arbitration proceedings even during the pendency of the suit was not a bar, especially when there was no stay in referring the matter to the Arbitrator and it was prayed that the application be dismissed. The learned trial Court; after hearing both sides,—*vide* order dated 16th May, 1997, allowed the application of the plaintiff and granted *ad interim* injunction, restraining the defendants from proceeding with the arbitration proceedings. Aggrieved against this order of the trial Court, the defendants filed an appeal, which was dismissed by the Additional District Judge,—*vide* judgment dated 22nd September, 1998. Aggrieved against

these orders of the Courts below, defendant No. 1 has filed the present revision petition in this Court.

(4) Notice of motion was issued. Counsel for the parties have been heard and record perused.

(5) The learned counsel appearing for the defendant—petitioner submitted before me that the arbitration proceedings were initiated while appointing the Arbitrator,—*vide* letter dated 22nd November, 1996 and these arbitration proceedings were covered under the the provisions of the Arbitration and Conciliation Act, 1996 (for short, “the 1996 Act”) which came into force with effect from 25th January, 1996. It was submitted that under the provisions of this Act, the Civil Court has no jurisdiction to stay the arbitration proceedings pending before the Arbitrator. It was submitted that only an application to the Arbitrator was competent in this regard and even his decision could not be challenged except by way of an application under section 34 of the 1996 Act. Reliance has been placed on the law laid down by a Division Bench of this Court in the case reported as *M/s Herike Rice Mills, Mehalkalan, District Sangrur Vs. State of Punjab and others* (1), On the other hand, learned counsel appearing for plaintiff—respondent No. 1 submitted before me that in the present case, the provisions of the Arbitration Act, 1940 (hereinafter referred to as “the 1940 Act”) would apply. Reliance was placed on *M/s. Shetty’s Constructions Co. Pvt. Ltd. Vs. M/s Konkan Railway Construction and another* (2), It was further submitted that since the defendants had failed to raise the objection regarding the jurisdiction of the civil Court in the civil suit filed by the plaintiff and the defendants had joined the proceedings by filing written statement etc., the defendants were debarred from referring the matter to the Arbitrator and that being so, the proceedings before the Arbitrator were liable to be stayed.

(6) After hearing both sides and perusing the record, in my opinion, the revision petition must be allowed and the order passed by the Courts below must be set-aside.

(7) The 1996 Act had come into force with effect from 25th January, 1996 whereby the 1940 Act stood repealed. Since no proceedings under the 1940 Act were pending in this case at the time when the 1996 Act came into force, there would be no question of the

(1) 1998 (1) PLR 395

(2) AIR 1999 SC 1535

provisions of 1940 Act being applicable to the facts of the present case. *M/s Shetty's Constructions Co. Pvt. Ltd.'s case* (supra) relied upon by the learned counsel for plaintiff—respondent No. 1, in my opinion, would have no application to the facts of the present case. In the reported case, the demand for referring the dispute to the Arbitrator was made by the petitioners prior to the date when the 1996 Act had come into force and it was under those circumstances that it was held by their Lordships of the Supreme Court that in those cases the 1940 Act would apply and not 1996 Act. In the present case, there is nothing on the record to show that by the time when 1996 Act had come into force on 25th January, 1996, any plea regarding arbitration had been raised before the trial Court either by the plaintiff or by the defendants. The provisions of 1940 Act would have applied to the present case only if any claim regarding arbitration had been made by either side prior to 25th January, 1996, the date on which the 1996, Act came into force. As referred to above, in the present case, there is nothing to show that either side had made any claim for arbitration proceedings before 25th January, 1996. That being so, there would be no question of 1940 Act being applicable to the present case. Mere filing of the civil suit by the plaintiff prior to 25th January, 1996 would be of no relevance unless it is shown that any reference to the arbitration was made by either side prior to 25th January, 1996. Under these circumstances, the provisions of 1996 Act would apply to the present case and not the provisions of 1940 Act.

(8) Under Section 5 of the 1996 Act, it is provided that in the matters governed by the said Act, no judicial authority shall intervene except where so provided in this Act. Section 8(3) of the 1996 Act provides that even where the issue is pending before the judicial authority (Courts), an arbitration may be commenced or continued and an arbitral award made. Section 16 of 1996 Act provides that the arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement and a party is competent to raise the plea before the arbitral tribunal that it did not have the jurisdiction or was exceeding the scope of its authority and where the arbitral tribunal takes a decision, rejecting any such plea, it would continue with the arbitral proceedings and make the arbitral award. It is further provided therein that a party aggrieved by such an arbitral award may make an application for setting-aside such an arbitral award, in accordance with Section 34 of the said Act.

(9) In *M/s Herike Rice Mill's case* (Supra), after noticing various provisions of the 1996 Act, it was held by a Division Bench of this Court that even if the appointment of an Arbitrator was invalid, the same will have to be decided by the Court before which the validity of the award would be challenged and an unsuccessful party cannot challenge the order of the Arbitrator, rejecting the challenge to his appointment, even before the civil Court before the award is made and even a petition under Article 226 of the Constitution of India, challenging the order of Arbitrator, would not lie, when the award is yet to be made. In *Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and others* (3) it was held by their Lordships of the Supreme Court that under Section 34 of the 1996 Act, arbitral award may be set-aside by the Court if the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or if it contains decision on matters beyond the scope of the submission to arbitration.

(10) In view of the law laid down by a Division Bench of this Court and by their Lordships of the Supreme Court, in the cases referred to above, in my opinion, no case was made out for the Courts below to have restrained the Arbitrator from proceeding with the arbitration proceedings or to have restrained the defendants from proceeding with the arbitration proceedings before the Arbitrator. The plea regarding the Jurisdiction of the Arbitrator could be raised before the Arbitrator and if the Arbitrator did not agree with the plea raised before him and an award was given against the plaintiff, then the plaintiff was competent to challenge the same under section 34 of the 1996 Act and the Court was competent to set-aside the award if it dealt with a dispute not contemplated by or not falling within the terms of the arbitration clause. However, the civil court could not restrain the defendants or the Arbitrator to proceed with the arbitration proceedings. As referred to above, Section 8(3) of the 1996 Act contemplates a situation where the matter may be pending before the Courts and still the arbitration may be commenced or continued and an arbitral award made. Thus, even if the civil suit in question was pending in the civil court, yet the matter could be referred to the Arbitrator and the Arbitrator could proceed with the arbitration proceedings and the aggrieved party had the remedy to challenge the award under Section 34 of the 1996 Act.

(11) For the reason recorded above, both the Civil Revisions referred to above are allowed, the orders passed by the Courts below are set-aside and the applications filed by plaintiffs for restraining the defendants and the Arbitrator from proceeding with the arbitration proceedings during the pendency of the suit are dismissed but with no order as to costs.

S. C. K.

Before G. S. Singhvi and Nirmal Singh, JJ

VINOD GOEL AND OTHERS—*Petitioners*

versus

UNION OF INDIA AND OTHERS—*Respondents*

C. W. P. No. 963 of 1999

26th September, 2000.

Income Tax Act, 1961—Ss. 2(21), 116(cc), 132(1) and 133—A—Deputy Director ordering survey at the premises of the petitioners after seizing documents during the search carried out at the premises of the two other firms—Addl. Director, on the discovery of material and incriminating documents, converting the survey into search operation u/s 132—Addl. Director has jurisdiction to exercise the power of the Director General under the provisions of the Act—Search and seizure operation does not suffer from any legal infirmity—Writ dismissed.

Held that survey ordered by the Deputy Director under Section 133-A of the 1961 Act was, later on, converted into search in continuation of the search carried out at the business premises of M/s Rakesh Kumar, Ashok Kumar and M/s R. K. and Company, Builders and Colonisers, it is not possible to accept the argument of the petitioners that the search and seizure operation carried out at the premises of the petitioners should be quashed on the ground of lack of jurisdiction. No doubt, there is a time gap of about 15 days between the search and seizure operation carried out 9/30, Sadar