

Before G. C. Mital, J.

TAJ FINANCING AND TRADING COMPANY

—Appellant.

versus

SHRI INDER DEV GUPTA AND OTHERS

—Respondents.

First Appeal from Order No. 247 of 1979

September 13, 1984

Arbitration Act (X of 1940)—Sections 5 and 34—Loan advanced to a party—Such advance further secured by two persons standing as guarantors—Agreement between the principal and the borrower alone to refer disputes between themselves to three named Arbitrators—Guarantors not parties to the arbitration agreement—Two arbitrators refusing to act as such—Civil suit between the parties—Whether can proceed.

Held, that where two of the named Arbitrators have declined to proceed with the arbitration proceedings the sole Arbitrator cannot enter into the reference and cannot decide the matter between the parties. Moreover, Section 5 of the Arbitration Act, 1940 would also not apply to such a case in view of the fact that two of the Arbitrators have refused to enter into the reference. Further the guarantors were not parties to the arbitration agreement and as such cannot be parties before the Arbitrators. A salutary principle has to be followed that the matter should not be vexed over twice and if the arbitration agreement is to be given effect to, first the Arbitrators would decide the dispute between the principal debtor and the principal creditor and after the award is made the rule of the Court, if the principal creditor is not able to realise the entire decretal amount from the principal debtor then there will be another round of litigation between the principal creditor and the guarantors. This multiplicity of proceedings is to be avoided. The dispute between the principal debtor and the creditors can well be decided in the suit and as such the application under Section 34 of the Act would be liable to dismissal and the civil suit between the parties can proceed.

...

(Paras 4, 5 and 6).

First Appeal from the order of the Court of Shri Gopi Chand, P.C.S., Sub-Judge, 1st Class, Ludhiana, dated 19th February, 1979, staying the proceedings of the case under Section 34 of the Indian Arbitration Act.

P. S. Sandhu, Advocate, with G. S. Cheema, Advocate, for the Appellant.

V. P. Gandhi, Advocate, for the Respondent.

JUDGMENT

Gokal Chand Mital, J. (Oral):

(1) M/s Taj Financing and Trading Company (hereinafter referred to as the Company) had advanced huge amount to Inder Dev Gupta. The amount of Rs. 86,080 was due to the Company according to the accounts of the Company and for recovery of the same, a civil suit was filed. In the civil suit Bansi Lal and Suraj Chand *alias* Swaraj Chand were impleaded as defendants as they were the guarantors. Two more persons were impleaded as defendants as in the loan agreement it was mentioned by Inder Dev Gupta that he was taking the loan for himself and on behalf of those persons. When notice of the suit was received by Inder Dev Gupta, he filed an application under section 34 of the Arbitration Act (hereinafter referred to as the Act) and claimed that the suit be stayed as there was an arbitration agreement between him and the Company and reference had already been made to the three named arbitrators. The trial Court allowed the application of Inder Dev Gupta and stayed the suit by order, dated 19th February, 1979. This is appeal by the Company.

(2) Shri P. S. Sandhu, Advocate, appearing for the company has urged that the arbitration agreement was only between the Company and Inder Dev Gupta and in the agreement the two guarantors were not associated and, therefore, on these facts and arbitration agreement would not stand in the way of filing of the suit and section 34 of the Act was not applicable. In support of the argument, reliance is placed on (1) *Asiatic Shipping Co. (Private) Ltd. v. P. N. Djakarta Lloyed and another*, (1), (2) *The Chartered Bank v. The Commissioner for the Port of Calcutta*, (2) and (3) *M/s The Barium Chemicals Ltd. v. M/s Bombay Industrial and Chemical Company, Bombay*, (3).

(3) Shri V. P. Gandhi, Advocate, appearing for Inder Dev Gupta, has urged that the aforesaid decisions are distinguishable on facts because in the instant case there was reference to the three named arbitrators and those arbitrators had entered into reference

- (1) A.I.R. 1969 Cal. 374.
- (2) A.I.R. 1972 Cal. 198.
- (3) A.I.R. 1977 A.P. 400.

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and unless that reference is got revoked through Court under section 5 of the Act, the arbitration reference will continue and the suit has to be stayed.

(4) After hearing the learned counsel for the parties and on perusal of the aforesaid decisions, I am of the view that the aforesaid decisions relied upon by the appellant/company are applicable to the instant facts. It is not disputed by Shri Gandhi that out of the three named arbitrators, two arbitrators have declined to proceed with the arbitration proceedings and have clearly stated that they are no longer wanting to enter into arbitration. The arbitration agreement clearly shows that all the three arbitrators had to decide the dispute between the parties to the agreement. Now we have only one arbitrator and he by himself cannot enter into the reference and cannot decide the matter between the parties. Therefore, the reference does not stand in the way of the suit.

(5) Moreover, section 5 of the Act is not applicable. What is provided by section 5 of the Act is that the authority of an appointed arbitrator or umpire cannot be revoked except with the leave of the Court. Here no body is seeking to revoke the authority of the arbitrator or umpire. As already noticed, two of the arbitrators themselves have refused to enter into reference. Hence there is no merit in the argument that the reference should be got revoked. Section 5 of the Act is not applicable for any such matter.

(6) It is not disputed before me that the two guarantors were not parties to the arbitration agreement, and, therefore, cannot be parties before the Arbitrators. A salutary rule has been laid in the aforesaid decisions that the matter should not be vexed over twice and if the arbitration agreement is to be given effect to, first the arbitrators would decide the dispute between the principal debtor and the principal creditor and after the award is made the rule of the Court, if the principal creditor is not able to realise the entire decretal amount from the principal debtor, then there will be another round of litigation between the principal creditor and the guarantors. This multiplicity of proceedings is to be avoided as far as possible. The dispute between the principal debtor and the creditors can well be decided in the suit which has been filed by the Company and I am of the opinion that the same should be decided to avoid multiplicity of proceedings. For this additional reason also, I hold that it is not a fit case for staying the suit.

(7) For the reasons recorded above, this appeal is allowed, the order of the Court below, dated 19th February, 1979 is hereby set aside and the application filed by Inder Dev Gupta under section 34 of the Act is hereby dismissed. Since it would be an old suit, the trial Court is directed to revive it and to proceed with it with expedition by giving preference to it over the newly instituted suits. The parties, through their counsel, are directed to appear before the trial Court on 16th October, 1984. However, there will be no order as to costs.

H. S. B.

Before P. C. Jain, A.C.J. & J. M. Tandon, J.

MUNICIPAL CORPORATION, AMRITSAR

—Appellant.

versus

SHRI DES RAJ PAUR AND OTHERS

—Respondents.

Letters Patent Appeal No. 1 of 1983

October, 1984

Payment of Bonus Act (XXI of 1965)—Sections 32 and 34—Punjab Municipal Act (III of 1911)—Sections 39, 236 and 240—Municipal Account Code 1930—Rule XVII.17(1)(b)(5) Paragraph 9—Municipal Committee entering into a settlement with its employees for payment of bonus—Subsequent resolution by the Committee approving the settlement—Resolution annulled by the Government under section 236 on the ground that Bonus Act was not applicable to municipal employees—Non-applicability of the Bonus Act to a municipal committee—Whether debars it from paying bonus to its employees—Grant of bonus to the employees—Whether violates the Municipal Account Code.

Held, that in view of the provisions contained in section 32 of the Payment of Bonus Act, the employees of the Municipal Committees are not covered by this Act. In other words, no provision contained in the Bonus Act including section 34 can be made applicable to the employees of the Municipal Committee. It is also clear that the State Government is competent to annul or modify any