

M/S SANT RAM AND COMPANY
v.
THE STATE OF RAJASTHAN AND ORS.

NOVEMBER 20, 1996

[K. RAMASWAMY, G.T. NANAVATI AND
K. VENKATASWAMI, JJ.]

Code of Civil Procedure, 1908/Arbitration Act, 1940 :

O. XXXIX R. 1/S. 41 (b) and Second Schedule—Application for ad interim injunction—Dispute referred to Arbitrator by mutual agreement—Pending arbitration respondent sought to adjust amount due to appellant in another contract—Application for ad interim injunction by appellant seeking to restrain respondent from adjusting the said amount—District Judge and High Court held that application was not maintainable—Held, under the contract appellant had expressly agreed for adjustment of amount pending with respondent in respect of claim under the dispute or any other contract with the respondent—Neither on merits nor on principle of law there is any illegality in the order passed by High Court warranting interference.

Kamaluddin Ansari & Co. v. Union of India, [1983] SCR 607, relied on.

Union of Inida v. Ram Iron Foundry, [1974] 3 SCR 556, held no longer a good law, as it stood overruled in [1983] 3 SCR 607.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 78 of 1991.

From the Judgment and Order dated 7.8.90 of the Rajasthan High Court in C.R. No. 293 of 1990.

A.B. Rohtagi, Ms. Indu Malhotra and Ms. Kavita Wadia for the appellant.

Aruneshwar Gupta, Manoj K.Das and Manish Garg for the Respondents.

The following Order of the High Court was delivered :

A This appeal by special leave arises from the order of the Single Judge of the Rajasthan High Court made in Civil Revision Petition No. 293/90, dated August 7, 1990.

The admitted position is that the appellant had entered into a contract with the respondent-State for execution of the works of widening of Gagar Diversion Bridge at Bikaner in Sri Ganganagar Section. Pursuant to a dispute which arose between the parties, in terms of the contract, the matter by mutual agreement, was referred to the arbitrator by name Sri K.L. Sethia. Pending arbitration, the respondent sought to adjust the amount due to the appellant in another contract. Thereon the appellant filed an application in the district Court under Order XXXIX Rule 1, Code of Civil procedure, 1908 read with Section 41(b) of the Arbitration Act and the Second Schedule to the Arbitration Act, 1940 for ad interim injunction, restraining the respondent from adjusting the same. The District Judge by his order held that such an application is not maintainable without the intervention of the Court; therefore, Section 41(b) and the Second Schedule have no application. The same came to be upheld by the learned Chief Justice in the impugned order. Thus this appeal by special leave.

Shri. A.B. Rohtagi, learned senior counsel for the appellant, contends that for entertaining an application under Section 41(b) read with the Second Schedule, it is not a condition that the arbitration proceedings should be pending through the intervention of the Court. Independently thereof, when arbitration proceedings were pending between the parties in respect of the claim or counter-claim and when the respondent sought to adjust the same with the amounts due from other contracts, the Court would, in the circumstances, intervene and restrain the respondents from adjusting the same as a counter-claim. Otherwise, the arbitration proceedings would be nullified. He placed strong reliance on the judgment of a two Judge Bench of this court in *Union of India v. Raman Iron Foundry*, [1974] 3 SCR 556. The question is no longer *res integra*. A Bench of three judges of this Court in *Kalaluddin Ansari & Co. v. Union of India*, [1983] 3 SCR 607 has considered the scope of Section 41 (b) and the Second Schedule and had held thus :

“The first question that falls for consideration in this appeal is about the exact scope and ambit of Section 41 in order to appreciate the contention raised on behalf of the appellant:

H “41. Procedure and powers of Court: Subject to the provisions

of this Act and of rules made thereunder

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(a) The provisions of the Code of Civil Procedure, 1908 shall apply to all proceedings before the Court, and to all appeals, under this Act, and

(b) The Court shall have, for the purpose of, and in relation to, arbitration proceeding, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court:-

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Provided that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.’

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In view of cl. (b) of s. 41 the Court has been given power of passing orders in respect of any of the matters set out in second Schedule for the purpose of and in relation to any proceedings before the Court. The Second Schedule of the Arbitration Act inter alia includes ‘interim injunction’ and the ‘appointment of receiver’.

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In that case, an application under Section 33 of the Arbitration Act had come to be filed and then an application for ad interim injunction was filed. It will, therefore, be clear that to avail the remedy under the provisions of the Code of Civil Procedure, when an application for injunction under Section 41 (b) read with Schedule is filed, the Court shall have, pending proceedings for the purpose of and in relation to the arbitration proceedings availed through the process of the Court, the same power of making orders in respect of any matters set out in the Second Schedule as it has for the purpose of and in relation to any proceedings before the Court. The initiation of pendency of any proceedings in the court in relation to the arbitration proceedings would, therefore, be a pre-condition for the exercise of the power by the Civil Court under the Second Schedule of the Act.

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On merits, this Court had held in the similar circumstances that such an injunction cannot be granted as it amounts to granting a relief which is not warranted under Section 41(b) read with the Schedule of the Act. This Court had recorded a finding as under :

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- A “We are clearly of the view that an injunction order restraining respondents from withholding the amount due under other pending bills to the contractor virtually amounts to a direction to pay amount to the contractor-appellants. Such an order was clearly beyond the purview of cl. (b) of s. 41 of the Arbitration Act. The Union of India has no objection
- B to the grant of an injunction restraining it from recovering or appropriating the amount lying with it in respect of other claims of the contractor towards its claim for damages. But certainly cl. 18 of the standard contract confers ample power upon the Union of India to withhold the amount and no
- C injunction order could be passed restraining the Union of India from withholding the amount.”

The Division Bench decision on which the reliance was placed, has reiterated that principle, namely, that “such an injunction can only be for the purpose of and in relation to the arbitration proceedings. The court could not make an injunction order which, though ostensibly in the form

D of an order of interim injunction, in substance, amounted to a direction to the appellant to pay the amounts due to the respondent under other contracts.” In fact, the ratio therein which the learned counsel tried to propound, was not approved and the said decision was expressly overruled in *Kamaluddin’s case* (supra).

E It is seen that under Clause (50) of the contract, the appellant has expressly agreed for adjustment of the amount pending with the respondent in respect of the claim under the dispute or any other contract with the Department. Under these circumstances, neither on merits nor on principle

F of law, we find any illegality in the order passed by the High Court warranting interference.

The appeal is accordingly dismissed. No costs.

R.P.

Appeal dismissed.