

Case No. 56

(2004) 3 Supreme Court Cases 447

(BEFORE RUMA PAL AND P.VENKATARAMA REDDI, JJ)

SECUR INDUSTRIES LTD.

Appellant

Vs

GODREJ & BOYCE MFG. CO. LTD. AND ANOTHER

Respondents

Civil Appeal No. 1417 of 2004, decided on February 26, 2004

Subject matter of suit - covered by arbitration agreement - incumbent on court to refer the parties to arbitration under Section 8 - Powers of arbitral tribunal widened - Only court's powers curtailed - Whether pre-conditions before invoking arbitral jurisdiction fulfilled - Arbitral tribunal to decide - No jurisdiction for High Court to stay the arbitration proceedings.

Advocates who appeared in this case:

Rajiv Tyagi, Ajit Kr. Singh and Ms Bandana Agarwal, Advocates, for the Appellant:
C.A.Sundaram, Senior Advocate (Shridhar Y.Chitale and Abhijat P. Medh, Advocates, with him) for the Respondents.

Chronological list of cases cited	on page (s)
1. (2002) 2 SCC 388, Konkan Rly. Corpn. Ltd. v. Rani Construction (P) Ltd.	451h
2. (1976) 2 SCC 82: 1976 SCC (L&S) 82, Rohtas Industries Ltd. v. Rohtas Industries Staff Union	452d

The Judgment of the Court was delivered by

RUMA PAL, J.- Leave granted.

2. This appeal has been preferred from an interim order granted by the Division Bench of the Bombay High Court staying the arbitration proceedings before the Uttar Pradesh Industry Facilitation Council (referred to as "the Council") set up under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 (referred to as "the Act")

3. We are not concerned with the merits of the proceedings initiated by the appellant before the Council. The only question is where the High Court had the jurisdiction to pass the impugned order.

4. The chronology of events that are relevant for the purpose of this appeal, commenced with a notice dated 11-9-2001 served by the appellant on the respondent raising a demand. The notice also contained the following paragraph:

“ You may also treat this as a notice under the provisions of the ‘Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993’ Failure or non- payment will force us to move our claims as mentioned above to the appropriate authorities for recovery of our dues as mentioned above”.

5. In October 2001 the appellants filed a claim petition before the Council. The Council forwarded the claim petition to Respondent I under cover of its letter dated 27-12-2001 asking Respondent I to respond to the same within a period of one month. The receipt of the claim petition was acknowledged by the respondent by letter dated 25-1-2002 and requested for time to submit its reply by six weeks. The prayer for extension of time was, however, made without prejudice to the respondent’s “legal rights and contentions relating to the impugned notice dated 27th December and the claim purported to be made under Section 6 of the said Act”.

6. On 12-2-2002 Respondent I filed a suit in the City Civil Court at Bombay against the appellant who was named as Defendant I and the Council, which was named as Defendant 2. The prayers in the plaint were, inter alia, for a declaration that the claim petition filed by the appellant before the Council was ultra vires the provisions of the Act and, therefore, illegal, null and void. A permanent order of injunction was also asked for restraining further proceedings before the Council. An application was filed in the suit for interim relief by Respondent 1. By an order dated 5-2-2002 the City Civil Court granted an ad interim injunction staying the proceedings under the Act. The application for interim relief was however, ultimately dismissed by the City Civil Court ON 28-11-2002 principally on the ground that the claim had been filed by the appellant under Section 6(2) of the Act read with Section 8(1) of the Arbitration and Conciliation Act, 1996 (which we will refer to as the 1996 Act) and in view of Section 5 of the 1996 Act no court could intervene in arbitration proceedings except to the extent prescribed under the 1996 Act. According to the City Civil Court, the reliefs claimed for Respondent I in its suit did not fall within the ambit of those situations where interference by court was permissible and consequently, the court had no jurisdiction to stay the proceedings before the Council.

7. Respondent 1 preferred an appeal from the decision of the City Civil Court before the High Court. The appeal is pending. On an application for interim relief filed by Respondent 1 pending the appeal, the High Court by its order dated 21-1-2003 stayed the proceedings before the Council only on the ground that no notice had been served by the appellant on Respondent 1 under Section 21 of the 1996 Act. The High Court rejected the appellant's application for expediting appeal on 2-5-2003. Both these orders of the High Court are questioned before us in these appeals.

8. Section 6 of the Act provides as follows:

"6. Recovery of amount due.- (1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of Section 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.

(2). Notwithstanding anything contained in sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such dispute as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) Section 7 of that Act."

9. Sub-section (2) of Section 6 expressly incorporates the provisions of the 1996 Act. Apart from the such express incorporation, Sub-section (2) of Section 6 goes further and creates a legal fiction whereby disputes referred are to be deemed to have been made pursuant to an arbitration agreement as defined in sub-section (1) of Section 7 of the 1996 Act.

10. Incorporation of the provisions of the 1996 Act into Section 6(2) of the Act has also been effected by sub-sections (4) and (5) of Section 2 of the 1996 Act which say:

"2. (4) This Part except sub-section (1) of Section 40, Section 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except insofar as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

(5) Subject to the provisions of sub-section (4), and save insofar as is other-

wise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.” (Emphasis added)

11. The “ Part” referred to in this sub-section is Part I of the 1996 Act which deals with domestic arbitrations. The proceedings before the Council, therefore, are proceedings under the 1996 Act, pursuant to a deemed agreement between the parties to the dispute. With the applicability of Part I of the 1996 Act in all its force, the extent of judicial intervention in arbitrations is limited by the non obstante provisions of Section 5 of the 1996 Act, which stipulate.

“5. Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part”.

The City Civil Court was right in its approach when it said that the court could only intervene in respect of matters expressly provided for in the 1996 Act. The validity of the proceedings before the arbitral tribunal is an issue which the Council, and not the court, could decide under Section 16 of the 1996 Act. Sub Section (1) of Section 16 opens with the words “ the arbitral tribunal may rule on its jurisdiction...” It has been held by this Court that the arbitral tribunal’s authority under Section 16 is not confined to the width of its jurisdiction but goes to the very root of its jurisdiction (*Konkan Rly. Corpn. Ltd. v. Rani Construction (P) Ltd.*) Therefore, the Council can go into the question whether its authority had been wrongly invoked by the appellant and it is open to it to hold that it had no jurisdiction to proceed with the matter.

12. The arguments, which have been raised before us by the learned counsel on behalf of the respondent to a large extent related to the merits of the appellant’s claim before the Council. Having regard to the scope of the authority of the arbitral tribunal under Section 16, this is not a matter, which the court can adjudicate upon. Indeed it is incumbent on the court to refer the parties to arbitration under Section 8(1) of the 1996 Act if a suit is filed in a matter which is the subject- matter of an arbitration agreement. Furthermore, even while this question is pending decision before a court, the arbitral tribunal may proceed with the arbitration under Section 8(3) and make its award. The High Court could not, therefore, have stayed the proceedings before the Council.

13. We are also unable to accept the submission of Respondent I that Section 16 of

the 1996 Act does not apply to the present case because the reference is a statutory one. The decision relied upon by Respondent I in support of this submission, namely, *Rohtas Industries Ltd.v. Rohtas Industries Staff Union* 2 related to a voluntary reference of an industrial dispute under Section 10-A of the Industrial Disputes Act. Section 10-A of the industrial dispute Act, 1947 permits the employer and the workmen to agree to refer the dispute to arbitration to a Labour Court or a tribunal for adjudication " where any industrial dispute exists or is apprehended" Therefore, if there was no such industrial dispute there could be no arbitral reference. This court therefore held (at SCC p98, para 31) that the disputes spilt" into areas where the arbitrator deriving authority under Section 10-A has no jurisdiction". The provisions of Section 10-a are entirely different from the provisions of Section 16 of the 1996 Act. There is in this case, no question of dispute spilling into areas where the arbitral tribunal does not have jurisdiction. Under the 1996 Act, the arbitral tribunal does not have jurisdiction. Under the 1996 Act, the arbitral tribunal has been given a very wide and deep area of operation and it is the court's powers which have been statutorily curtailed.

14. This brings us to the ground on which the High Court stayed the proceedings before the Council, namely, the alleged failure of the appellant to serve notice under Section 21 of the 1996 Act. The point was not raised before the High Court at all by Respondent 1. This was candidly stated by the learned counsel for Respondent 1. Our attention was not drawn to any other legal provision which requires a notice to be given prior to commencing proceedings apart from Section 21 of the 1996 Act Whether the notice was a notice under Section 21 and whether the giving of notice under Section 21 is to be construed as a precondition to the exercise of jurisdiction by Council are questions which the Council will have to decide. This debate could not be a ground for the High Court interfering with the Council's jurisdiction and staying proceedings before it.

15. To sum up: the High Court erred in staying proceedings before the Council. It had no jurisdiction to do so.

16. Having regard to our conclusion, and as has been agreed by the parties, the appeal before the High Court has really become infructuous. We therefore, set aside the decision of the High Court and treat the appeal of Respondent I before the High Court as having been decided by this order. The decision of the City Civil Court is confirmed and the appeal is allowed with costs.