

Ram Parshad Rastogi *v.* Jagdish Narain (Grover, J.)

the inquiry under section 476 of the Criminal Procedure Code will not be competent before the Rent Controller. There will be no order as to costs.

B.R.T.

REVISIONAL CIVIL
Before S. K. Kapur, J.
AMAR NATH,—Petitioner

versus

BHAGWAN DAS AND OTHERS,—Respondents
Civil Revision No. 333-D of 1965

July 27, 1966

Arbitration Act (X of 1940)—Ss. 2(a) and 33—Question regarding legality of contract containing arbitration clause—Whether to be determined by Court—By-law providing for arbitration—Legality of contracts—Whether determinable by arbitrators.

Held, that if a party contends that the contract, which contains the arbitration clause, was never entered into, the proper forum for decision of that issue would be the Court, for denial by a party of having entered into a contract is also denial of the fact that he ever joined in the submission. Similarly, if a party to such an alleged contract challenges the legality thereof and alleges that it is void *ab initio*, the arbitration clause cannot operate, for on this view the arbitration clause itself is also void. On the other hand, there is no fetter on the competence of the parties to agree to refer to arbitration disputes as to legality of certain contracts and if they do so by an independent agreement, the legality or illegality of the contract will not destroy the arbitration agreement. Of course, a question may arise about the scope of the arbitration agreement, that is, whether or not the dispute as to the legality is covered. A particular by-law of the Stock Exchange providing arbitration will operate as a separate arbitration agreement not linked with the contracts the legality whereof is challenged. The legality of those contracts will then fall to be determined by the arbitrators.

Petition for revision under section 115 of the Code of Civil Procedure (Act V of 1908) of the order of Shri Dalip Singh, Sub-Judge, 1st Class, Delhi, dated 11th June, 1965, dismissing the application of Shri Amar Nath, under sections 33 and 11 of the Arbitration Act and leaving the parties to bear their own costs.

R. S. TANDON, ADVOCATE, for the Petitioner.

J. R. GOEL, ADVOCATE, for the Respondent.

JUDGMENT

KAPUR, J.—Amar Nath petitioner is alleged to have purchased and sold certain shares through Bhagwan Dass, respondent No. 1. at Delhi Stock Exchange Association Limited. New Delhi. The petitioner is a non-member while the respondent is a member of the said Stock Exchange. Contract notes were prepared with respect to the purchase and sale of the said shares and.

according to the petitioner, some of them did not bear his signatures at all while on some of the notes his signatures had been forged. He, however, admitted having signed a few contract notes. The said contract notes contain an arbitration clause providing for reference of all disputes arising out of or in relation to dealings, transactions and contracts, etc., to arbitration. Another clause in the contract is made subject to the rules, bye-laws, regulations and usages of the Delhi Stock Exchange Association, New Delhi. The said bye-laws also admittedly contain an arbitration clause. On the basis of these transactions Bhagwan Dass submitted a claim for Rs. 32,848-5½ P. against petitioner Amar Nath, to the Delhi Stock Exchange Association Limited to be adjudicated upon according to the arbitration agreement. The petitioner having failed to appoint his arbitrator when called upon by the Stock Exchange, it appointed Shri P. S. Khambate as an arbitrator on behalf of the petitioner. The arbitrator appointed by Bhagwan Dass, and said Shri P. S. Khambate commenced arbitration proceedings and the petitioner made an application under section 33 of the Arbitration Act. In the said petition the petitioner claimed that he had not signed some of the contract notes and the transactions covered by those notes could not be referred to arbitration. He also alleged that the contracts were illegal and void being in contravention of certain provisions of the Forward Contracts (Regulation) Act, 1952. and in that situation the arbitration clause forming an integral part of each contract could not survive. The trial Court decided that the agreement of arbitration in this case was independent of the contracts impugned as illegal and void. It was observed—

“There seems to be considerable force in this submission of the learned counsel, for there can be little doubt that the agreement of arbitration in this case is independent of the contracts said to be void. The independent agreement of arbitration is contained in bye-law No. 247(a) referred to above by which the parties had agreed to be bound. The subsequent similar agreements contained in each contract note were only a reiteration of the general regulation aforesaid.”

In view of this finding about the existence of an independent arbitration agreement the trial Court dismissed the petition made under section 33 of the Arbitration Act. The learned counsel for the petitioner does not dispute that in case there be in existence an independent arbitration agreement in terms of the bye-laws, rules and regulations of the said Stock Exchange with respect to the business

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transacted between the parties the clause in the bye-laws would be of sufficient amplitude to embrace within it the dispute as to the validity and/or legality of the transactions entered into between the parties and the dispute as to what business was transacted. He, however, maintains that there was no such independent agreement and on the authority of *Khardah Company Ltd. v. Raymon and Co. (India) Private Ltd.* (1), and *Waverly Jute Mills v. Raymon and Co.* (2), the arbitration clause as contained in the contract notes must be held to have perished. He further says that the legality or illegality of those contracts, evidenced by the contract notes alone and containing the arbitration clause, must be decided by the Court and not the arbitrators. In the view that I have taken it is unnecessary to consider the legality of the contracts. Where a question about the legality of a contract containing an arbitration clause is raised, the Courts have undoubtedly to decide that question. The parties may, however, refer disputes as to the legality of their contracts also to arbitration and if there exists an independent arbitration agreement to that effect, the legality or illegality of the contract under which disputes arise does not affect the arbitration agreement. The position is, therefore, this: If a party contends that the contract, which contains the arbitration clause, was never entered into, the proper forum for decision of that issue would be the Court, for denial by a party of having entered into a contract is also denial of the fact that he ever joined in the submission. Similarly, if a party to such an alleged contract challenges the legality thereof and alleges that it is void *ab initio*, the arbitration clause cannot operate for on this view the arbitration clause itself is also void. On the other hand, there is no fetter on the competence of the parties to agree to refer to arbitration disputes as to legality of certain contracts and if they do so by an independent agreement, the legality or illegality of the contract will not destroy the arbitration agreement. Of course, a question may arise about the scope of the arbitration agreement, that is, whether or not the dispute as to the legality is covered. That dispute again will have to be decided by the Court under section 33. The position here is that the petitioner admits that the particular bye-law is wide enough to cover disputes as to legality and, therefore, the only point requiring decision would be whether the arbitration agreement is contained only in the contract notes or independently thereof. The trial Court has on evidence found that the parties

(1) A.I.R. 1962 S.C. 1810.

(2) A.I.R. 1963 S.C. 90.

agreed that they will abide by the bye-laws of the Stock Exchange. The particular bye-law will in that case operate as a separate arbitration agreement not linked with the contracts the legality whereof is challenged. The legality of those contracts will then fall to be determined by the arbitrators. I would like to refer to the statement of Bhagwan Das, who appeared as R.W. 1 and spoke about the existence of such an independent agreement. The passage from the trial Court's judgment shows that that statement has been accepted.

In these circumstances, I find no merit in the revision petition and the same is dismissed with no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Shamsheer Bahadur and R. S. Narula, JJ.

NAND LAL,—Petitioner

versus

THE ESTATE OFFICER, CHANDIGARH AND OTHERS,—Respondents

Civil Writ No. 459 of 1965

August 3, 1966

Punjab New Capital (Periphery) Control Act, 1952 (Act I of 1953)—S. 12(2)—Whether valid—Order for demolition of building passed without affording reasonable opportunity to the owner to show-cause against demolition—Whether valid.

Held, that sub-section (2) of section 12 of the Punjab New Capital (Periphery) Control Act vests an unregulated power in the Deputy Commissioner to make an order of demolition and being clearly in violation of the constitutional protection enshrined in Article 19 must be struck down as *ultra vires*.

Held, that the order passed by the Deputy Commissioner for demolition of the building is vitiated on the grounds that no reasonable opportunity was afforded to the owner to show-cause against the demolition and there was a non-compliance of the requirements of sub-section (1) of section 4 of the Act.