

SECURITY & FINANCE (P) LTD. & ANR.

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v.

DATTARAYA RAGHAV AGGE & ORS.

November 8, 1968

[J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

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Arbitration Act 10 of 1940, s. 35—Civil suit filed during pendency of dispute before arbitrator—Notice of suit given under s. 35 to arbitrator and opposite party—Arbitrator nevertheless recording evidence of opposite party and giving award—Whether arbitrator and opposite party guilty of contempt of court and s. 3 Contempt of Courts Act (32 of 1952).

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A hire-purchase agreement was entered into between the appellants and respondent No. 1. Under that agreement a motor transport truck was made available to respondent No. 1 for doing transport business. The agreement contained an arbitration clause for settlement of disputes. When disputes arose reference was made to an arbitrator. Respondent No. 3 a practising lawyer was named as the arbitrator. During the pendency of the arbitration proceedings respondents Nos. 1 and 2 filed a civil suit in which they claimed a declaration that the hire-purchase agreement was brought about by fraud and was not binding on them on various grounds. The suit was registered and the court ordered summons to be issued to the two appellants. A notice was also issued by respondent No. 1 to the appellants and the arbitrator with a copy of the plaint. When the arbitrator made an award after recording the evidence of the appellants respondents Nos. 1 and 2 filed an application under s. 3 of the Contempt of Courts Act on the allegation that the appellants and respondent No. 3 had committed contempt of court in proceeding with the arbitration reference in spite of the notice under s. 35 of the Arbitration Act being given and in spite of the knowledge of the suit which was filed by respondents 1 and 2. The application was contested by the appellants as well as the arbitrator. The appellants contended that in obeying the orders of the arbitrator to produce evidence they did not commit any contempt. Respondent No. 3 denied that he conducted the arbitration proceedings in order to defeat the object of the suit. The High Court found the appellants and respondent No. 3 guilty of contempt of court on the view that their conduct had a tendency to bring into contempt the proceedings before the Civil Court. In appeal to this Court by certificate,

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HELD : The High Court was in error in holding that in the circumstances of the case the appellants and respondent No. 3 were guilty of contempt of court.

Section 35 of the Arbitration Act does not expressly prohibit the arbitrator from continuing the hearing of the reference. Its only effect is that "all further proceedings in a pending reference shall, unless a stay of proceedings is granted under s. 34, be invalid". For this consequence to follow, however, two important and distinct conditions must be satisfied, namely, (1) that such legal proceedings must be upon the whole and not merely part of the subject-matter of the reference, and (2) that a notice of such legal proceeding must be given to the arbitrator. Even on the assumption that these conditions were satisfied the only effect is that the further proceedings before the arbitrator after the receipt of the notice are rendered invalid and there is no prohibition under s. 35 requiring the arbitrator not to carry on the arbitration proceedings after the receipt of the notice. [672 G—673 B]

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A It is well established that an authority holding an enquiry in good faith in exercise of the powers vested in it by a statute is not guilty of contempt of court, merely because a parallel enquiry is imminent or pending before a court. To constitute the offence of contempt of court there must be involved some 'act done or writing published calculated to bring a court or a judge of the court into contempt or to lower his authority' or 'something calculated to obstruct or interfere with the due course of justice or the lawful process of the court'. [673 C]

B *Reg. v. Gray* [1900] 2 Q.B. 36, *Arthur Reginald Perera v. The King*, [1951] A.C. 482, *Tukaram Gaokar v. S. N. Shukla*, [1968] 3 S.C.R. 422 and *Rizwan-ul-Hasan v. State of Uttar Pradesh*, [1953] S.C.R. 581, 588, applied.

C It followed therefore that even if the action of the appellants and respondent No. 1 in the present case was assumed to be improper it would not justify the finding that they were guilty of contempt of court when their action was in no way calculated to obstruct the course of justice or to prejudice the trial of the civil suit.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 49 of 1967.

D Appeal from the judgment and order dated August 14, 1964 of the Bombay High Court, Nagpur Bench in Misc. Civil Application No. 13 of 1963.

Mohan Behari Lal, for the appellants.

V. K. Sanghi and *Ganpat Rai*, for respondents Nos. 1 and 2.

The Judgment of the Court was delivered by

E **Ramaswami, J.** This appeal is brought by certificate from the judgment of the Bombay High Court Nagpur Bench dated August 14, 1964 by which the appellants were convicted for contempt of Court of Civil Judge, Junior Division, Nagpur and sentenced to pay a fine of Rs. 200/- each. By the same judgment respondent no. 3, Sri Ram Nath Vig was also convicted for contempt and sentenced to pay a fine of Rs. 100/-.

F It appears that a hire-purchase agreement was entered into between the appellants and respondent no. 1. on or about August 12, 1959. Under that agreement a motor truck was made available to respondent no. 1 for doing transport business. The hire-purchase agreement contained an arbitration clause for settlement of disputes arising between the parties. It appears that subsequently disputes did arise between the parties and a reference was made to an arbitrator to settle the disputes. Respondent no. 3, Sri Ram Nath Vig who is a practising lawyer in Delhi was the person named as arbitrator in the arbitration agreement itself and the dispute was submitted to him on or about June 25, 1962 at the instance of the appellants. Thereafter the arbitrator gave notice of the reference and invited statements of the parties. He fixed the hearing of the arbitration matter before him on July 17, 1962. The case of respondent no. 1 is that he did not receive notice of this date from the arbitrator and

therefore he did not appear on the date fixed. The arbitrator adjourned the hearing of the reference to another date, namely, August 29, 1962. The contention of respondent no. 1 is that he was not given intimation of this date also but this point is controverted by the respondents. Respondents nos. 1 and 2 filed a Civil Suit in the Court of Civil Judge, Senior Division, Nagpur on August 30, 1962. In this suit they claimed a declaration that the hire-purchase agreement was brought about by fraud and was not binding on them on various grounds. The suit was registered and the court ordered summons to be issued to the two appellants. Meanwhile, the arbitrator postponed the hearing of the reference to September 15, 1962 and it is alleged that he issued fresh notices to the parties on September 1, 1962. The hearing was again adjourned to October 23, 1962 and it is said that respondent no. 3 made an award on October 24, 1962. It has been found by the High Court that on October 18, 1962 a notice was issued by respondent no. 1 to the appellants and the arbitrator with a copy of the plaint. This notice was received by the appellants on October 22, 1962. In spite of this notice, evidence was recorded by the arbitrator on October 23, 1962 and he made the award on the next day directing respondent no. 1 to pay Rs. 20,400/-. The allegation of the arbitrator is that he received the notice sent on October 18, 1962 on the next day of the award i.e., on October 25, 1962. It appears that in the civil suit filed by respondents 1 and 2 which was registered as Civil Suit no. 657 of 1962 on the file of the Civil Judge, Junior Division, the first date of hearing was fixed on October 15, 1962. On that date the appellants filed an application under s. 34 of the Arbitration Act for staying the proceedings before the court. No progress was made in the suit which was adjourned to November 6, 1962 and again to November 28, 1962 at the instance of the appellants. Finally on November 28, 1962 the arbitrator informed respondent no. 1 that he had made the award. On these facts respondents 1 and 2 filed an application under s. 3 of the Contempt of Court's Act for action being taken against the two appellants, respondent no. 3 and one more person. According to respondents 1 and 2 the appellants and respondent no. 3 had committed contempt of court in proceeding with the arbitration reference in spite of notice under s. 35 of the Arbitration Act being given and in spite of the knowledge of the suit which was filed by respondents 1 and 2. The application was contested by the appellants as well as the arbitrator. The case of the appellants was that the suit itself was not sustainable and they were unaware that participation in the arbitration proceedings after receipt of notice was precluded by law and that they honestly and *bona fide* believed that they were not expected to take any action after the receipt of the notice without direction from the arbitrator. It was for the arbitrator to take a decision in the matter and if the arbitrator decided to pro-

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ceed with the arbitration, they only obeyed the orders of the arbitrator and therefore had not committed any contempt. The defence of respondent no. 3 was that in completing the arbitration and giving his award he was only performing his duty. He denied that it was necessary for him to await the result of the stay application alleged to have been made by respondent no. 1 in the Nagpur Court as he was of the view that the subject-matter in the Nagpur Court was not the whole subject-matter under arbitration, Respondent no. 3 denied that he had any bias or that he conducted the arbitration proceedings in order to defeat the object of the suit and to place an impediment in the conduct of the suit. The High Court rejected the contention of the appellants and of respondent no. 3 and held that the action of the appellants in participating in the arbitration proceedings and the conduct of respondent no. 3 constituted contempt of court as the conduct of respondent no. 3 and of the appellants had a tendency to bring into contempt the proceedings before the Civil Court.

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It is necessary at this stage to set out the relevant provisions of the Arbitration Act (X of 1940). Sections 32, 33, 34 and 35 are to the following effect :

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“32. Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.”

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“33. Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits :

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Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence, also, and it may pass such orders for discovery and particulars as it may do in a suit.”

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“34. Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are

pending to stay the proceedings, and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceeding.”

“35. (1) No reference nor award shall be rendered invalid by reason only of commencement of legal proceedings upon the subject-matter of the reference, but when legal proceedings upon the whole of the subject-matter of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrators or umpire all further proceedings, in a pending reference shall, unless a stay of proceedings is granted under section 34, be invalid.

(2) In this section the expression ‘parties to the reference’ includes any persons claiming under any of the parties and litigating under the same title.”

In our opinion, the High Court was in error in holding that in the circumstances of this case the appellants and respondent no. 3 were guilty of contempt of court. It is not disputed that there was an arbitration clause in the agreement between the appellants and respondent no. 1 and in terms of the arbitration clause respondents 1 and 2 had a right to refer the dispute to the arbitrator. It is also not disputed that a reference to the arbitrator was made by respondents 1 and 2 long before the institution of the civil suit. It is also apparent that in view of the admitted existence of the hire purchase agreement containing an arbitration clause the remedy of respondent no. 1 was to move the Civil Court under s. 33 of the Arbitration Act challenging the existence or validity of the arbitration agreement and to have its effect determined. It was contended on behalf of the appellants that a separate suit was barred under s. 32 of the Arbitration Act. We do not wish to express any opinion on this point in the present case. Even on the assumption that the suit filed by respondents nos. 1 and 2 in the Nagpur Court is competent, the question arises whether the arbitrator was bound to stay the proceedings before him after he got notice from respondents 1 and 2 of the institution of the civil suit. Section 35 of the Arbitration Act does not expressly prohibit the arbitrator from continuing the hearing of the reference but the only effect of s. 35 is that “all further proceedings in a pending reference shall, unless a stay of proceedings is granted under s. 34, be invalid”. For this consequence to follow, however, two important and distinct conditions must be satisfied, namely, (1) that such legal proceedings must be upon

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A the whole and not merely part of the subject-matter of the refer-
 B after the receipt of the notice are rendered invalid and there is no
 C the only effect is that the further proceedings before the arbitrator
 D after the receipt of the notice are rendered invalid and there is no
 E prohibition under s. 35 requiring the arbitrator not to carry on the
 arbitration proceedings after the receipt of the notice.

It is well-established that an authority holding an inquiry in
 good faith in exercise of the powers vested in it by a statute is not
 guilty of contempt of court, merely because a parallel inquiry is
 imminent or pending before a court. To constitute the offence of
 contempt of court, there must be involved some 'act done or writ-
 ing published calculated to bring a court or a judge of the court
 into contempt or to lower his authority' or 'something calculated
 to obstruct or interfere with the due course of justice or the lawful
 process of the court'.—(See *Reg. v. Gray*⁽¹⁾ and *Arthur Reginald
 Perera v. The King*⁽²⁾). In *Tukaram Gaokar v. S. N. Shukla*⁽³⁾,
 it was held by this Court that the initiation and continuance of
 proceedings for imposition of penalty on the appellant for his
 alleged complicity in the smuggling of gold under s. 112(b) of the
 Sea Customs Act, 1962 did not amount to contempt of court
 though his trial in a criminal court for offences under s. 135(b)
 of that Act and other similar offences was imminent and identical
 issues would arise in the proceedings before the customs authorities
 and in the trial before the criminal court.

In *Rizwan-ul-Hasan v. The State of Uttar Pradesh*⁽⁴⁾ this
 Court stated :

F “As observed by Rankin, C.J. in *Anantlal Singha
 v. Alfred Henry Watson* [(1931) 58 Cal. 884 at 895],
 the jurisdiction in contempt is not to be invoked unless
 there is real prejudice which can be regarded as a sub-
 G stantial interference with the due course of justice and
 that the purpose of the court's action is a practical pur-
 pose and it is reasonably clear on the authorities that
 the court will not exercise its jurisdiction upon a mere
 question of propriety.”

H It follows therefore that even if the action of the appellants and
 respondent no. 1 in this case is assumed to be improper it will not
 justify the finding that they were guilty of contempt of court when
 their action was in no way calculated to obstruct the course of
 justice or to prejudice the trial of the Civil suit.

(1) [1900] 2 Q.B. 36.

(3) [1968] 3 S.C.R. 422

(2) [1951] A.C. 482.

(4) [1953] S.C.R. 581, 588.

For these reasons we hold that this appeal should be allowed and the judgment of the High Court of Bombay, Nagpur Bench dated August 14, 1964 should be set aside and the conviction and sentences imposed on the appellants should be quashed. The arbitrator, respondent no. 3 has not filed an appeal but in view of our finding with regard to the appellants it is necessary that the conviction of respondent no. 3 and the sentence imposed upon him should also be quashed. The fines, if already paid by respondent no. 3 and the appellants should be refunded.

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Appeal allowed.