

**Rattan Cloth House and ors. Vs. Punjab State Electricity Board, Patiala**

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**Court** : Punjab and Haryana

**Decided On** : Feb-02-1984

**Reported in** : AIR1986P& H115

**Judge** : S.S. Sodhi, J.

**Acts** : Arbitration Act - Sections 34

**Appeal No.** : Civil Revn. No. 1803 of 1983

**Appellant** : Rattan Cloth House and ors.

**Respondent** : Punjab State Electricity Board, Patiala

**Judgement** :

ORDER

1. Did the Court rightly dismiss the application of the defendant under S. 34 of the Arbitration Act? Herein lies the controversy raised in this revision petition.

2. The facts relevant to this matter are that on Nov.13, 1978, the petitioners--M/s. Rattan Cloth House, Ludhiana, entered into a rate contract with the Punjab Government through the Controller of Stores, Punjab, for the supply of certain articles including Muslin cloth on rates and on terms and conditions as mentioned in that agreement. Included in this agreement was an arbitration clause providing for the reference of disputes arising thereunder, to arbitration.

3. The Punjab State Electricity Board (hereinafter referred to as 'the Board') placed an order with the petitioners on May 29, 1979 for the supply the Muslin cloth on terms and conditions as set out in the rate contract of Nov.13, 1978. The petitioners are said to have accepted the order, but thereafter failed to supply the Muslin cloth. The Board was in that situation constrained to purchase this cloth from other sources and thereby suffered a loss of Rs.87,000/- odd. The Board then filed a suit against the petitioners for the recovery of this sum as damages.

4. In the suit referred to above, June 5, 1982 was the first date when the petitioners put in appearance. The order passed on that date reads as under:--

'Present: Counsel for the parties

To come up on 2-8-1982 for filing of written statement.'(Long date has been given as the civil Court remained closed from 16-6-1982 to 15-7-1982.)

On Aug. 1982, the petitioners filed an application under S. 34 of the Arbitration Act seeking stay of the proceedings in the suit in terms thereof. This application was dismissed by both the Courts below on two grounds, one that there was no arbitration clause governing the controversy between the parties in this case and second that the petitioners had taken a step in the proceedings on June 4, 1982 by making a request on that day for an adjournment for filing the written statement. Neither of these grounds is tenable.

5. It is the admitted case of the parties that according to the terms of the rate contract of Nov. 13, 1978, disputes between the parties could be referred to arbitration. In other words, the terms of this contract contained an arbitration clause. Exhibit p/1 is the letter from the Board to the petitioners whereby the order for supply of Muslin cloth was placed. It is specifically mentioned therein that the supply of Muslin cloth was placed. It is specifically mentioned therein that the supply of this cloth be arranged on terms and conditions agreed to by the petitioners with the Controller of Stores, in terms of the rate contract of Nov. 1, 1978. In this situation, there can be no escape from the conclusion that there was indeed an arbitration clause governing the parties with regard to the dispute in the present case.

6. Turning to the other aspect of the case, namely; whether the petitioners had taken any step in the proceedings to debar them from seeking the relief as available to them under S. 34 of the Arbitration Act, it is pertinent to note that there is no mention in the order of the Court of June 4, 1982, of any request by the petitioners for adjournment. The lower Courts appeared to have taken the view that as a written statement is normally to be filed on the day when parties appear, it is to be presumed that when the petitioners appeared in Court on that date i.e. June 4, 1982 they knew about the case and the case was adjourned for the filing of the written statement at their request. In other words, from knowledge of the suit an oral request for adjournment was imputed to them. This is indeed an unwarranted assumption. The relevant aspect in such a situation would not be the adjournment but whether such adjournment was at the request or instance of the defendant. This is a question of fact to be established by the material on record and not one to be concluded by mere assumption.

7. Reference had been made by the lower appellate Court to *Union of India v. Hira Lal Sood*, (1978) 80 Pun LR 239. No occasion, however, arose in this case for applying the ratio thereof, it being held there that for the purpose of S. 34 of the Arbitration Act an oral request for adjournment for filing written statement was as good as written one for this purpose. This is clearly of no relevance here.

As regards the petitioners having knowledge of the suit against them, it would be pertinent to advert to the judgment of the Supreme Court in *Food Corporation of India v. Yadav Engineers and Contractor*, Air 1982 SC 1302, where after holding that contesting an application for interim injunction, or for appointment of Receiver by itself, without anything more, would not constitute such step as would disentitle the party to an order under S. 34 of the Arbitration Act. It was observed as under:--

'unless the step alleged to have been taken by the party seeking to enforce arbitration agreement is such as would display an unequivocal intention to proceed with the 'suit and acquiesce in the method of resolution of dispute adopted by the other party, namely, filing of the suit and acquiesce in the method of resolution of dispute adopted by the indicate that it has abandoned its right under the arbitration agreement to get

the dispute resolved by arbitration, any other step would not disentitle the party from seeking relief under section 34'.

8. Mere knowledge of the suit cannot thus fasten any disability upon the defendant in seeking to avail of the provisions of S. 34 of the Arbitration Act.

9. For the foregoing reasons the impugned orders of the Courts below are hereby set aside and the suit of the plaintiff is stayed in terms of S. 34 of the Arbitration Act and the trial Court is directed to proceed further in the matter in accordance with law.

10. This Revision petition is accordingly accepted with costs.

11. Petition allowed.

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