

(2012) 05 P&H CK 0116

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 7707 of 2009

Manoj Makkar

APPELLANT

Vs

Neeru Bal

RESPONDENT

Date of Decision: May 3, 2012

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 8, 85
- Constitution of India, 1950 - Article 227
- Partnership Act, 1932 - Section 69, 69(3)

Citation: (2013) 1 RCR(Civil) 807

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Sumeet Mahajan, with Mr. Vishal Sharma, for the Appellant; Amit Rawal, Advocate for Respondent Nos. 1 to 4, for the Respondent

Final Decision: Allowed

Judgement

L.N. Mittal, J.

Defendant No. 1 Manoj Makkar has filed this revision petition under Article 227 of the Constitution of India impugning order dated 9.10.2009, Annexure P/6 passed by Learned Civil Judge (Junior Division), Ludhiana thereby dismissing application Annexure P/3 moved by defendant No. 1 - petitioner u/s 8 of the Arbitration and Conciliation Act, 1996 (in short, the Act) for referring the dispute to arbitration. Ashok Kumar Narang plaintiff No. 1 (since deceased and represented by respondents No. 1 to 4) and his wife Neeru Bala plaintiff No. 2 (respondent No. 1) filed suit against defendant No. 1-petitioner Manoj Makkar and Kaushlaya Devi defendant No. 2/proforma respondent No. 5 herein. Kaushlaya Devi is mother of plaintiff No. 1 Ashok Kumar Narang and mother-in-law of plaintiff No. 2 Neeru Bala. 2. Both plaintiffs and defendant No. 1 were carrying on partnership business in the name of M/s. Narang Filling Station vide partnership deed dated 17.12.2004,

Annexure P/1. The plaintiffs alleged in their plaint, Annexure P/2 that the said firm being partnership at will stood dissolved with service of notice dated 22.1.2008. The said firm was carrying on business in the suit property described in the head note of the plaint. The plaintiffs alleged they along with defendants No. 2 are joint owners in possession of the suit property and other property. Plaintiffs sought declaration that the aforesaid partnership firm stands dissolved as aforesaid and therefore, the defendant No. 1 has lost his right to enter upon the suit property. Plaintiffs also, therefore, sought permanent injunction restraining defendant No. 1 from interfering in peaceful possession of the plaintiffs over the suit property and from dispossessing the plaintiffs therefrom illegally and forcibly and from entering upon the suit property.

3. Defendant No. 1 on appearance moved application Annexure P/3 u/s 8 of the Act for referring the dispute to arbitration in view of arbitration clause contained in paragraph 11 of the partnership deed.

4. Plaintiffs by filing reply Annexure P/4 resisted the application inter alia on the ground that the firm being unregistered, the arbitration clause in the partnership deed cannot be invoked and the dispute cannot be referred to arbitration. It was also alleged that original arbitration agreement or certified copy thereof has also not been filed with the application and for this reason also, defendant No. 1 cannot invoke section 8 of the Act.

5. Defendant No. 1 filed rejoinder Annexure P/5 reiterating his stand for referring the dispute to arbitration.

6. Learned trial court vide impugned order Annexure P/6 dismissed the application of defendant No. 1 on the ground that the firm was un-registered and therefore, the dispute could not be referred to arbitration. Feeling aggrieved, respondent No. 1 has filed this revision petition.

7. I have heard learned counsel for the parties and perused the case file.

8. As regards non filing of original arbitration agreement or certified copy thereof, suffice to notice that defendant No. 1 - petitioner had placed on record of trial court attested copy of the partnership deed containing the arbitration clause. Even the plaintiffs themselves filed copy of the partnership deed. Moreover, arbitration clause contained in paragraph 11 of the partnership deed was reproduced in paragraph 4 of application, Annexure P/3 and the same was virtually admitted by the plaintiffs by in their reply saying that it is matter of record. In view of these circumstances, the aforesaid objection of non-filing of original arbitration agreement or certified copy thereof does not lie in the mouth of the plaintiffs.

9. Counsel for the plaintiffs/respondents No. 1 to 4 contended that defendant No. 2 (proforma respondent No. 5) is not party to the partnership deed containing arbitration clause and therefore, the dispute cannot be referred to arbitration. It

was also pointed out that the firm was being run on property measuring 446 sq. yards whereas the total property of plaintiffs and defendant No. 2 is 742 sq. yards including aforesaid 446 sq. yards property and therefore, dispute regarding remaining property of plaintiffs and defendant No. 1 excluding the property in which partnership firm was being run cannot be referred to arbitration. These contentions are meritless. Plaintiffs have no dispute with defendant No. 2 who is none else but mother of plaintiff No. 1 (since deceased) and mother-in-law of plaintiff No. 2. No relief has been sought against her or in her favour. She at best is proforma defendant to the suit. The real dispute is between plaintiffs and defendant No. 1 only who are parties to the partnership deed dated 17.12.2004. As regards area of the property, the suit has been filed only regarding the property in which the partnership firm was being run and only said property is the suit property. Remaining property allegedly owned by the plaintiffs and defendant No. 2 is not subject matter of the suit although the same has been referred to in the plaint. However, suit pertains to the property on which the firm was being run and relief has also been claimed only regarding the said property and not regarding the remaining property allegedly owned by plaintiffs and defendant No. 2. Consequently, arbitration cannot be declined on the basis of aforesaid contentions raised by counsel for respondents No. 1 to 4.

10. Now coming to the main contention as to whether dispute can be referred to arbitration when admittedly partnership firm was unregistered one. Before dealing with this contention, it may be mentioned that the dispute raised in the suit by the plaintiffs is otherwise covered by arbitration clause contained in paragraph 11 of the partnership deed. Said clause is of very wide amplitude. The same is reproduced herein under:-

11. That in case of any dispute arising out of the partnership business the same shall be dealt with in accordance with the provisions of the Indian Arbitration Act of 1940 and the decision of the Arbitrator shall be conclusive and final on the both parties.

11. The suit relates to dispute arising out of the partnership business. Accordingly, the same has to be referred to arbitration. In the aforesaid clause, there is reference to the Arbitration Act, 1940. However, in view of section 85 of the Act of 1996 as well as in view of provisions of the General Clauses Act, the Act of 1996 shall be applicable since the Arbitration Act, 1940 stands repealed.

12. Counsel for the petitioner relying on judgments of Hon"ble Supreme Court in [Prabhu Shankar Jaiswal Vs. Sheo Narain Jaiswal and Others](#), and [Smt. Premlata and another Vs. M/s. Ishar Dass Chaman Lal and others](#), contended that dispute between partners of the firm can be referred to arbitration as per arbitration clause in the partnership deed even if the firm is unregistered one. However, counsel for the contesting respondents, on the other hand, relied on judgments of Hon"ble Supreme Court in [Jagdish Chander Gupta Vs. Kajaria Traders \(India\) Ltd.](#), and [U.P. State Sugar Corporation Ltd. Vs. Jain Construction Co. and Another](#), to contend that

arbitration clause contained in partnership deed of unregistered firm cannot be invoked to refer the dispute to arbitration.

13. I have carefully considered the rival contentions. Judgments in the cases of Prabhu Shankar Jaiswal (supra) and Prem Lata (supra) are fully applicable to the facts of the case in hand. In view thereof, it becomes crystal clear that arbitration clause contained in partnership of unregistered firm can also be invoked to refer to the dispute to arbitration when the dispute is between or among the partners of the said firm as in the instant case. Judgment in the case of Jagdish Chandra Gupta (supra) has also been referred to and discussed in the case of Prabhu Shankar Jaiswal (supra). As regards judgment in the case of Jain Construction Company (supra), the said dispute was between unregistered firm and a third party i.e. a Corporation. In view thereof, it was held that the unregistered firm could not invoke the arbitration clause contained in agreement between the parties. In that case, the dispute was not between partners of the unregistered firm. So, said judgment has no applicability to the facts of the instant case.

14. In addition to the aforesaid, it is also significant to notice that if contention of contesting respondents/plaintiffs that arbitration clause in partnership deed of unregistered firm cannot be invoked, then suit filed by plaintiffs would also be barred. The plaintiffs cannot blow hot and cold in same breadth. Moreover, section 69(3) of the Indian Partnership Act excludes the applicability of sub-sections (1) and (2) of section 69 of the said Act to enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realise the property of the dissolved firm. In view thereof, neither the suit is barred nor the right of defendant No. 1 to invoke arbitration clause in the partnership is barred by sub-section (1) or sub-section (2) of section 69 of the Partnership Act on the ground that the firm was unregistered one. Right of the partners of unregistered firm to file suit for dissolution of the firm or for accounts of the dissolved firm or to realise property of the dissolved firm or to invoke arbitration clause in partnership deed of an unregistered firm is saved by sub-section (3) of the section 69 of the Partnership Act. Thus, even on plain interpretation of section 69 of the India Partnership Act, defendant No. 1 is not debarred from invoking arbitration clause contained in the partnership deed merely on the ground that the firm was unregistered.

15. For the reasons aforesaid, I find that the trial court committed grave jurisdictional error in dismissing application Annexure P/3 moved by defendant No. 1 - petitioner u/s 8 of the Act. The dispute is covered by arbitration clause between the parties (plaintiffs and defendant No. 1). The same was, therefore, required to be referred to arbitration. However, the trial court refused to exercise its jurisdiction to refer the dispute to arbitration. The impugned order is, therefore, not sustainable. As a necessary consequence of the discussion aforesaid, the instant revision petition is allowed. Impugned order Annexure P/6 passed by the trial court is set aside. Application Annexure P/3 moved by defendant No. 1 u/s 8 of the Act is allowed.

Dispute between plaintiffs and defendant No. 1 as raised in the suit is ordered to be referred to arbitration in terms of clause 11 of the partnership deed. Parties are directed to appear before the trial court on 23.5.2012 for appointment of appropriate Arbitrator in accordance with law.