APPELLATE CIVIL.

Before D. S. Tewatia, J.

GURMUKH SINGH,—*Appellant.*

versus

DR. RANBIR SINGH AND OTHERS,—*Respondents.*

First Appeal From Order No. 94 of 1970.

November 27, 1970.

Arbitration Act (X of 1940)—Section 34—Expression 'taking any other steps in the proceedings' occurring therein—Whether to be construed ejusdem generis with the expression 'filing of the written statement'—Code of Civil Procedure (Act V of 1908)—Section 10—Filing of an application under—Whether amounts to challenging the jurisdiction of the Court—Successive reference to arbitration of disputes covered by an arbitration clause—Whether permissible.

Held, that the expression 'taking any other steps in the proceedings' occurring in section 34 of the Arbitration Act cannot be read *ejusdem generis* with the expression 'filing of the written statement' also occurring therein. The former expression covers steps other than 'filing of the written statement' which is expressive of the desire to submit to the jurisdiction of the Court or which tantamounts to an acquiescence in the jurisdiction of the Court.

Held, that an application under section 10 of the Code of Civil Procedure in substance amounts to a request to the Court that though the party has no objection to the trial Court trying the cause before it, but it will be desirable if it stays its hands for a certain period to save the parties from incurring unnecessary expenditure in the litigation, as a similar *lis* between the parties, which arose before the case in another Court, is pending decision which decision will operate as *res judicata*. By filing an application under section 10 of the Code, the party does not challenge the jurisdiction of the Court before whom the application is filed. In fact, by filing the application the party really submits to the jurisdiction of the Court. Hence an application under section 10 of the Code of Civil Procedure cannot tantamount to challenging the jurisdiction of the Court. (Para 6)

Held, that if once a dispute is referred to the arbitrator the arbitration clause is not exhausted and if again a second dispute arises between the parties, even that dispute under the same arbitration clause can be referred to the arbitrator if the language used in the arbitration clause permits such a thing and is of wider amplitude. (Para 6)

First Appeal from the order of the Court of Shri Nirpinder Singh, Sub-Judge, 1st Class, Amritsar, dated the 24th June, 1970, dismissing the application of Gurmukh Singh, defendant.

S. L. PURI, ADVOCATE, for the appellant.

K. L. KAPUR, ADVOCATE, for the respondents.

JUDGMENT

Tewatia, J.—(1) This F.A.O. is directed against the order, dated 24th June, 1970, passed by the trial Court on an application made under section 34 of the Arbitration Act, 1940 (Act X of 1940), hereinafter referred to as the Act, to stay the proceedings in a suit for possession by way of partition.

(2) The question that arises for consideration in this appeal is the ambit and scope of the expression "taking any other steps in the proceedings' occurring in section 34 of the Act. Before proceeding with the consideration of the scope and ambit of the said expression, the relevant facts which have a bearing on the proper understanding of the matter may be noticed.

(3) There was a contract, which governed the rights of the parties before me in certain properties, wherein was incorporated an arbitration clause that every dispute relating to the property shall be referred to a certain arbitrator named therein. Dispute regarding the *inter-se* share of the parties in the property in question arose which was referred to the arbitrator who gave an award which was made the rule of the Court, against which a First appeal is pending in this Court. On the strength of the award of the arbitrator and the resultant decree of the civil Court in terms of the award, the plaintiff-respondent filed a suit for possession by way of partition of the property in question. It is in this suit that the present application under section 34 of the Act was moved for staying the proceedings therein.

(4) It was urged that the arbitration clause governed all disputes relating to the said property, whether relating to the share in, or nature of, the property that a party has to get in partition. Before the application under section 34 of the Act was presented to the trial Court by the appellant, he had already moved an application under section 10 of the Civil Procedure Code with a prayer for the stay of the proceedings on the ground that the matters in issue in the present suit were directly and substantially the same as were involved in the above-mentioned appeal pending for decision in the High Court, which decision will operate as *res judicata* on that question before this Court, and so pending the decision of the appeal in the High Court, the present proceedings may be stayed. The trial Court dismissed the application on the ground that there was no

valid ground for referring the matter again to the arbitrator, the dispute had already been referred to the arbitrator, and what is being done now by the plaintiff before the trial Court is to give effect to the award of the arbitrator. It is against this order of the trail Court that the present first-appeal has been filed by the defendant, as already noticed.

(5) Learned counsel for the appellant has urged that the trial Court was not right in holding that the matter cannot be again referred to the arbitrator on the ground of the matter already having been referred to him once and he having given his award thereon, as the present proceedings are meant to give effect to that award by separating the shares of the parties and putting them in possession of their respective shares so separated. He has relied for this proposition on the two judgments of the Calcutta High Court reported in the *Baranagore Jute Factory Co. Ltd.* v. M/s *Hulaschand Rupchand* (1), and *Seth Kerorimall* v. *Union of India* (2). These cases have been relied upon for the proposition that if once a dispute is referred to the arbitrator, the arbitration clause is not exhausted and if again a second dispute arises between the parties, even that dispute under the same arbitration clause can be referred to the arbitrator if the language used in the arbitration clause permits such a thing and is of wider amplitude. It was held in those cases that—

> "Where the words of the agreement are wide enough to cover all disputes concerning the relevant transaction or contract, there can obviously be successive references under the authority regarding different disputes and even in a case where a fresh dispute arises as to the import or effect of the award made on a reference of the original dispute, a second reference regarding that dispute can be made............".

I am in respectful agreement with the principle enunciated in the above two rulings and so I find merit in the contention of the learned counsel that not only there can be a dispute to the quantum of the share but when the property is joint, then the mode of partition and the fact as to which portion of the property should go to which claimant can give rise to disputes which will be qualitatively different from the dispute relating to the quantum of the share which

(1) A.I.R. 1958 Cal. 490.
(2) A.I.R. 1964 Cal. 545.

was referred earlier to the arbitrator and so in the present case, the dispute regarding partition is also covered by the arbitration clause and is such that can be referred to the arbitrator.

(6) Learned counsel for the respondent has tried to save the situation by arguing that even if the dispute is such that is covered by the arbitration clause and was required to be referred to the arbitrator, but in view of the fact that the appellant has taken other steps in the proceedings before the trial Court, no application under section 34 of the Act was maintainable, and the order of the trial Court is valid and can be sustained on this ground. The learned counsel contends that the filing of an application under section 10 of the Code of Civil Procedure amounts to a step in the proceedings, while the learned counsel for the appellant has urged that the expression 'taking any other steps in the proceedings' has to be considered *ejusdem generis* with the 'filing of the written statement' or appearing in the Court and taking an adjournment for filing the written statement etc. In my opinion, the expression 'taking any other steps in the proceedings' cannot be read *ejusdem generis* with the expression 'filing a written statement'. The expression in question covers steps other than 'filing the written statement' which is expressive of the desire to submit to the jurisdiction of the Court or which tentamounts to an ecquiescence in the jurisdiction of the Court, and what we have to consider is as to whether the application under section 10, Civil Procedure Code, measures up to that test or not. The application under section 10, in substance, amounts to a request to the Court that though the party has no objection to the trial Court trying the cause before it, but it will be desirable if it stays its hands for a certain period to save the parties from incurring unnecessary expenditure in the present litigation, as a similar *lis* between the parties, which arose before the present case in another Court, is pending decision and the decision in the other suit will operate as *res judicata* and will be binding on this Court. By no stretch of imagination it can be considered that by filing an application under section 10 of the Code of Civil Procedure, the party has challenged the jurisdiction of the Court before whom the application is filed. In fact, by filing the application the party concerned has really submitted to the jurisdiction of the Court and the application under section 10, as already noticed, cannot tentamount to challenging the jurisdiction of the Court in the instant case. Learned counsel for the respondent has cited in this connection *Union of*

India v. *Hans Raj Gupta and Company* (3), wherein Beg, J., after extensive survey of the Indian and English decisions, ruled that the expression 'taking any other steps in the proceedings' is not limited to the step which tantamounts to either 'filing of the written statement' or to such a request as to adjourn the case to enable the party to file the written statement. With respect, I agree with the construction placed on the expression 'taking any other steps in the proceedings' by Beb, J.

(7) For the reasons recorded above, this appeal fails and is dismissed, but there is no order as to costs.

B. S. G.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

PIARE LAL,—*Petitioner.*

versus

BANU MAL, ETC.,—*Respondents.*

Civil Revision No. 211 of 1970.

November 30, 1970.

The East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Tenant for a fixed period—Such tenant—Whether can be evicted before the expiry of the period under section **13(2).**

Held, that under section 13(1) of the East Punjab Urban Rent Restriction Act, 1949, a tenant cannot be evicted either before or after the termination of the tenancy except in accordance with the provisions of section 13 of the Act. If a tenant violates any of the conditions mentioned in section 13(2) and thus gives cause to the landlord to evict him, he can be ejected even before the termination of his tenancy. According to the first proviso to sub-section (3) of the Section, where the tenancy is for a fixed period the landlord is not able to apply for the dispossession of the tenant under this sub-section before the expiry of the tenancy period. He can do so only under one condition, namely, if his case is covered by sub-paragraph (i-a) of Section 13(3). It means that the Legislature intends that in a tenancy for a fixed period, the tenant can be evicted if his case falls under the provisions of section 13(2) of the Act. Hence in the case of a tenancy for a

(3) A.I.R. 1957 All. 91.