(1999) 02 P&H CK 0027

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2896 of 1998 (O and M)

Bharat Bhushan Setia and Another		APPELLANT
	Vs	
Nirmal Kanta etc.		RESPONDENT

Date of Decision: Feb. 10, 1999

Acts Referred:

- Arbitration Act, 1940 - Section 34

Citation: (1999) 122 PLR 165 : (1999) 4 RCR(Civil) 235

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: Jasbir Singh, for the Appellant; S.M.L. Arora, for the Respondent

Final Decision: Dismissed

Judgement

Swatanter Kumar, J.
Learned counsel for the petitioners contended that the principle of acquiescence could not be made applicable for dismissing an application for referring the dispute to the Arbitration and stay of the proceedings of the suit filed by the applicants-defendants.

2. In order to examine the merit of this contention, reference to basic facts would be necessary. Nirmal Kanta filed a suit for dissolution of partnership and rendition of accounts of the firm known as M/s Sunder Dass Setia Cotton Ginning and Pressing Factory situated at Mukatsar. Defendants No. 1 and 2 are alleged to be the partner of the partnership firm alongwith respondent No. 2 to 4. However, respondents No. 2 to 4 relinquished their rights in favour of defendants No. 1 and 2. Defendants No. 1 and 2 had reimbursed the plaintiff and her husband. Allegations of misappropriation and fabrication of the books of account and threatening of destruction of the accounts and property of the firm were made.

3. The suit was being contested and the defendants were called upon to file written statement. However, after seeking certain opportunities for the said purpose, the defendants No. 1 and 2 filed an application praying that in view of the clause 21 of the partnership deed executed between the parties, the dispute be referred for determination to the Arbitrator and the proceedings in the suit be stayed. This application of the defendants was contested by the plaintiff.

4. Learned Additional Civil Judge, (Senior Division), Muktsar vide impugned order dated 20.5.1998, dismissed the said application obviously calling upon the defendants to comply with the previous order.

5. Learned counsel for the respondent has relied upon the case of Union of India (UOI) Vs. Naresh Chand Goyal and Others, and a judgment of this Court in the case of Harinder Singh Randhawa and Anr. v. Shri Hardial Singh Dhillon and Ors. (1984)86 P.L.R. 744.

6. The principles of law enunciated in these judgments could hardly be disputed, but it is the application of these principles to the facts and circumstances of the case, which required consideration. The existence of the arbitration agreement is not in question. What the learned trial Court has relied is the fact that the applicants-defendants firstly took number of opportunities to file the written statement and thereafter, they filed the present application. Furthermore, the said defendants themselves had filed two suits earlier in relation to the affairs of the partnership firm and both the suits were consolidated and ultimately compromise decree was passed in those suits. The assets of partnership firm were not questioned. In other words, the principle of acquiescence would squarely apply to the present case because of the clear intention of the applicants themselves not to abide by the arbitration agreement and secondly their own conduct clearly shows that they had not pressed the arbitration agreement for determination of their dispute in relation to the partnership concern on earlier occasion.

7. At this stage, it may be appropriate to refer to the orders passed by the learned trial Court on various occasions. On 1st of August, 1998, the learned Judge passed the following order:-

"Present:- Counsel for the parties.

W/s again not filed. Adjournment requested, is granted subject to cost of Rs.100/-. W/s be now filed on 18.8.1998."

8. On 18th August, 1998, the following order was passed:-

"Present:- Counsel for the parties.

W/s again not filed. Be filed on 3.9.1998. This is the last opportunity given."

9. The language of the above orders, clearly show that the applicants never intended to raise the plea of section 34 of the Arbitration Act as it stood at the

relevant time and unequivocally sought time to file written statement to the suit. It tantamount to taking steps in the proceedings of the suit. Thus, a clear waiver on the part of the applicant to invoke the arbitration agreement.

10. To my mind, in the facts and circumstances of the present case, the applicants would be estopped from invoking the arbitration agreement and in any case by their own conduct the acquiescence on their part can safely be construed.

11. Lastly, it must be noticed that the parties have made allegations of fraud, manipulation of accounts. The question of dissolution itself required determination. In these circumstances, the learned trial Court has rightly relied upon the cases of Harinder Singh Randhawa and Anr. v. Shri Hardial Singh Dhillon and Ors. (1984)86 P.LR. 744, Murti Ram v. Shri Ram Parkash (1986)89 P.LR. 189 and Union of India (UOI) Vs. Naresh Chand Goyal and Others, for coming to a conclusion that the question involved in the present suit cannot be fairly gone into in the arbitration proceedings.

12. Cumulative effect of the above discussions is that the application of the defendants has rightly been rejected by the learned Trial Court. I am unable to see any error of jurisdiction or otherwise, which would justify interference by this Court in exercise of its revisional jurisdiction. Consequently, this revision is dismissed. However, there shall be no order as to costs.