

SADHU SINGH GHUMAN
v.
FOOD CORPORATION OF INDIA & ORS.

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FEBRUARY 14, 1990

[K. JAGANNATHA SHETTY AND R.M. SAHAI, JJ.]

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*Arbitration Act, 1940: Section 34—"A step in the proceeding"—
What is—Interpretation thereof.*

In a suit filed by the Respondent for recovery of a certain amount from the appellants and others, on the basis of an agreement between the parties, appellant entered appearance and prayed for the production of original documents, since photostat copies were not clear, so that written statement may be filed.

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Thereafter the appellant moved the Court under Section 34 of the Arbitration Act, 1940 for stay of the suit on the ground that there was an arbitration clause in the suit agreement covering the matter in dispute. Though the Respondent Corporation admitted the existence of such a clause, it opposed the prayer for stay of the proceedings on the plea that the appellant had taken steps in the proceedings of the suit, in that an adjournment was taken for filing written statement. Staying the proceedings, the trial court observed that there was no prayer for adjournment of the case for filing the written statement.

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On appeal by the Respondent-Corporation, the First Appellate Court vacated the stay order passed by the trial court. The Revision petition filed by the appellant was dismissed by the High Court.

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This appeal, by special leave, is against the High Court's order.

Allowing the appeal, this Court,

HELD: 1.1 The expression "a step in the proceeding" which would disentitle the defendant from invoking section 34 of the Arbitration Act is not every step taken by him in the suit. It should be a step to abandon the right to have the suit stayed. It should be a step in aid of the progress of the suit. The step must have been consciously taken with a view to submit to the jurisdiction of the Court for the purpose of adjudicating the controversy on merits. [356C-D]

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A 1.2 Before the trial court, the defendants only sought a direction
 to the plaintiff to produce the original agreement and other documents
 so that they may file written statement. It was not stated that they
 would file the written statement. They never took any other step sub-
 mitting to the jurisdiction of the court to decide the case on merits. The
 B right to have the dispute settled by arbitration has been conferred by
 agreement of parties and that right should not be deprived of by techni-
 cal pleas. The Court must go into the circumstances and intention of the
 party in the step taken. The court must examine whether the party has
 abandoned his right under the agreement. In the light of these princi-
 C ples and looking to the substance of the application dated January 4,
 1985, one cannot form an opinion that the defendants have abandoned
 their right to have the suit stayed and took a step in the suit to file the
 written statement. [357B-D]

State of U.P. v. Janki Saran Kailash Chandra, [1974] 1 SCR 31;
Food Corporation of India v. Yadav Engineer, [1983] 1 SCR 95 and
General Electric Co. v. Renusagar Power Co., [1987] 4 SCC 137, relied
 D on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1201
 of 1990

E From the Judgment and Order dated 5.6.87 of the Punjab and
 Haryana High Court in C.R. No. 556/87.

Mukul Mudgal for the Appellant.

S.S. Javali, Y.P. Rao and Raju Ramachandran for the
 Respondents.

F The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. Special leave granted.

G Food Corporation of India filed a suit for recovery of Rs.2 lacs
 against the appellant and respondents 2 to 7 on the basis of an agree-
 ment between the parties. After service of notice, the appellant
 entered appearance on December 10, 1984. On January 4, 1985, the
 appellant filed an application stating as follows:

H "That the photostat copy of the original agreement and
 other documents which have been produced by the plaintiff

in their evidence are not visible and clear, and it is very difficult for the defendants to inspect and give the written statement. A

3. That it is very essential to get the original documents produced in the court which are in possession of the plaintiff so that the defendants may file the written statement. B

4. It is, therefore, respectfully prayed that the plaintiff may kindly be ordered to produce the original agreement and other documents which has been filed with the plaint." C

On January 21, 1985, the appellant moved the Court under Section 34 of the Arbitration Act for stay of the proceeding of the suit on the ground that there exists an arbitration clause in the suit agreement covering the matter in dispute. The Food Corporation of India contended that the appellant had taken steps in the proceedings of the suit since an adjournment was taken for filing written statement. It was however, admitted the existence of the arbitration agreement covering the matter in dispute in the suit. The Trial Court accepted the request of the appellant and stayed the suit *inter-alia* observing: D

"..... This application did not contain any prayer for adjournment of the case for filing the written statement. The prayer contained in this application was that the plaintiff be directed to produce the original agreement and other documents so that the defendants may file the written statement E

.....In the present case, the prayer of the defendants that the plaintiff be directed to file the original agreement and other documents in the court before they could file the written statement cannot be said to be a step in the proceedings because it was not a prayer for adjournment of the case for filing written statement." F

But the Additional District Judge, in the appeal preferred by the Food Corporation of India has reversed the order of the trial court. He was of the view that a written request made by the defendants by their application dated January 4, 1985 for an adjournment to enable them to file the written statement was a step in the proceedings and the trial court was not justified in staying the suit. Accordingly, he accepted the G H

A appeal and vacated the stay order and directed the trial court to proceed with the suit in accordance with law.

The High Court of Punjab and Haryana has dismissed the revision petition of the appellant. The High Court has also observed that the defendants having moved the application dated January 4, 1985 for production of original documents and seeking an adjournment of the suit to enable them to file written statement would certainly be construed as a step taken in the proceedings.

Section 34 of the Arbitration Act has received the consideration of this Court in *State of Uttar Pradesh v. Janki Saran Kailash Chandra*, [1974] 1 SCR 31, (ii) *Food Corporation of India v. Yadav Engineer*, [1983] 1 SCR 95 and more recently in *General Electric Co. v. Renusagar Power Co.*, [1987] 4 SCC 137. It may be noted that the expression "a step in the proceeding" which would disentitle the defendant from invoking section 34 of the Arbitration Act is not every step taken by him in the suit. It should be a step to abandon the right to have the suit stayed. It should be a step in aid of the progress of the suit. The step must have been consciously taken with a view to submit to the jurisdiction of the Court for the purpose of adjudicating the controversy on the merits. In *General Electric Co.'s* case this Court after considering the previous decisions observed (at 155-56):

E " thus a step in the proceeding which would disentitle the defendant from invoking Section 34 of the Arbitration Act should be a step in aid of the progress of the suit or submission to the jurisdiction of the court for the purpose of adjudication of the merits of the controversy in the suit. The step must be such as to *manifest* the intention of the party unequivocally to abandon the right under the arbitration agreement and instead to opt to have the dispute resolved on merits in the suit. The step must be such as to indicate an election or affirmation in favour of the suit in the place of the arbitration. The election or affirmation may be by express choice or by necessary implication by acquiescence. The broad and general right of a person to seek redressal of his grievances in a court of law is subject to the right of the parties to have the disputes settled by a forum of mutual choice. Neither right is insubstantial nor the right can be allowed to be defeated by any manner of technicality. The right to have the dispute adjudicated by a civil court cannot be allowed to be defeated by vague

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or amorphous mis-called agreements to refer to 'arbitration'. On the other hand, if the agreement to refer to arbitration is established, the right to have the dispute settled by arbitration cannot be allowed to be defeated on technical grounds."

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In the application filed by the defendants in this case, they only sought a direction to the plaintiff to produce the original agreement and other documents so that they may file written statement. It was not stated that they would file the written statement. They never took any other step submitting to the jurisdiction of the court to decide the case on merits. The right to have the dispute settled by arbitration has been conferred by agreement of parties and that right should not be deprived of by technical pleas. The Court must go into the circumstances and intention of the party in the step taken. The Court must examine whether the party has abandoned his right under the agreement. In the light of these principles and looking to the substance of the application dated January 4, 1985, we cannot form an opinion that the defendants have abandoned their right to have the suit stayed and took a step in the suit to file the written statement.

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In the result the appeal is allowed in setting aside the order of the High Court and restoring the order of the trial Court.

In the circumstances of the case, we make no order as to costs.

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Appeal allowed.