

ORIGINAL CIVIL.

*Before Mr. Justice Davar.*1906.
December 3.IN THE MATTER OF THE PETITION OF LUCAS RALLI AND ANOTHER
(PETITIONERS) v. NOOR MAHOMED (RESPONDENT).*Indian Arbitration Act (IX of 1899), section 19—Jurisdiction of High Court to stay proceedings in the Small Cause Court—Step in the proceedings.*

N. agreed to purchase from R. 150 tons of sugar imported by R. A clause in the agreement provided for arbitration in the event of disputes arising in connection with the agreement. A dispute arose with regard to the condition of some of the bags of sugar and N. claimed damages from R. which R. refused to pay. N. filed a suit in the Small Cause Court. The Judge before whom the suit was instituted, on the petition of R., stayed the proceedings. On appeal to the full Court the order staying the proceedings was set aside. R. by a petition to the High Court prayed that the proceedings in the Small Cause Court should be stayed.

Held, under section 19 of the Arbitration Act, the High Court has the power to stay proceedings in the Small Cause Court and the proceedings should under the circumstances be stayed.

PER CURIAM :—The language of section 19 of the Act is quite clear and it gives jurisdiction to the High Court to stay proceedings in any Court in the Presidency town subordinate to its jurisdiction. The section in the beginning refers to a party to a submission commencing *any legal proceedings*; then it goes on to refer to *such* legal proceedings, and then provides for staying *the* proceedings. Nowhere is there any indication in the section or the Act that the legal proceedings contemplated must be proceedings in that Court.

Any proceedings taken by a party to a suit to stay legal proceedings under section 19 of the Arbitration Act are not 'steps in the proceedings.'

PETITION in Chambers.

By a contract dated the 30th January 1906, Noor Mahomed Valley, the respondent, agreed to purchase from Messrs. Ralli Brothers, the petitioners, 150 tons of Belgian Sugar in double bags of about 2 cwts. The goods arrived in Bombay on the 19th March 1906, and the petitioners advised the respondent of their arrival; the respondent paid for and took delivery of 750 bags on the 26th March 1906, 426 bags on the 27th March 1906 and the remaining 324 bags on the 4th April 1906. In the course of the delivery it was found that some bags were slack, that is loose in weight, and some damaged. The respondent got these bags surveyed by the Surveyor and claimed from the

petitioners Rs. 382-2-3 in accordance with the report of the Surveyor. On the petitioners refusing to pay this amount the respondent filed a suit in the Court of Small Causes claiming the said amount.

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Before the hearing of the said suit in the Court of Small Causes, the petitioners applied to the Court to stay proceedings in that suit under the Indian Arbitration Act (IX of 1899), section 19, on the ground that the matters in dispute in that suit ought to have been referred to Arbitrators under condition 9 of the contract between them and the respondent. The condition ran as follows :—

“In case any dispute arises between us and Messrs. Ralli Brothers as regards the quality of the said goods or in reference to any of these conditions we agree to refer such dispute to the arbitration of two European merchants of this place, one to be appointed by us and one by Messrs. Ralli Brothers and to abide by their decision, and in case of these Surveyors disagreeing, we agree to the matter in dispute being referred to the Committee of the Chamber of Commerce whose decision shall be final.”

The respondent opposed that application on the ground that the dispute in the suit did not relate either to the quality of the goods or had any reference to any of the conditions of the contract. The Judge of the Small Cause Court, who heard this application, ordered a stay of proceedings.

The respondent thereupon moved the full Court and applied for and obtained a Rule calling upon the petitioners to show cause why the order made by the said Judge for stay of proceedings should not be set aside on the ground that the Indian Arbitration Act under which the application for stay was made did not apply to the Small Cause Court.

The full Court after hearing both sides on 18th September 1906 reversed the order of the single Judge on the ground that the Small Cause Court could not make an order for stay of proceedings under section 19 of the Indian Arbitration Act, and that the term ‘Court’ in section 19 meant the High Court of Judicature at Bombay so far as that case was concerned, and the suit was fixed for hearing on its merits by the full Court.

Messrs. Ralli Brothers thereupon applied to the High Court for stay of proceedings in the Court of Small Causes as the suit was in respect of matters agreed to be referred to arbitration,

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Lowndes for the petitioners:—The question is whether the suit filed relates to the matters which under the agreement must be referred to arbitration. If so, the suit must be stayed. The Small Cause Court is subordinate to the High Court and therefore the High Court has jurisdiction to stay the suit in the Small Cause Court. The Indian Arbitration Act, section 19, means that if any legal proceedings are taken in any Court the High Court may stay those proceedings.

Robertson for the opponent:—The Indian Arbitration Act does not apply to the Small Cause Court. See the High Court Rules under the Indian Arbitration Act, section 20 (*d*), rule 404, p. 257, rules 404 *et seq.* These rules all apply to the High Court. There is no suggestion that the suit can be in any other Court than the High Court. Proceedings must be in the Court that stays them. The High Court cannot stay proceedings in the Small Cause Court unless express power is given it to do so.

Secondly, the defendant applied to the Small Cause Court and got an order to stay the proceedings. He opposed the setting aside of that order before the Full Bench of the Small Cause Court. Now section 19 of the Arbitration Act says he must have taken no other steps in the proceedings except applying to the High Court. Has the step been taken or not? See *Shankar Bisto Nadgir v. Narsinghrao Ramchandra*⁽¹⁾; *Adhar Chandra Dass v. Lal Mohun Das*⁽²⁾.

The defendant has caused great delay in putting off the hearing from August to December.

Thirdly, this Court has discretion in this matter. If there is sufficient reason for not referring the matter to arbitration it should not be referred.

Lowndes in reply.—A step in the proceedings is a step to defend the suit. My clients' application to the Small Cause Court was no more a proceeding in the suit than his present application to the High Court.

As to discretion it is decided that the Court does not stop arbitration except if complicated questions of law arise. In *Ran-*

(1) (1887) 11 Bom, 467.

(2) (1897) 24 Cal, 778.

degger v. Holmes⁽¹⁾ it was said arbitration would not be stopped unless fraud was alleged.

DAVAR, J. :—The petitioners, who are well known merchants carrying on business in Bombay, have presented a petition to this Court praying that the legal proceedings instituted against them by Noor Mahomed Vulley in the Court of Small Causes at Bombay may be stayed under the provisions of the Indian Arbitration Act, and the clause in the contract, in respect of which disputes and differences have arisen, providing for a reference to Arbitration, may be enforced against the respondent. It appears that by a contract in writing bearing date the 30th of January 1906, the respondent agreed to purchase 150 tons of Belgian sugar imported into Bombay by the petitioners. The first clause of the contract, a copy of which is annexed to the petition, provides that the respondent should on arrival of the goods forthwith pay for and take delivery of the goods from the steamer's deck. The goods arrived by the steamship *Trantenfels*, and the petitioners, on the 19th of March, wrote to the respondent asking him to take delivery in terms of his contract. Copy of the petitioners' letter is annexed to the petition and marked B. The petitioners allege that the respondent did not pay for the goods forthwith on their arrival in Bombay and did not take delivery of the goods from the steamer, that the goods had to be landed and the respondent took delivery of 750 bags on the 26th of March 1906, 426 bags on the 27th of March 1906, and the remaining 324 bags on the 4th of April 1906. After taking delivery the respondent contended that some of the bags of sugar were slack and torn and that portion of the goods were damaged. He claimed Rs. 382-2-3 as damages and on the petitioners refusing to pay him this sum he instituted a suit against them in the Small Causes Court, being Suit No. 12052 of 1906. The petitioners applied to the Judge of the Small Causes Court on whose Board the suit appeared to stay proceedings under the provisions of the Indian Arbitration Act and the learned Judge erroneously made the order. Against this order the respondent appealed

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(1) (1866) L. R. 1 C. P. 679.

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to the full Court and the full Court correctly held that the Small Causes Court had no power to make such an order and set the same aside. Thereupon the petitioners presented a petition to this Court and the matter was argued before me in Chambers on Saturday the 1st instant. Mr. Lowndes, who appeared in support of the petition, contended that clause 9 of the contract was very wide in its terms and under that clause he was entitled to enforce Arbitration. Mr. Lowndes stated to the Court that it was a matter of principle on which his clients were fighting—that they had a great many similar contracts with other merchants and if they did not enforce the provisions of this clause his clients would be subjected to much harassing litigation. Mr. Robertson for the respondent contended—

First, that the Indian Arbitration Act was not intended to apply to the Small Causes Court and that therefore I had no power or jurisdiction to stay proceedings in that Court ;

Secondly, that the petitioners in applying to the Small Causes Court had taken steps and that therefore under section 19 of the Act their present petition must fail ;

Thirdly, that I had a discretion in the matter and that I ought under the circumstances of the case to exercise that discretion in his client's favour ; and

Fourthly, that the questions *involved* in the Small Causes Court suit do not fall within the terms of clause 9 of the contract.

After giving careful consideration to Mr. Robertson's argument I had no doubt in my mind as to what my Judgment should be, but, as it was pointed out to me that the questions that I have to decide on this petition have not arisen before, I thought it desirable to write my Judgment.

As to the first contention of Mr. Robertson, no doubt, section 4 of the Act provides that "the Court" in Presidency towns means the High Court, but I do not think it follows, as argued by Mr. Robertson, that the legal proceedings referred to in section 19 must necessarily be legal proceedings in the High

Court or as he contends in *that Court*. If this was held to be the right construction of the section it would mean that it would be open to one of the parties to a submission to give the go-bye to such submission by instituting a suit in the Small Causes Court. Again section 4 provides that outside the Presidency towns the 'Court' means the Court of the District Judge, and if the respondent's counsel's contention is correct it would come to this that the District Judge would have no power to stay proceedings in Courts subordinate to his Court and consequently the agreement to submit disputes to Arbitration would be abortive if one of the parties choose to file a suit in any of the Courts subordinate to the District Court. To my mind the language of section 19 of the Act is quite clear and it gives jurisdiction to the High Court to stay proceedings in any Court in the Presidency town subordinate to its jurisdiction. The section in the beginning refers to a party to a submission commencing *any legal proceedings*; then it goes on to refer to *such* legal proceedings and then provides for staying *the* proceedings. Nowhere is there any indication in the section or the Act that the legal proceedings contemplated must be proceedings in that Court. To hold that I have no jurisdiction to entertain this application and stay proceedings would be tantamount to holding that the provisions of the Indian Arbitration Act applied only to the High Court in Presidency towns and to the District Court in the Mofussil. This could never have been the intention of the Legislature. I am therefore clearly of opinion that I have jurisdiction to entertain this petition and to order stay of proceedings in the Presidency Small Causes Court if I am satisfied that I ought to make the order.

While considering the point it is interesting to notice that section 19 of the Indian Arbitration Act is almost a *verbatim* reproduction of section 4 of the English Arbitration Act of 1889 (52 & 53 Vic., c. 49). By section 27 of that Act "Court" is defined as meaning Her Majesty's High Court of Justice. I could hardly conceive that that Act was intended only to apply to the High Court and that the High Court of Justice had no power to stay proceedings in Courts subordinate to its jurisdiction.

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I do not agree with Mr. Robertson's second contention that the proceedings taken by the petitioners in the Small Causes Court to stay proceedings are a bar to the present application. The Small Causes Court had no jurisdiction to make the order asked for and the proceedings there proved abortive, but I am of opinion that any proceedings taken by a party to a suit to stay legal proceedings under the provisions of section 19 of the Arbitration Act are not "steps in the proceedings."

I hold that the proceedings taken by the petitioners are not "steps in the proceedings" contemplated by section 19 of the Arbitration Act, and are no bar to the present proceedings.

As to the third contention that I should not exercise my discretion in favour of staying proceedings, I am very strongly of opinion that if the matter was entirely within my discretion I ought to exercise that discretion in favour of staying proceedings. If this was a suit filed in this Court it would have been classed as a commercial cause and it is a case eminently suited for the decision of two merchants. When entering into the contract the parties specifically agree that in case of disputes they will go to the arbitration of certain parties named or designated. Why should I encourage one of the parties deliberately to give the go-bye to his agreement and harass the other party by litigation? It is possible that if the respondent had refused to agree to the arbitration clause the petitioners might have refused to enter into the contract with them. But the matter does not rest here. I do not think that it is entirely within my discretion to make or refuse the order asked for. The section provides as follows:—"And the Court *if satisfied* that there is no sufficient reason why the matter should not be referred in accordance with the submission . . . may make an order staying the proceedings." Is there any sufficient reason to satisfy me in this case that this matter should not be referred? There is none that I can appreciate, while there are many reasons which convince me that it would be most unjust to allow the respondent to harass the petitioners with litigation after his specific agreement that he would go to arbitration.

The only other question that remains is—do the disputes and differences that have now arisen between the parties fall within

the 9th clause of the agreement of the 30th of January 1906? By that clause the respondent stipulates as follows:—"In case any dispute arise between us and *Messrs. Ralli Brothers* as regards the quality of the said goods or in reference to any of these conditions we agree to refer such dispute to the arbitration, etc." Now what are the disputes that have arisen. The respondent through his counsel contends that though the petitioners wrote to say he should take delivery from the steamer's deck he never had the opportunity to do so and the goods were landed in the docks before he could take delivery on board. The petitioners' counsel contended before me that the respondent had no moneys or was for some reason unable to take delivery on board and that as a matter of fact he did not take delivery on board the ship as stipulated by the first clause of the agreement. This breach on the respondent's part is specifically alleged in paragraphs 4 and 5 of the petition. The respondent does not deny the allegation in the affidavit he has put in in reply. The petitioners contend that under the terms of their contract they are not liable for any damage to the goods if the respondent did not perform his obligation under clause 1 of the contract by paying for the goods forthwith and taking delivery of the same from the deck of the steamer. It may be that the respondent is right in his contention that he got no opportunity to take delivery on board the steamer although he does not say so in his affidavit. Whatever may be the merits of the different contentions I find that the disputes between the parties are in "reference to the conditions" of the contracts and therefore fall within clause 9 of the contract.

Having regard to all the circumstances of the case I have come to the conclusion that the petitioners are entitled to the order they ask for.

I grant the prayer of the petition and order that proceedings in Suit No. 12052 of 1906 instituted by the respondent in the Small Causes Court of Bombay be stayed. The respondent must pay the petitioners' costs. I certify for counsel.

Attorneys for plaintiff: *Messrs. Unwalla and Phirozshah.*

Attorneys for defendant: *Messrs. Craigie, Lynch & Owen.*

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