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Jagan Nath Vs. Des Raj and ors.

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Court : Punjab and Haryana

Decided On : Sep-25-1984

Reported in : AIR1985P& H115

Judge : M.M. Punchhi, J.

Acts : Arbitration Act, 1940 - Sections 17, 30 and 35 ; Limitation Act, 1963 - Schedule - Article 119

Appeal No. : Civil Revn. No. 1204 of 1984

Appellant : Jagan Nath

Respondent : Des Raj and ors.

Judgement :

ORDER

1. Facts giving rise to this revision petition are these.

2. There was a dispute between the parties which on 7-4-1979 was referred to an arbitrator for decision. The arbitrator on 26-7-1979 passed the award. Jagan Nath, the petitioner herein, presumably on notice received of the making of the award, filed an application on 10-8-1979 for the filing in court of the award for making it a rule of Court. Within the time prescribed, from the date of service of the notice of the filing of the award, Hans Raj, one of the respondents herein, filed objections claiming that the award be not made rule of the Court. The Court applied its mind, but came to the conclusion on 16-10-1980 that the award could not be made rule of Court until and unless it was registered. The appellate Court, however, upset that order and the matter was remitted back to the trial Judge for re-decision. It is at this stage that on 17-2-1984 an application was moved by Jagan Nath petitioner, seeking to amend his application for filing in Court the award to make it a rule of Court. This application was allowed on 21-2-1984 whereby two factual statements were allowed to be added to. Consequently, the application dated 10-8-1979 preferred by Jagan Nath, petitioner for making the award the rule of Court was formally amended. Thereupon on 5-3-1984 Hans Raj, filed an amended objection petition for setting aside the award, taking shelter of the circumstance that the petitioner had been allowed to amend his application for the making of award the rule of the Court. This course was objected to by the petitioner. Shri Vinod Jain, Sub Judge IInd Class, Kaithal, the learned Judge dealing with the matter, taking shelter of the rule enunciated in Jagdish Prasahd v. Dhensi Ram (1977) 79 Pun LR 670 took the view that when one party is allowed to amend his pleading, then there is no restriction imposed upon the other side for filing an amended reply, and it was within its legal competence to take all available new

grounds which were not previously taken in the original reply. Challenging this view of the learned trial Judge, the petitioner has approached this Court in revision.

3. Mr. R. L. Sarin, learned counsel for the petitioner, candidly submits that the rule employed by the learned trial Judge though unexceptionable has been misapplied to the facts and circumstances of the case, because neither is an application for filing in the Court of the award in the nature of a plaint nor an objection petition for setting aside the award or getting the award remitted for reconsideration in the nature of a written statement. Learned counsel for the respondents, however, counters that one is a plaint and the other a written statement and both have to go along intergripped during the controversy. Learned counsel, however, have not been able to cite at the Bar any precedent one way or the other. Seemingly the matter is bereft of precedent.

4. Two provisions of the Arbitration Act, 1940, would be a guiding factor, S. 17 thereof provides that where the court sees no cause to remit the award, or any of the matters referred to arbitration for reconsideration, or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall be from such decree exception the ground that it is in excess of, or not otherwise in accordance with the award. S. 30 provides that an award shall not be set aside except on the following grounds, namely:-

(a) that an arbitrator or umpire has misconducted himself or the proceedings.

(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under S. 35:

(c) that an award has been improperly procured or is otherwise invalid.

The Scheme of the Arbitration Act thus goes on the supposition that an arbitration award would normally meet approval and become the rule of Court, but the objection to such a course is also not ruled out. Limitation for the purpose is prescribed under Art. 119 of the Limitation Act, 1963, which is reproduced as under:--

(For table see below)

'119. Under the Arbitration Act, 1940- (Description of suit) '(a) for the filling in Court of an award. (b) for setting aside an award or getting an award remitted for reconsideration. (Period of limitation) Thirty days -do- (Time from which period begins to run) The date of service of the notice of the making of the award. The date of service of the notice of the filing of the award'.

As is plain from this provision, two different types of applications are conceived of. The Article appears in Third Division of the Schedule titled as--'Applications'. Under sub-article (a), a 30 days limitation is prescribed for the filing in Court of an award from the date of service of the notice of the making of the award. Obviously such an application is attracted for the purpose of making the award a rule of Court and would normally be filed by a party in whose favour the award tends to be. Now before the award can be made rule of the Court, the affected party need be served for the purpose, lest it has any objection, as conceivable under S. 30 of the Arbitration Act. For that purpose sub-article (b) provides that the prescribed period of limitation is 30

days for setting aside an award or getting an award remitted for reconsideration commencing from the date of the service of the notice of the filing of the award. From the scheme of things, it is patent that an application conceived of under sub-article (a) is directed towards making the award the rule of the Court, and on the other hand one under sub-article (b) is directed towards setting aside the award or getting the award remitted for reconsideration and not letting it become the rule of Court. Though the claims in the respective two applications are opposite to each other but, as at presently advised, I am of the view they are not intergripped as normally a plaint and a written statement are in a civil suit. Each respective application is to stand and fall on its own legs. Each has it own goal to achieve. That seems to me the reason why two different claims were sub-divided in Article 119 under separate sub-heads. If this distinction is understood, then it does not remain difficult to discern that on the mere fortuitous circumstance of the applicant under sub-article (a) being given the right to amend his application, a corresponding right does not automatically accrue to the applicant under sub-article (b) to amend his objection petition and raise all sorts of new pleas and objections supportive of its claim to set aside the award etc. If such a course were to be permitted, it would transgress the salutary rule of limitation prescribed by the statute. The rule of a right conferred on a defendant to amend his written statement when the plaintiff has been allowed to amend his plaint, and then to raise all sorts of pleas, and even those not originally taken in the written statement, appears to me to have been misapplied by the Court below. Thus, I have come to the considered view that the trial Judge while permitting the objector-applicant, for setting aside the award, to amend his application-objection, went beyond his jurisdiction with material irregularity. Thus, his order is upset and the amended reply dated 5-3-1984 sought to be introduced, is struck off keeping on file the original reply filed on 5-12-1979.

5. This petition is accordingly allowed and the impugned order dated 17-4-1984 is set aside, but without any order as to costs. Parties through their counsel are directed to put in appearance before the trial Judge on 22-10-1984. No costs.

6. Order accordingly.

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