APPELLATE CIVIL

Before Prem Chand Pandit, J.

PUNJAB AGRICULTURAL UNIVERSITY AND OTHERS—*Appellants*

versus

M/S. WALIA BROS.—*Respondent*

F.A.O. 48 of 1967

January 24, 1968

Arbitration Act (X of 1940)—Ss. 34 and 39 (1)(v)—Appeal against order refusing to stay suit on the finding that there was no valid arbitration agreement between the parties—Whether competent—Finding as to the existence of a valid arbitration agreement—Whether can be challenged in appeal—Punjab Agricultural University Act (XXXII of 1961)—S. 12—Vice-Chancellor—Whether competent to file suit or appeal.

Held, that according to section 39 of the Arbitration Act an order staying or refusing to stay legal proceedings where there is an arbitration agreement is appealable. In section 39(1)(v) the words are "where there is an arbitration agreement" and not "where there is a valid arbitration agreement". Where there is an agreement providing for arbitration but the lower court finds that it was not a valid agreement and on that finding refuses to stay the suit under section 34 of the Act, an appeal against that order is competent under section 39(1)(v) of the Act. It is not correct to say that it is only for the trial court to see whether there is a valid arbitration agreement or not and that the said finding cannot be challenged in appeal or otherwise. That finding gives the cause to the appellant to file the appeal against that order and the appellate Court can reverse that finding. The finding given by the trial court does not take away the right of the appellant to file an appeal against the order refusing to stay the suit filed by the respondent.

Held, that the words "the Vice-Chancellor shall exercise general control over the affairs of the University and shall be responsible for the due maintenance of discipline at the University" in section 12(2) of the Punjab Agricultural University Act, 1961, do not confer any power on the Vice-Chancellor to file or defend any suit or appeal without specific Resolution in that behalf by the Board of Management of the University. Similarly, item No. 27 in Schedule Part 'B' does not authorise the Vice-Chancellor to institute an appeal. Schedule Part 'B' contains a statement

showing the delegation of financial powers to officers, teachers and other employees of the Punjab Agricultural University. In item No 27, under the heading "Nature of powers to be delegated" is mentioned "to sanctioned expenditure in connection with civil suits instituted with the sanction of the Vice-Chancellor" and opposite this item, it is mentioned that the Vice-Chancellor has full powers. All that this item means is that if some civil suit has been instituted with the sanction of the Vice-Chancellor, then the said Vice-Chancellor has full financial powers to incur expenditure in that connection. The question, however, still remains, which are those suits which could be instituted with the sanction of the Vice-Chancellor? That has not been made clear in the said Schedule. Besides, no power has been given to the Vice-Chancellor to decide whether a suit or appeal in a particular case should be filed or not. It is for the Board of Management to decide by Resolutions the nature or type of the suits which could be instituted with the sanction of the Vice-Chancellor. Under the circumstances, the Board of Management should have, by a resolution, authorised the Vice-Chancellor or somebody else to file an appeal in the instant case. The Vice-Chancellor on his own could not do so, because no such power was given to him under the Punjab Agricultural University Act.

First Appeal from the order of Shri Nirpinder Singh, Sub-Judge, 1st Class, Ludhiana, dated the 21st January, 1967, rejecting the application for stay.

H. L. Soni, Advocate, for the Appellants.

Man Mohan Singh Liberhan, Advocate, for the Respondent.

ORDER

Pandit, J.—In 1964, the Punjab Agricultural University, Ludhiana, invited tenders for the construction of two hostels in the University campus at Ludhiana. On 30th of September, 1964, Messrs Walia Brothers of Kharar, district Ambala, respondent, submitted two tenders in that connection. On 14th of October, 1964, the respondent was informed that their tenders had been accepted and they should start work. One of the conditions, however, was that the respondent had to sign an agreement. The respondent delayed the signing of the agreement, but, however, started the construction work on 1st of November, 1964, without signing the agreement in spite of repeated requests. On 22nd of April, 1965, at about 11.35 P.M. one truck No. PNL 4015 belonging to the respondent was stopped at the gate of the University campus by the Security staff of the University. The truck had 107 bags of cement in it. The stock of the cement was also verified at that very time in the presence of one

Ram Krishan Walia, one of the partners of the respondent-firm, and it was found short by 107 bags. On 24th of April, 1965, a report to the Police was lodged by the University authorities in that connection. On 27th of April, 1965, the Chief Engineer of the University recommended to the Vice-Chancellor of the University that the contractor, namely, the respondent firm, should be allowed to finish the contract, but that proposal was not agreed to by the Vice-Chancellor. On 26th of May, 1965, the work was taken away from the respondent in terms of the contract and the University itself started the construction work. It may be mentioned that in the meantime, on 28th of April, 1965, the respondent had signed the agreement. On 19th of April, 1966, a suit was brought by the respondent against the University for the recovery of Rs. 3,20,000 on account of damages for breach of the contract, in the Court of Subordinate Judge 1st Class, Ludhiana. The suit was brought against the University and its three officers, namely, the Vice-Chancellor, the Chief Engineer and the Executive Engineer. On the same day when the suit was filed, an interim injunction was obtained against the University restraining them from continuing with the construction of the two hostels. The Court fixed the matter regarding the injunction for 30th of April, 1966. It had to be decided on that date as to whether the said injunction had to be confirmed or vacated. The suit, however, was fixed for 19th of May, 1966. On the said date that is 30th of April, 1966, the defendants objected to the grant of the injunction. The Court refused to vacate the injunction, but appointed a Local Commissioner to measure the work already done by the contractors for making payment to them for the said work. That was agreed to by both the parties and the injunction matter had been ordered to come up on the 19th of May, 1966, which was the date fixed in the main suit. On 19th of May, 1966, both the suit and the application for injunction came up for hearing before the Court. On that day, the University filed an application under Section 34 of the Indian Arbitration Act for staying the proceedings in the suit because of the arbitration clause in the agreement. The respondent objected to the grant of that application on a number of grounds, which led to the framing of the following issues:—

(1) Whether there is any valid agreement for arbitration between the parties?

(2) Whether the application is not maintainable, as the applicant has taken step in the proceedings?

(3) Whether the application is properly presented?

(4) Whether the subject-matter of the suit is a matter not covered by the agreement?

(5) Whether the Estate Officer-cum-Chief Engineer defendant No. 3 is not a proper person to be appointed as Arbitrator for reasons given in the additional pleas ?

(6) Relief?

The Court below held that there was a no valid agreement for arbitration between the parties, because according to it the said agreement was in all probability the result of undue influence and, therefore, voidable at the instance of the respondent-firm. Under issue No. (2), it was found that before the stay application was filed on 19th of May, 1966, the defendants had taken steps in the proceedings in the suit and that fact would render the application for stay incompetent. Under issue No. (3), the finding was that the application for stay had been properly presented. It was further held under issue No. (4) that the dispute in the suit was such, which did not fall within the reference clause in the agreement. Under issue No. (5), the finding was that the Estate Officer-cum-Chief Engineer, defendant No. 3, was not a proper person to be appointed as an arbitrator in the instance case, because he had already pre-judged the matter and he could not be made the Judge in his own case. On these findings, the learned Judge held that the present case was one where stay should be disallowed and the application under Section 34 of the Indian Arbitration Act was, consequently, rejected. Against this order the present appeal has been filed by the Punjab Agricultural University, Ludhiana, Shri P. N. Thapar its Vice-Chancellor, Shri D. K. Saigal its Chief Engineer, and Shri P. K. Gupta, its Executive Engineer.

Two preliminary objections have been raised by the learned counsel appearing for the respondent-firm. In the first instance, it was contended that no appeal lay under Section 39 of the Indian Arbitration Act, because it had been found b ythe trial Court that there was no arbitration agreement in the present case. Under Section 39 (1) (v) the existence of an arbitration agreement was a pre-requisite for the purpose of filing an appeal under the said Section. Reliance for this submission was placed on a decision of the Allahabad High Court in *State of Uttar Pradesh* v. *Obdul Aziz and others* (1).

(1) A.I.R. 1955 All. 673.

In the present case, as already mentioned above, it was found by the trial Judge that there was no valid agreement for arbitration between the parties. The said agreement, according to the learned Judge, was the result of undue influence. In appeal this finding of the learned Judge is being challenged by the appellants. This Court would decide whether that finding given by the Court below was correct or not. It is not understood as to how an appeal was not competent under Section 39 of the Act, if a finding of the nature mentioned above was given by the Court below and which finding was the subject-matter of appeal in this Court. According to Section 39, an order staying or refusing to stay legal proceedings where there was an arbitration agreement was appealable. Undoubtedly, there was an arbitration clause in the agreement that had been executed between the parties. It was in view of that arbitration clause that an application under Section 34 of the Arbitration Act had been made by the University for staying the suit filed by the respondent. That application having been rejected by the Court below, the University had come here in appeal against that order. In Section 39(1) (v), the words were "where there is an arbitration agreement" and not "where there is a valid arbitration agreement". As I have said, there was indisputably an arbitration agreement, which, according to the Court below, was not a valid agreement. This point is still to be decided by this Court in appeal. I am not impressed with the argument of the learned counsel for the respondent that it was only for the trial Court to see whether there was a valid arbitration agreement or not and that the said finding could not be challenged in appeal or otherwise and it had become final between the parties. That finding, in my opinion, had given cause to the appellants to file the appeal and the appellate court could reverse that finding. The finding given by the trial court does not take away the right of the University to file an appeal against the order refusing to stay the suit filed by the respondent. It was held by a Division Bench of the Punjab Chief Court consisting of Shadi Lal and Broadway, JJ., in *Sheo Parshad Radha Kishen* v. *Indore-Malwa United Mills, Ltd.*, (2), as under—

> "When it is pleaded by defendant that there is an agreement to refer to arbitration and application is made under paragraph 18 of Schedule 11 of the Code to stay the suit on that ground and plaintiff denies the agreement, it is within the province of the Court to decide whether or not there is

(2) 62 P.R. 1917 page 220.

such an agreement, whether it is still subsisting and whether the matters in dispute in the suit are within the agreement for arbitration.

And where the Court decides that no such agreement was entered into by the plaintiff and that the suit was, therefore, not liable to be stayed, the order of the Court is subject to appeal under Section 104(e)."

As regards *Abdul Aziz's* case, the respondent cannot derive any benefit therefrom, because there, the learned counsel for the appellants had conceded that no appeal lay.

I would, therefore, hold that there is no merit in this objection of the respondent and an appeal was competent in the instant case.

The learned counsel then contended that the Punjab Agricultural University, Ludhiana, being a corporate body, its proceedings were conducted by the Resolutions of its Board of Management. Since the said Board had passed no Resolution to the effect that an appeal should be filed in the instant case and had not authorised somebody to do so, the present appeal had not been properly instituted and the same was liable to be dismissed on that ground. In reply, it was submitted by the learned counsel for the appellants that the Vice-Chancellor of the University was competent to file the appeal. In that connection, he referred to the powers of the Vice-Chancellor mentioned in Section 12(2) of the Punjab Agricultural University Act, 1961, and item No. 27 in Schedule Part 'B' given at page 109 of the Punjab Agricultural University Act and Statutes of 1967-68. In Section 12(2), it is mentioned that the Vice-Chancellor shall exercise general control over the affairs of the University and shall be responsible for the due maintenance of discipline at the University. These words, in my opinion, do not confer any power on the Vice-Chancellor to file or defend any suit or appeal without specific Resolution in that behalf by the Board of Management of the University. Similarly, item No. 27 in Schedule Part 'B', at page 109 does not authorise the Vice-Chancellor to institute an appeal. Schedule Part 'B' contains a statement showing the delegation of financial powers to officers, teachers and other empolyees of the Punjab Agricultural University. In Item No. 27, under the heading "Nature of powers to be delegated" is mentioned "to sanction expenditure in connection with civil suits instituted with the sanction of the Vice-Chancellor"

and opposite this item, it is mentioned that the Vice-Chancellor has full powers. All that this item means is that if some civil suit has been instituted with the sanction of the Vice-Chancellor, then the said Vice-Chancellor has full financial powers to incur expenditure in that connection. The question, however, still remains; which are those suits which could be instituted with the sanction of the Vice-Chancellor. That has not been made clear in the said Schedule. Besides, no power has been given to the Vice-Chancellor to decide whether a suit or appeal in a particular case should be filed or not. It is for the Board of Management to decide by Resolutions the nature or type of the suits which could be instituted with the sanction of the Vice-Chancellor. No such material has been brought on the record to show that the present suit or appeal was of that type. In the instant case, a suit has been filed against the University and certain of its officers and the Board of Management had to decide as to whether that suit had to be defended or not. If former was the case, then it had to authorise somebody to defend the said suit. Similarly, when the application under Section 34 filed by the University in the said suit had been rejected, it was again the Board of Management which had to decide by a Resolution as to whether that matter had to be taken up in appeal or not. It was held by the Supreme Court in *Vice-Chancellor, Utkal University and others* v. *S. K. Ghosh and others* (3), that though an incorporated body, like a University, was a legal entity it had neither a living mind nor voice. It could only express its will in a formal way by a formal Resolution and so could only act in its corporate capacity by Resolution properly considered, carried and duly recorded in the manner laid down by its Constitution. Similarly, it was held by a Division Bench of the Lahore High Court in *Bawa Bhagwan Dass* v. *Municipal Committee, Rupar* (4), that the act of filing an appeal by the Municipal Committee required a special Resolution of the Committee. Under these circumstances, would hold that the Board of Management should have, by a Resolution, authorised the Vice-Chancellor or somebody else to file an appeal in the instant case. The Vice-Chancellor on his own could not do so, because no such power was given to him under the Punjab Agricultural University Act.

It was then contended by the learned counsel for the appellants that if it be held that the Vice-Chancellor of the University had no

(3) A.I.R. 1954 S.C. 217.

(4) A.I.R. 1943 Lahore 318.

authority to file the present appeal, the application under section 34 of the Arbitration Act, having been filed by all the defendants in the trial court and after the same had been rejected, the three other appellants, except the Punjab Agricultural University, Ludhiana, appellant No. 1, could file the present appeal, especially when the application had been signed by the counsel who held the power of attorney on behalf of all the defendants-appellants.

A perusal of the application would, however, show that though in the heading, it was mentioned that it was on behalf of the defendants, but towards the end, it was signed by Shri P. K. Gupta, executive Engineer (6), Punjab Agricultural University, Ludhiana, on behalf of Punjab Agricultural University, Ludhiana, alone. The verification was also done by the said Executive Engineer only. The application undoubtedly was signed by Shri H. L. Soni, counsel. This would clearly indicate that the application was on behalf of the University alone and the same had been filed through one of its officers, namely, the Executive Engineer. The counsel, though holding the power of attorney on behalf of all the defendants, would be deemed to have signed it only on behalf of the University which was filing the said application. This application was not signed or verified by the other defendants. The Executive Engineer had also signed it not on his own behalf, but on behalf of the University. In these circumstances, it cannot be said that the application under section 34 of the Arbitration Act had been filed by all the defendants. This contention, therefore, also fails.

Lastly, it was submitted that if it was held that the University could not have filed the appeal through its Vice-Chancellor, it could now be made a respondent in the appeal, especially when no valuable right had accrued to the respondents, by the non-filing of the appeal by the University within limitation.

There is no substance in this submission also. Firstly, I have already held that the other appellants could not file an appeal inasmuch as they had not made an application under section 34 of the Arbitration Act for staying the suit filed by the respondent. No application of theirs had been dismissed which gave them cause to go up in appeal. That being so, there was no proper appeal filed by anybody in this Court and the question of transposing the University, which was a necessary party, to the side of the respondent, would not arise. Secondly, by the non-filing of the appeal within limitation against order rejecting the application under section 34 of

the Arbitration Act and refusing the prayer for the stay of the respondent's suit, a valuable right had accrued to the respondent, inasmuch as the order of the trial court had become final and he could get his rights determined by a civil court and not through arbitration.

In view of what I have said above, I would hold that the present appeal has not been properly instituted and the same is, therefore, dismissed on that ground. In this view of the matter, it is needless to go into the merits of the case.

The parties are, however, left to bear their own costs.

B.R.T.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and R. S. Narula, J

HARI KRISHAN,—*Appellant*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

L.P.A. No. 16 of 1966

February 27, 1968

Words and Phrases—Chahi Mushtar land—Meaning of—Mortgaged land having no well—Mortgagee irrigating it from the well in his own land—Such mortgaged land—Whether becomes Chahi Mushtar *land—Land having no well nor entitled to be irrigated from another well as of right—Whether can be termed as* Chahi.

Held (per Mehar Singh, C.J.), that *Chahi Mushtar* land means land which is jointly well-irrigated or well-irrigated together by the voluntary agreement of the owners of the adjoining lands on some consideration. Where however, a mortgagee takes advantage of the mortgage and irrigates the land mortgaged with him which has no well of its own, from a well in his own land, it is not a case of land irrigated as *Chahi Mushtar*. The mortgagor has no say in the matter. After redemption of the mortgage he cannot insist under any right,