

Before : J. V. Gupta, J.

MAHAVIR SPINNING MILLS LTD.,—*Petitioner.*

versus

M/S. UTILITY ENGINEERS (INDIA) PVT. LTD.,—*Respondents.*

Civil Revision No. 1548 of 1988

August 28, 1989.

Arbitration Act (X of 1940)—Ss. 20, 39—Case referred to arbitrator—Application for amendment of written statement—Application allowed by Senior Sub Judge—Court becomes functus officio—Maintainability of such application.

Held, that the moment application under S. 20 of the Arbitration Act, 1940 is finally decided by the Court, the Court becomes *functus officio*. Admittedly in the present case, the application was disposed of on February 6, 1985. It is unfortunate that the matter remained pending before the Arbitrator for about three years and when it reached the final stage of arguments, the respondents moved an application for making amendments in the reply to the application Under S. 20 of the Act. No such application was maintainable at that stage.

(Para 6).

Petition under Section 115 C.P.C. for revision of the order of the Court of Shri H. P. Handa, P.C.S., Senior Sub Judge, Hoshiarpur, dated 3rd June, 1988, allowing the application for amendment of written statement, subject to payment of costs of Rs. 200.

CLAIM : Application under Section 8(1)(b) of the Arbitration Act for filling the vacancy of Arbitrator in place of Mr. H. C. Jain.

CLAIM IN REVISION : For the reversal of the order of Lower Court.

M. J. S. Sethi, Sr. Advocate, with Amit Singh, Advocate, for the petitioner.

Arun Jain, Advocate, for the Respondents.

JUDGMENT

J. V. Gupta, J.

(1) This petition is directed against the order of the Senior Sub Judge, Hoshiarpur, whereby application for amendment of the written statement was allowed,—*vide* order dated May 3, 1988.

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(2) The petitioner M/s Mahavir Spinning Mills filed application under Section 20 of the Indian Arbitration Act for filing in Court the arbitration agreement. The said application was allowed and the matter was referred to the Arbitrator. The matter remained pending for about three years before the Arbitrator and when it reached the stage of arguments, the respondents moved an application in the Court of Senior Sub Judge, Hoshiarpur for amendment of the reply dated April 9, 1985 filed in the application under Section 20 of the Act. That application was resisted on behalf of the petitioner, *inter alia* on the grounds that no such application was maintainable and the Court had no jurisdiction to decide the same. However, the learned Senior Sub Judge, Hoshiarpur took the view that the Court had the inherent jurisdiction to decide the application and since according to the learned Senior Sub Judge, the respondent did not want to introduce new things except to specify the claim in detail, he allowed the amendment sought for.

(3) The learned counsel for the petitioner submitted that after the application under Section 20 of the Act was decided the Court had become *functus officio* and the said order was appealable under Section 39 of the Act. According to the learned counsel sub-section (5) of Section 20 of the Arbitration Act provides that thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable. Thus, argued the learned counsel that after the matter was finally decided by the Court under section 20 of the Act, the Court had no jurisdiction to pass any order as such. Thus, the Court has acted illegally with material irregularities in exercise of its jurisdiction. In support of his contention, he referred to *Bhikhari Lal v. Dibyasingh Brahma and others* (1), and *The Indian Minerals Co. v. The Northern India Lime Marketing Association* (2).

(4) On the other hand, the learned counsel for the respondent referred to *Kundan Lal and another v. Mehtab Ram and another* (3).

(1) A.I.R. 1965 Orissa 101.

(2) A.I.R. 1958 Allahabad 692.

(3) A.I.R. 1980 Punjab and Haryana 192.

(5) After hearing the learned counsel for the parties, I find merits in the contentions raised on behalf of the petitioner.

(6) The moment application under Section 20 is finally decided by the Court, the Court becomes *Functus officio*. If any party aggrieved of the order passed therein can file an appeal as provided under Section 39 of the Act. Admittedly in the present case, the application was disposed of on February 6, 1985. It is unfortunate that the matter remained pending before the Arbitrator for about three years and when it reached the final stage of arguments, the respondent moved an application for making amendments in the reply to the application under Section 20 of the Act. No such application was maintainable at that stage. The view taken by the learned Senior Sub Judge, Hoshiarpur in this behalf was wholly wrong and illegal.

(7) In *The Indian Minerals Co's case* (supra) while considering the provisions of the Arbitration Act it was observed that "the provisions of Order 6 Rule 17 of the Civil Procedure Code are therefore fully available to the Civil Judge and the Civil Judge can at any stage before the reference is made to the Arbitrator, allow either party to alter or amend his pleadings in such manner and on such term as are just and necessary for the purpose of determining the real questions in controversy between the parties." It is, therefore, evident that before the reference was made to the Arbitrator, the amendment, if any, could be allowed. But once the reference was made, the function of the Court was over and it was no more seized of the matter. The judgment reported in *Kundan Lal's case* (supra) relied upon by the learned counsel for the respondent has no applicability to the facts of the present case.

(8) Consequently this petition succeeds and the impugned order is set aside.

(9) Since at the time of motion hearing the proceedings before the Arbitrator were stayed, the parties are directed to appear before the Arbitrator on September 19, 1989. The Arbitrator will give his award within four months thereof in accordance with law.

S.C.K.