
payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act.

(3) No Civil Court shall have jurisdiction to decide or deal with any question or *dispute as aforesaid* or to adjudicate on any liability which by or under this Act is to be decided by a medical board, or by a medical appeal tribunal or by the Employees Insurance Court.”

(emphasis added).

(5) A bare reading of these provisions indicates that the Employees Insurance Court has the jurisdiction to settle a dispute between a person and the Corporation in respect of any contribution or benefit or other dues payable or recoverable under the Act and if that is so, as to my mind it is, then sub-section (3) clearly injuncts the civil court to refrain from deciding the “dispute as aforesaid”. For this conclusion of mine, I also seek support from *Employees, State Insurance Corporation, Bombay v. R. P. Gundu*, (1), wherein a similar opinion has been expressed.

(6) Thus, I allow this petition and set aside the impugned order. I, however, pass no order as to costs.

H.S.B.

Before: S. S. Sodhi, J.

TEK SINGH,—Petitioner.

versus

PARAMJIT SINGH AND OTHERS,—Respondents.

Civil Revision No. 3450 of 1985.

May 1, 1986.

Arbitration Act (X of 1940)—Section 34—Dispute between parties leading to dissolution of partnership—One set of partners

(1) (1984) 64 F.J.R. 120.

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filing suit for permanent injunction against the second set for restraining them from carrying on the business of the partnership—Second set of partners filing separate application under Section 34 of the Act before the civil Court praying for stay of suit in view of the arbitration agreement between the parties—Written statement also filed subsequently whereby similar objection regarding continuance of proceedings in the suit also taken—Filing of written statement—Whether a step in the proceedings in the suit—Application under Section 34—Whether liable to be dismissed.

Held, that an application for stay of the proceedings under Section 34 of the Arbitration Act, 1940, was filed and subsequently written statement was also filed in answer to the suit. In the written statement an objection was taken at the very outset to the continuance of the proceedings in the suit on account of the arbitration clause in the partnership deed. Mention was also made of the application under Section 34 of the Act having already been filed. As such it cannot be inferred that there was any waiver or abandonment of the relief sought by the defendant in terms of Section 34 of the Act. 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, any other step would not disentitle the party from seeking relief under Section 34. As such mere filing of the written statement in the case can by no means be construed as unequivocal intention or acquiescence on the part of the defendant to the dispute being dealt with by the civil Court and as such the defendant was clearly entitled to the stay of suit in terms of Section 34 of the Act and the application aforesaid is not liable to be dismissed.

(Paras 5 and 6)

Petition Under Section 34 of the Arbitration Act for the revision of the order of the Court of Shri M. K. Bansal, Additional District Judge, Chandigarh dated 13th September, 1985, affirming that of Miss. Raj Jain, HCS, Sub-Judge Ist Class Chandigarh dated 11th June, 1985 rejecting the application for ad-interim injunction.

U. S. Sahni, Advocate, for the Petitioner.

J. S. Virk, Advocate with Bhupinder Singh, Advocate, for the Respondents.

JUDGMENT

S. S. Sodhi, J.

(1) Filing of the written statement does not invariably constitute a bar to the stay of proceedings under section 34 of the Arbitration Act, 1940 (hereinafter referred to as the Act). Illustrative of this being the case here.

(2) The partnership deed between the parties contained an arbitration clause which reads as under :—

“In case of any dispute or difference between the parties, the same may be referred to an arbitrator who shall be appointed with the mutual consent of the partners and his decision shall be final and binding on the partners.”

(3) Differences having arisen between the partners, one set of them, namely, Paramjit Singh, Ajmer Singh and Mehar Singh dissolved the partnership and then filed a suit against the other partners Tek Singh and Hari Singh seeking a permanent injunction to restrain them from carrying on the business of the partnership. Along with the suit, an application for temporary injunction was also filed. On receipt of the notice of the suit, on January 23, 1985, the defendant Tek Singh filed an application under section 34 of the Act praying therein that proceedings in the suit be stayed in view of the arbitration agreement between the parties. It was also averred that the dispute had already been referred to the arbitrators and the parties had appeared before them.

(4) On the next date of hearing, i.e., January 30, 1985, besides filing a reply to the application for temporary injunction, the defendant also filed his written statement. The case was then adjourned to February 6, 1985, for reply to the application under section 34 of the Act. This reply was eventually filed on February 7, 1985. One of the pleas raised in this reply was that the filing of the written statement by the defendant constituted a step in the proceedings and the application thus deserved to be dismissed on this ground alone. This objection prevailed with both the trial Court as also the lower appellate Court. Stay of proceedings, as sought by the defendant, was consequently declined. Herein lies the challenge in revision.

(5) It will be seen that the application for stay of proceedings under section 34 of the Act had been filed earlier, i.e., on January 23, 1985, and it was awaiting adjudication when the defendant filed his written statement a week later on January 30, 1985. A plain reading of this written statement would show that objection was taken there at the very outset to the continuance of the proceedings in the suit on account of the arbitration clause in the partnership

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deed. Mention was also made of the application under section 34 of the Act having already been filed. It is pertinent to note that counsel for the respondent could point to no material on record or circumstance to infer any waiver or abandonment by the defendant of the relief sought by him in terms of section 34 of the Act except the filing of the written statement. Such being the circumstances, can it be said that the defendant had disqualified himself from relief under section 34 of the Act by the mere filing of the written statement ?

(6) The test to be applied here is that as laid down by the Supreme Court in *Food Corporation of India v. Yadav Engineer and Contractor*, (1), where the question posed was : "What action on the part of the defendant who is sued in a court of law and who has a subsisting valid arbitration agreement with the plaintiff, would constitute steps in the proceedings so as to disentitle him to stay of the suit which, if granted, would enable him to enforce the arbitration agreement ?" It was held—

"..... 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 thereby 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"

(7) Seen in this light, the mere filing of the written statement by the defendant in this case can by no means be construed as any unequivocal intention or acquiescence on his part to the disputes being dealt with by the Civil Court instead of by the arbitrators under the arbitration agreement between the parties. This being so, the defendants were clearly entitled to the stay of the suit in terms of section 34 of the Act as prayed for by them.

(8) Faced with this situation, Mr. J. S. Virk, counsel for the plaintiffs sought to raise the plea that it had not been specifically mentioned in the application under section 34 of the Act that the

(1) 1982 (2) S.C.C. 499.

defendant was ready and willing to abide by the arbitration agreement. Contention was also raised that as fraud had been alleged by the plaintiffs against the defendants, the matter had of necessity to be decided by the Civil Court, rather than by arbitration. Neither of these pleas had been raised in the reply filed by the plaintiffs, nor was any such point taken before either of the Courts below. They cannot, therefore, be allowed to be raised for the first time in revision.

(9) In the result, the impugned order of the lower appellate Court is hereby set aside and the suit of the plaintiffs is ordered to be stayed in terms of section 34 of the Act. This revision petition is consequently accepted with costs. Counsel's fee Rs. 300.

H. S. B.

Before: D. S. Tewatia and D. V. Sehgal, JJ.

STATE OF PUNJAB AND OTHERS,—Appellants.

versus

RAM KISHAN,—Respondent.

Letters Patent Appeal No. 578 of 1981.

May 5, 1986.

Punjab New Mandi Townships (Development and Regulation) Act (II of 1960) as amended by Act 16 of 1981—Section 13—Transferee of a plot committing default in payment of purchase price—Administration straightaway issuing show-cause notice under Section 13(3) for resumption of the plot and forfeiture of the amount already paid—No show cause notice issued as provided for under Section 13(1)—Transferee also not given any opportunity to comply with the provisions of Section 13(2)—Administrator—Whether has power to issue notice under Section 13(3) without first taking action under Section 13(2)—Action of the Administrator—Whether void ab initio and liable to be quashed.

Held, that a perusal of Section 13(1) of the Punjab New Mandi Townships (Development and Regulation) Act, 1960, as amended, reveals that, at first a notice to show-cause, within a period of thirty days, as to why penalty be not imposed is to be served on