

STATE TIMBER CORPORATION

v.

MOIZ GOH (PVT) LTD.,

COURT OF APPEAL.

JAYASINGHE, J.

JAYAWICKREMA, J.

CA. No. 361 /98.

D. C. COLOMBO No. 35477/MS.

19TH NOVEMBER, 1999.

Civil Procedure Code, S.693, 694, 695, 696, 698 - Arbitration Act, No. 11 of 1995 - S2(2) - Award made on reference independently without intervention of Court - Jurisdiction of the District Court to entertain application - Arbitration proceedings and enforcement of an Award - Interpretation Ordinance S.6(3)(c).

The Petitioner-Respondent made an application to the District Court in terms of S.696 Civil Procedure Code to file the award in Court. This award was made on a reference independently without the intervention of Court. The Respondent-Petitioner contended that the District Court has no jurisdiction in view of the provisions of the Arbitration Act, which gives jurisdiction to the High Court to enforce the Arbitral award. The District Court allowed the award to be filed of record.

Held :

(1) S.47(2) Arbitration Act repeals S.693 - 698 Civil Procedure Code but the repeal is subject to S.2(2) which states that where arbitration proceedings were commenced prior to the appointed date the law in force prior to the appointed date shall unless the parties otherwise agree, apply to such arbitration proceedings. In this case the arbitration proceedings commenced prior to the appointed date i. e. 30.6.1995, as the arbitration proceedings commenced on 30.3.94.

(2) Prior to the Arbitration Act the Civil Procedure Code governed both voluntary and compulsory arbitration. Arbitration Ordinance 15 of 1866 dealt only with compulsory Arbitration. All these proceedings under the above statutes took place before the District Court, the original Court of civil jurisdiction.

(3) When one examines S.2(2) of the Arbitration Act with S.6 3(c) of the Interpretation Ordinance, it is clear that in view of the savings

clause and S.6 3(c) that the District Court has jurisdiction to decide the application.

(4) It is also clear that arbitral proceedings means and include the enforcement of the arbitral award. The provisions for enforcement is part and parcel of an arbitration proceeding.

(5) According to S.698, Civil Procedure Code, a Court can order the award to be filed of Court -

"if on the hearing of such application no ground mentioned or referred to in S.690 or S.691 be shown." The Court however has not given a proper hearing to the parties and violated the principles of natural justice.

APPLICATION for Revision of the order of the District Court of Colombo.

Cases referred to :

1. *Dartford Brewery Co., vs. Moseley* - 1906 1 KB 462
2. *R. vs. Bloomsbury County Court* - 24 QBD 309

Uditha Egalahewa S. C. for Petitioner.

Gamini Marapana P. C. with G. Perusinghe for Respondent.

Cur. adv. vult.

January 17, 2000.

JAYAWICKRAMA, J.

This is an application to revise the order of the learned District Judge, Colombo dated 30th of April, 1998 wherein he has ordered an award made by an arbitrator to be filed of record under Section 698 of the Civil Procedure Code.

The petitioner-respondent made an application to the District Court in terms of Section 696 of the Civil Procedure Code to file the award in Court. The respondent-petitioner raised a preliminary objection to that application stating that the District Court has no jurisdiction to entertain

that application in view of the provisions of the Arbitration Act No. 11 of 1995. The learned District Judge fixed an inquiry to decide the question of jurisdiction and the parties tendered written submissions. The learned District Judge made order holding that the District Court has jurisdiction and also allowed the award to be filed of record without giving a proper hearing as regards the question of allowing the award to be filed of record.

It is admitted that the award was made on a reference independently without the intervention of Court. It is further admitted that the parties are bound by the terms and conditions of contract No. 5/89 dated 14.12.1989 and that Clause 15 of the said contract made express provision for the settlement of disputes that may arise between the parties by reference to arbitration. It is also admitted that the arbitrator made his award on 5.5.1997 and held that the respondent-petitioner is liable in a sum of Singapore Dollars 747,612.00 as damages payable to the petitioner-respondent and that the respondent-petitioner has by his letter dated 3.7.1997 refused to honour the claim of the petitioner-respondent. Thereafter, the petitioner-respondent sought enforcement of the said award through the District Court of Colombo by way of summary procedure on 31.10.1997.

The respondent-petitioner took up a preliminary objection that according to the provisions of Arbitration Act, No. 11 of 1995, the enforcement of the arbitral award should have been made to the High Court and not to the District Court. The learned Counsel for the respondent-petitioner contended that the term "arbitration proceedings" referred to in Section 2(2) of the Arbitration Act do not include the enforcement of an arbitral award. The learned Counsel attempted to distinguish between arbitration proceedings and enforcement of an arbitral award.

According to Black's Law Dictionary "proceeding" means; "In a general sense, the form and manner of conducting juridical business before a Court or judicial officer; regular and orderly progress in form of law; including all possible steps in an action from its commencement to the execution of judgment". - "An act which is done by the authority on the direction of the Court, express or implied; an act necessary to be done in order to obtain a given end; a prescribed mode of action for carrying into effect a legal right. All the steps or measures adopted in the prosecution or defence of an action. The word may be used synonymously with "action" or "suit" to describe the entire cause of an action at law or suit in equity from the issuance of the writ or filing of the bill until the entry of a final judgment, or may be used to describe any act done by authority of a court of law and every step required to be taken in any cause by either party. The proceedings of a suit embrace all matters that occur in its progress judicially".

In *Dartford Brewery Co. v. Moseley*⁽¹⁾ it was held that "All proceedings in the Supreme Court (Judicature Act 1890 (c. 44), s 5) included a writ of possession to enforce a judgment in ejectment."

In *R. v. Bloomsbury County Court*⁽²⁾ it was held that proceedings (County Court Act 1888 (c) 43), s 84), applied to all proceedings that might be brought in a County Court, including administrative proceedings.

It must be noted that termination of proceedings in an action occur with the satisfaction of a decree voluntarily or by way of a writ obtained by a Court of law. To that extent, proceedings include the satisfaction of a decree obtained according to law. In this instance, learned Counsel for the respondent-petitioner argued that the arbitration proceedings terminated with the making of the award by the arbitrator and the enforcement of that award is a new cause of action which arose after the Arbitration Act No. 11 of 1995 became law and therefore the District Court has no jurisdiction.

When one carefully examines the provisions of the Arbitration Act it is clear that provisions have been made by way of a saving clause as regards pending arbitration proceedings. By Section 47 (2) of the Arbitration Act, Sections 693 to 698 of the Civil Procedure Code have been repealed, but this repeal is subject to the provisions of Section 2 (2) which states that "where arbitration proceedings were commenced prior to the appointed date, the law in force prior to the appointed date, shall, unless the parties otherwise agree, apply to such arbitration proceedings." It is very clear according to the above provisions that the arbitration proceedings relevant to the award commenced prior to the appointed date, i. e. 30th of June 1995, as the arbitration proceedings commenced on 30.3.1994.

Although the learned Counsel for the respondent-petitioner argued that arbitration proceedings do not include enforcement of an award, on a reading of the above provisions, it is very clear that arbitration proceedings ends with the satisfaction of the award. The preamble to the Arbitration Act states that the purpose of the Act is to provide for the conduct of arbitration proceedings and for matters connected there with or independent thereto among other things. It is specifically stated that the purpose for the enactment of this Act is to make comprehensive legal provision for the conduct of arbitration proceedings and the enforcement of the awards made thereunder.

Prior to the Arbitration Act No. 11 of 1995 the Civil Procedure Code governed both voluntary and compulsory arbitration. The Arbitration Ordinance No. 15 of 1866 dealt only with compulsory arbitration. All these proceedings under the above statutes and few other statutes took place before the District Court, the original Court of civil jurisdiction, with rights of appeal from the District Court to the Court of Appeal and then to the Supreme Court.

The mechanism for a speedier and a well integrated procedure for the disposal of commercial arbitration was necessary if commercial arbitration was to be attractive as an alternate source of dispute resolution. For that purpose, the new Arbitration Act was enacted.

When one examines the provisions of Section 2 (2) of the Arbitration Act together with Section 6 (3) (c) of the Interpretation Ordinance, it is very clear that in view of the saving clause and the above provisions of the Interpretation Ordinance that the District Court has jurisdiction to decide the application of the petitioner-respondent. In the instant case, the arbitration proceedings commenced on 30.3.1994 prior to coming into force of the Arbitration Act No. 11 of 1995 and continued until 1997 when the award was delivered. According to Section 6 (3) (c) of the Interpretation Ordinance; *"Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected any action, proceeding or thing pending or incompleated when the repealing written law comes into operation, but every such action, proceeding or thing may be carried on and completed as if there has been no such repeal"*.

When one takes into consideration the above provisions it is abundantly clear that "arbitral proceedings" means and include the enforcement of the arbitral awards". The provisions for enforcement of the award is part and parcel of an arbitration proceeding. In any case, the argument submitted by the learned Counsel for the petitioner-respondent is highly technical. If one is to accept that argument it will cause more confusion and delay even after obtaining a valid award. In any event, the satisfaction of an award is the final step with regard to arbitration proceedings. If one is to accept the contention of the learned Counsel for the petitioner-respondent, once a valid award has been made the petitioner has to file a new action on

the basis of a new cause of action to obtain the benefits of the award. Therefore, we hold that the submissions made by the learned Counsel for the petitioner-respondent is untenable. When a matter is referred to an arbitration, the proceeding ends with the satisfaction of the award. In view of the above reasons, we hold that the learned District Judge has come to a correct and proper conclusion as regards the preliminary objection raised by the respondent-petitioner. We hold that the learned District Judge has jurisdiction to hear this application.

The learned District Judge in deciding the preliminary objection, has also decided on the main application without a proper hearing.

According to the provisions of Section 698 of the Civil Procedure Code, a Court can order the award to be filed of Court, "if on the hearing of such application no ground such as mentioned or referred to in Section 690 or 691, be shown". In the instant case, the learned District Judge has not given a proper hearing to the parties and violated the principle of natural justice. Therefore, we set aside that part of the learned District Judge's order where he ordered that the award be filed of Court and direct the learned District Judge to give a proper hearing according to the provisions of Section 698 of the Civil Procedure Code and come to a proper finding according to law. The application for revision is partly allowed and partly dismissed. No costs.

JAYASINGHE, J. - I agree.

Application partly allowed.