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deemed to have been issued by the Central Government, for section 94 of the Government of India Act, 1935, declares that a Chief Commissioner's Province shall be administered by the Governor-General acting to such extent as he thinks fit through a Chief Commissioner to be appointed by him. If the notification must be deemed to have been issued by the Central Government it cannot be said to be inconsistent with the Act of 1952.

For these reasons I am of the opinion that the trial Court was justified in ordering the acquittal of the respondent even though it arrived at its conclusion by an erroneous process of reasoning. I would uphold the order of the trial Court and dismiss the appeal. Ordered accordingly.

Chopra, J.

CHOPRA, J.—I agree.

APPELLATE CIVIL

Before Bishan Narain, J.

PUNJAB STATE,—*Appellant*

versus

SHRI MOJI RAM,—*Respondent*

First Appeal from Order No. 111 of 1955.

1957

April, 11th

Arbitration Act (X of 1940)—Section 34—Step in proceedings—Meaning of—Application for adjournment without authority of defendant and on the ground of non-receipt of a copy of the plaint—Whether constitutes a step in proceedings—Silence of the defendant on receipt of notice from the plaintiff—Whether affects applicability of section 34 and indicates his unwillingness to get dispute decided by arbitration—Proper time to take action under section 34 indicated—Arbitration agreement—Construction of, to determine if disputes covered by it—Rules stated.

Held, that whether a particular application to Court amounts to a step in proceedings depends on the circumstances in each case and no absolute test can be laid down

to determine it. It is, however, clear that such an application must be made by a defendant or under his authority. Where a Government pleader made application for adjournment without receiving instructions from the defendant and on the ground of non-receipt of a copy of the plaint, it amounted to an application to get time to discover the exact nature of the suit and nothing more. It cannot at all be said in such circumstances that the application was made with a view to take a step in the proceedings within section 34 of the Arbitration Act.

Held, that silence of the defendant on receipt of a notice from the plaintiff and before the suit is filed does not affect the applicability of section 34 of the Arbitration Act, nor does it indicate that the defendant is not ready and willing to get the dispute decided by arbitration. It is only on receiving notice of the suit that the defendant has to make up his mind if he should enforce the arbitration agreement, but he should do so before filing the written statement or before taking any step in the proceedings in the suit.

Held, that an arbitration agreement is to be construed according to its language and in the light of circumstances in which it is made to determine if the dispute is covered by it. If a contractor claims that in executing the contracts, he had done extra work for which he is entitled to separate payment but which is denied by the Government, this dispute can only be settled after looking at and construing the items given in the work orders. That being so, obviously it is a dispute under the work orders and the arbitration agreement is applicable.

Held further, that if resort has to be had to the terms of a contract to settle a dispute between the parties, then that dispute arises out of the contract and the arbitration agreement in the present case would cover the dispute. Even if it be held that the contractor has done some work which is not covered by the items mentioned in the work orders a claim for payment of this extra work would be covered by the arbitration agreement. It is after all a dispute which relates to the contract. Every slight deviation or every deviation from the original terms of the contract would not make the dispute relating to that deviation outside the scope of the contract. Similarly, every extra work done in performing the contract of construction must be held to be a claim relating to the contract and therefore covered by the arbitration agreement.

First appeal from the order of Shri Harnam Singh Chadha, Senior Sub-Judge, Hissar, dated 2nd June, 1956, rejecting the application of the appellant for stay of the proceedings under section 34 of the Indian Arbitration Act

HAR PARSHAD, Assistant Advocate-General, for Appellant.

F. C. MITAL, for Respondent.

JUDGMENT

Bishan Narain, J. BISHAN NARAIN, J.—This is an appeal by the Punjab State against the order of the Senior Subordinate Judge, Hissar by which the Government's application for stay of the suit filed by Moji Ram for the recovery of Rs. 7,750 has been dismissed.

Moji Ram is a Government contractor. On the 1st of May, 1951, he was given two contracts to construct at Canal Colony, Hissar, the senior clerks' quarters and Sub-Divisional Officer's bungalow. On 5th February, 1952, he was given the contract to construct a V. R. bridge at Rana Distributary and a syphon at Balsamand Distributary. The work entailed in these contracts was described and detailed in work order forms. These forms show that each item of work was specified with rates. On the 31st of August, 1954, the contractor filed the present suit for recovery of the balance due for the work done in constructing the buildings. With the plaint he filed the relevant work order forms and also three schedules. One schedule gave the items of work which are covered by the work orders. The value of this work is Rs. 3,608-3-0. The second schedule gives the items not covered by the work orders and its value is alleged to be Rs. 4,126-9-0. The third list gives the items of work done and paid for. Thus for the present proceedings we have only to consider the schedule giving the items which according to the plaintiff are not covered by the work orders. The trial

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Court fixed the 19th of November, 1954, for appearance of the defendant. On this date the Government Pleader with one Kartar Singh, Sub-Divisional Officer, appeared and asked for time to file written statement as instructions with a copy of the plaint had not been received. The Court granted adjournment and fixed 17th of December, 1954, for filing the written statement. On this date the Government Pleader filed the application for stay of the suit under section 34 of the Indian Arbitration Act. This application was contested by the plaintiff on the grounds that there was no arbitration agreement between the parties and that in any case the suit should not be stayed. Some evidence was led by the parties and then the Court refused to stay the suit on the ground that the entire suit was not covered by the arbitration agreement, although a finding was given in favour of the Government that the application for stay was not belated on account of the Government Pealder's application for adjournment of the case on the 19th of November, 1954.

When I last heard the case I found the judgment confusing and I sent the case back for report as to the items which were or which were not covered by the work orders and also for a report if the items not covered by work orders were subsidiary to the work entrusted to the contract or independent of it. The report has now come. The Court has reported that most of the items in the disputed schedule are not covered by the work orders but that they are all subsidiary to the main contract. Unfortunately, the report is not very helpful as the trial Court has decided the matter of items in reference to the written statement filed by the Government after the dismissal of the application and not on the basis of the evidence produced by the parties for the purpose for which the case was sent down for report.

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The learned counsel for the respondent has argued before me that the application had been filed after a step in the suit proceedings had been taken by the Government and that the Government was not ready and willing to get the matter decided by arbitration. His main point, however, is that the arbitration agreement did not cover the entire dispute in the suit and, therefore, the suit could not be stayed. I proceed to deal with these items in seriatim.

On the 19th of November, 1954, when the Government Pleader appeared he stated that he had not received any instructions nor a copy of the plaint. There is nothing on the record to show if the plaintiff had filed a copy of the plaint to be served with summons on the Government, nor can it be gathered whether the Government had at all been served by that time. The Government Pleader filed an affidavit in the trial Court that at the time he had asked for adjournment he had no instructions from the Legal Remembrancer and Secretary to Government, Punjab, to defend this case and that he was not conversant with its facts. There is no reason to disbelieve the Government Pleader on these points. The question arises whether in these circumstances the Government can be said to have taken "any step in the proceedings". I have not come across any case in which an effort has been made to define as to what is a step in the proceedings. Lindley, L.J., in *Ives and Barker* v. *Willans* (1), has said—

> "The authorities show that a step in the proceedings means something in the nature of an application to the Court, * * * * * taking of some step, such as taking out a summons or something of that kind, which is, in the technical sense, a step in the proceedings."

In *Subal Chandra Bhur* v. *Mohammad Ibrahim and*

(1) (1894) 2 Ch. 478.

another (1), it was held that an application must be made to Court and the act of making such application should indicate that the defendant is acquiescing in the dispute being decided by a suit in civil Court. Similar view has been taken in *Nuruddin Abdulhusein* v. *Abu Ahmed Abdul Jalli* (2). It follows whether a particular application to Court amounts to a step in proceedings depends on the circumstances in each case and no absolute test can be laid down to determine it. It is, however, clear that such an application must be made by a defendant or under his authority. The Government Pleader had neither received the notice nor had he the authority under the notification appointing him to receive it. On the 19th of November, 1954, when he appeared before the Court, he had no authority to represent the Government. He, in fact, did not know anything about the case, nor did he know its nature or the cause of action on which it was based. He did not even know whether the suit was based on a contract or on some other cause of action. He merely acted as a volunteer and asked for adjournment on the assumption that in due course he would receive instructions from the Government. In these circumstances it cannot be said that the Government, i.e., the defendant, took any step at all in the proceedings. In any case application for adjournment in such circumstances really amounts to an application to get time to discover the exact nature of the suit and nothing more. It cannot at all be said that the application in the present case was made with a view to take a step in the proceedings within section 34 of the Arbitration Act. A similar view has been taken by Falshaw, J., in *Harbans Lal Narang* v. *National Fire and General Insurance Company, Limited* (3), and I respectfully agree with this view. I have

(1) A.I.R. 1943 Cal. 484
(2) A.I.R. 1950 Bom. 127
(3) F.A.O. No. 45-D of 1952

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therefore, no hesitation in rejecting this contention raised on behalf of the plaintiff.

The only ground on which it is urged that the defendant was not ready and willing to do all things necessary to the proper conduct of the arbitration is that the Government did not reply to the plaintiff's notice given by him on the 17th of February, 1953, i.e., about 1½ years before the filing of the present suit. Silence of the defendant before the suit is filed, however, does not affect the applicability of section 34 of the Arbitration Act, nor does it indicate that the defendant is not ready and willing to get the dispute decided by arbitration. It is only on receiving notice of the suit that the defendant has to make up his mind, if he should enforce the arbitration agreement, but he should do so before filing the written statement or before taking any step in the proceedings in the suit (vide *Governor-General in Council* v. *Simla Banking and Industrial Company Limited* (1).

This brings me to the main dispute in the present appeal. It is whether the entire subject-matter of the suit is covered by the arbitration agreement. The arbitration agreement reads—

> "In matter of dispute the case shall be referred to the Superintending Engineer of the Circle, whose order shall be final."

The real dispute between the parties is whether the disputed items are covered by the items mentioned in the work orders or not. It is clear from the work orders that they describe the work to be done and then follow the description of each item and the rate at which each item is to be paid. The work entrusted to the contractor was for construction of buildings, etc., described in the beginning of this judgment and specified in the plaint. The items that follow in the

(1) A.I.R. 1947 Lah. 215.

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work orders only give specifications of the items of work that is to be done by the contractor to perform that contract. The main contract is to construct the buildings, a bridge and a syphon. The parties have produced expert engineers in the witness-box and they are not agreed whether the entire work is covered or not covered by the items mentioned in the work orders. The Executive Engineer, Hissar, has produced Exhibit D.W.A. 1, and 2, which show that out of the disputed items only the items relating to site clearance (value 270) are not covered by the work orders. Shri Lakhanpal, Executive Engineer, has appeared in the witness-box and stated that all items are subsidiary to and relate to the buildings, etc., but some of the items are not covered by the work orders. The plaintiff has produced Shri Raj Bansi Lal, a retired Executive Engineer, who has stated after his attention had been directed to the latest rules of the P.W.D., that some of the disputed items are not covered by the work orders. They are, however, not agreed on these items. Thus the experts disagree regarding the details of the items which are not covered by the work orders. It can, however, not be disputed that all these disputed items relate to the main contract for construction of buildings, a syphon and a bridge.

It is well-settled that an arbitration agreement is to be construed according to its language and in the light of circumstances in which it is made to determine if the dispute is covered by it (vide *Gaya Electric Supply Company, Limited*, v. *State of Bihar* (1), In the present case the plaintiff's claim is that he is entitled to receive payment for certain items of work done in carrying out the contracts. In other words, he claims that in executing the contracts, he had done extra work for which he is entitled to separate payment. This is denied by the Government. It is,

(1) A.I.R. 1953 S.C. 182.

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therefore clear that this dispute can only be settled after looking at and construing the items given in the work orders. That being so, obviously it is a dispute under the work orders and the arbitration agreement is applicable. The claim made in the suit is not outside the ambit of the contracts and the arbitration agreement between the parties. It may be pointed out that the arbitration agreement reads—

> "In matter of disputes the case shall be referred * * * * * * ."

These words are very wide and even wider than the words "under the contract." Lord Esher, M.R., in *Re. Hohenzollern Actien Gesellschaft fur Locomotivban and the City of London Contract Corporation* (1), at p. 597 interpreting a clause that all disputes were to be settled by the engineer observed as follows:—

> "Now, of course 'all disputes' cannot mean disputes as to matters that have no relation at all to the contract. But I think that these words are to be read as if they were " all disputes that may arise between the parties in consequence of this contract having been entered into." I think that, as my brother Mathew pointed out in the Court below, there being all these clauses in the contract as to any of which a dispute might arise, this last clause was added to settle them all. I agree with what my brother Lopes has said, that a dispute as to 'the construction of the contract is within the clause'. The question, therefore, comes to be, was this a dispute in consequence of the contract having been made ?"

(1) (1886) 54 L.T. 596

If this rule is applied then it is obvious that the present dispute is covered by the arbitration agreement. It must also be remembered that it is well-settled that if resort has to be had to the terms of a contract to settle a dispute between the parties, then that dispute arises out of the contract and the arbitration agreement in the present case would cover the dispute. Even if it be held that the contractor has done some work which is not covered by the items mentioned in the work orders, a claim for payment of this extra work would be covered by the arbitration agreement. It is after all a dispute, which relates to the contract. Every slight deviation or every deviation from the original terms of the contract would not make the dispute relating to that deviation outside the scope of the contract. In *Woolf* v. *Collis Removal Service* (1), As quitt, L.J., laid down the legal position in these words—

> "The arbitration clause in the present case is, as to the subject-matter of claims within its ambit, in the widest possible terms. That clause is not in terms limited to claims arising 'under' the contract. It speaks simply of 'claims'. This, of course, does not mean that the term applies to claims of every imaginable kind. Claims, which are entirely unrelated to the transaction covered by the contract would no doubt be excluded; but we are of opinion that, even if the claim in negligence is not a claim 'under the contract', yet there is a sufficiently close connection between that claim and that transaction to bring the claim within the arbitration clause even though framed technically in tort."

Similarly, every extra work done in performing the contract of construction must be held to be a claim

(1) (1947) 2 A.E.R. 260

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relating to the contract and, therefore, covered by the arbitration agreement.

The learned counsel for the plaintiff did not urge any other circumstances for rejecting the application under section 34 of the Arbitration Act. Ordinarily when a dispute is covered by an arbitration agreement then the suit should be stayed and it is for the plaintiff to show why it should not be stayed. In the present case the nature of the dispute is such that the Superintending Engineer is in a better position to settle it than a Court of law which will ultimately have to rely on the evidence of rival's experts.

For all these reasons I accept this appeal and stay the suit of the plaintiff. There will be no order as to costs.

REVISIONAL CRIMINAL

Before Bhandari, C.J. and Tek Chand, J.

KISHORI LAL,—*Petitioner*

versus

THE STATE,—*Respondent*

Criminal Revision No. 103 of 1954.

1957

April 16th

Cantonments Act (II of 1924)—Section 238—Whether violative of the Constitutional guarantees contained in Article 19(1)(d) and (e) of the Constitution of India—"general public"—Meaning of—Principles for declaring the provisions of any enactment void as violative of fundamental rights stated—Constitution of India—Article 19—Fundamental rights—Extent of—Reasonableness of restrictions—Test of—Jurisdiction of Court—Extent of, stated.

Held, that the provisions of section 238 of the Cantonments Act are not violative of the Constitutional liberties declared under Article 19(1) of the Constitution of India and the procedural and the substantive provisions of the Act do not overstep the limits of reasonableness and the said section is *intra vires* the Constitution.