

## STATE OF PUNJAB

v.

M/s. GEETA IRON &amp; BRASS WORKS LTD.

October 14, 1977

[V. R. KRISHNA IYER AND JASWANT SINGH, JJ.]

*Arbitration Act 1940 (Act IV of 1940), Section 34—Power to stay legal proceedings where there is an agreement—Scope of S. 34.*

*Constitution of India, Article 136—Interference against interlocutory orders refusing stay of proceedings u/s. 34 of the Arbitration Act.*

*Civil Procedure Code (Act V of 1908), s. 80—Scope of.*

The respondent/plaintiff issued a notice u/s. 80 C.P.C. to the appellant/defendant for referring certain claims to Arbitration as per the contract. There being no response, a suit was filed under the Arbitration Act and summons taken out to the Chief Secretary. In the ex parte proceedings taken, on the refusal of the summons issued, the Government later applied for staying of the proceeding u/s. 34. The Subordinate Judge declined to stay the proceedings. In appeal, the High Court refused to interfere against the said order.

Dismissing the special leave petition, the Court,

HELD : (1) A statutory notice of the proposed action u/s. 80 C.P.C. is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. As a matter of law, mere silence on the part of the defendant when a notice u/s. 80, C. P. C. is sent to him may not, more, disentitle him to move u/s. 34 of the Arbitration Act and seek stay. [747 E, G]

(2) Where parties have, by contract, agreed to refer their disputes to arbitration, the courts should as far as possible proceed to give an opportunity for resolution of disputes by arbitration rather than by judicial adjudication. Even so, there is a residual discretion vested in the court to stay or not to stay having regard to the totality of circumstances. One weighty factor obviously to find out whether the party who invokes the arbitration clause has expressed his readiness to rely on it at the earliest stage.

In the instant case there is no gross error justifying the grant of leave since an opportunity for settling the dispute through arbitration was thrown away by sheer inaction by the appellant. [747 C—D]

*Observation :*

Government must be made accountable by Parliamentary social audit for wasteful litigative expenditure inflicted on the community by inaction. A litigative policy of the State involves settlement of Governmental dispute with citizens in a sense of conciliation rather than a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in court. Litigation in which Governments are involved adds to the case load accumulation in courts for which there is public criticism. [747 F—H, 748 A]

[The Court expressed its hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in courts of cases which deserve to be attended to.]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil)  
No. 1781 of 1977.

From the Judgment and Order dated 30-3-1976 of the Gujarat High Court in Appeal No. 9 of 1976.

*Hardev Singh, R. S. Sodhi and O. P. Sharma* for the Petitioner.

ORDER

KRISHNA IYER, J. This special leave to appeal is sought against a discretionary order passed by the Subordinate Judge declining to stay a suit under s. 34 of the Arbitration Act. This order was challenged in appeal and the High Court, after an exhaustive consideration, felt that the exercise of discretion was not so improper as to deserve interference.

Shri Hardev Singh is right to the limited extent that where parties have by contract agreed to refer their disputes to arbitration the courts should as far as possible proceed to give an opportunity for resolution of disputes by arbitration rather than by judicial adjudication. Even so, there is a residual discretion vested in the court to stay or not to stay having regard to the totality of circumstances. One weighty factor obviously is to find out whether the party who invokes the arbitration clause has expressed his readiness to rely on it at the earliest stage. We are not investigating the merits of the matter under Art. 136 but are satisfied that there is no gross error justifying grant of leave. We make it clear however that as a matter of law mere silence on the part of the defendant when a notice under s. 80 C.P.C. is sent to him may not, without more, disentitle him to move under s. 34 and seek stay. In the present case, other circumstances have also been pressed into service by the Court.

While dismissing the special leave petition for the reasons mentioned above, we would like to emphasize that the deserved defeat of the State in the courts below demonstrates the gross indifference of the administration towards litigative diligence. In the present case a notice under s. 80 C.P.C. was sent. No response. A suit was filed and summons taken out to the Chief Secretary. Shockingly enough, the summons was refused. An ex parte proceeding was taken when the lethargic Government woke up.

We like to emphasize that Governments must be made accountable by Parliamentary social audit for wasteful litigative expenditure inflicted on the community by inaction. A statutory notice of the proposed action under s. 80 C.P.C. is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now s. 80 has become a ritual because the administration is often unresponsive and hardly lives up to the Parliament's expectation in continuing s. 80 in the Code despite the Central Law Commission's recommendations for its deletion. An opportunity for settling the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of Governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on

- A the part of the State to empower its law officer to take steps to compose disputes rather than continue them in court. We are constrained to make these observations because much of the litigation in which Governments are involved adds to the case load accumulation in courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in courts
- B of cases which deserve to be attended to. Dismissed.

S.R.

*Special leave petition dismissed.*