

(2012) 11 P&H CK 0167

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 485 of 1997

Sewa Singh and Others APPELLANT

Vs

Swinder Kaur and Others RESPONDENT

Date of Decision: Nov. 2, 2012

Acts Referred:

- Arbitration Act, 1940 - Section 20

Citation: (2013) 1 RCR(Civil) 672

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: Bhag Singh, for the Appellant;

Final Decision: Dismissed

Judgement

A.N. Jindal, J.

The Sub Judge, Ist Class, Tarn Taran, vide judgment dated 15.10.1994, had dismissed the application filed by the applicants-respondent Nos. 1 and 2 u/s 20 of the Indian Arbitration Act, for referring the dispute pertaining to the agreement dated 11.08.1988, to the sole Arbitrator, whereas the additional District Judge, Amritsar, vide order dated 06.11.1996, had accepted the appeal and referred the matter to the sole Arbitrator with the direction that he should enter upon the reference and give an Award within four months from the date the parties appear before him. The factual matrix of the case is that Prito @ Pritam Kaur had executed an agreement to sell dated 11.08.1988 in favour of Swinder Kaur and Jagir Kaur-respondent Nos. 1 and 2 qua the land measuring 12 Kanals bearing Khasra No. 30/6 (6 Kanals), 31/10 (4 Kanals) and received a sum of Rs. 30,000/- as earnest money. The sale deed was to be registered by 08.11.1988. As per the agreement, in case of any dispute between the parties, the matter was to be referred to the sole Arbitrator namely Amrik Singh, Numberdar of Tarn Taran. It was alleged that the respondents were ready to perform their part of the contract, but the petitioners (successors-in-interest of Prito @ Pritam Kaur) had committed default on account of the death of said Prito @

Pritam Kaur. As such, respondent Nos. 1 and 2 filed an application before the trial Court to refer the matter to the sole Arbitrator.

2. The petitioners, in their reply, denied the execution of the agreement to sell in dispute. Rather, it was pleaded that Pritam Kaur had executed an agreement to sell dated 10.02.1988 in favour of Kartar Singh and Chanan Singh and received a sum of Rs. 15,000/- as earnest money from them. It was further alleged that on the stipulated date, the said Kartar Singh and Chanan Singh did not turn up to get the sale deed executed. Ultimately, the petitioners prayed for dismissal of the application.

3. From the pleadings of the parties, following issues were framed:-

1. Whether the agreement dated 11.08.1988 exists between the parties? OPA

2. Relief.

4. The trial Court had dismissed the application vide judgment dated 15.10.1994. In appeal, the first Appellate Court had relied upon the judgment delivered by the Hon'ble Supreme Court in case [Major \(Retd.\) Inder Singh Rekhi Vs. Delhi Development Authority](#), wherein it was observed as under:-

In order to be entitled to order of reference u/s 20, it is necessary that there should be an arbitration agreement and secondly, difference must arise to which this agreement applied. In this case, there is no dispute that there was an arbitration agreement. There has been an assertion of claim by the appellant and silence as well as refusal in respect of the same respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. But, in order to be entitled to ask for a reference u/s 20 of the Act, there must not only be an entitlement of money, but there must be a difference or a dispute must arise. It is true that on completion of the work, a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on 28th February, 1983 and there was non-payment, the cause of action arose from that date, that is to say, 28th of February, 1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator u/s 20 or a reference u/s 20 of the Act.

5. The first Appellate Court had further relied upon a judgment delivered in case [Great Americian Insurance Co. Ltd. Vs. Dina Nath](#), wherein it was observed as under:

Under a policy which remained in force from the 6th of March 1947 to the 6th of March 1948, the applicant had injured his house at Rawal Pindi for Rs. 40,000/- and his household effects contained therein for Rs. 10,000/-with the defendant

company. In consequence of the disturbances he had been forced to leave Rawalpindi and flee to India on the 1st of August 1947, leaving behind his house and furniture etc. The company having rejected his claim in respect of the policy he filed an application u/s 20 in accordance with Cl. 18 of the policy which was as follows:- If any difference arises as to the amount of any loss or damage, such difference shall, independently of all other questions, be referred to the decision of an arbitrator. It was argued that the total repudiation of the liability on the part of the company took the dispute between the parties out of the scope of the clause.

Held, that it did not make any difference whether the company said that no damage or loss at all had been caused, or whether it said that some damage had been caused, but not as much as was claimed by the insured. In either case it was quite obvious that there was a dispute between them as to the amount of loss or damage and therefore, the present dispute between the parties fell within the scope of the arbitration clause in the policy.

6. While further relying upon the judgment delivered by this Court in case The Saraswati Industrial Syndicate Limited Vs. The Chairman Sugar Mill, Machinery Purchase Committee and Another, the first Appellate Court had referred the matter to the sole Arbitrator.

7. Having scrutinized the impugned judgment, this Court is of the view that sine the agreement between Prito and respondent Nos. 1 and 2 was referable in case of a dispute between the parties, the petitioners being legal heirs of Prito, were bound by the said agreement, including the condition for referring the matter to the Arbitrator. As such, the judgment passed by the first Appellate Court, is well reasoned and the same does not call for any interference.

8. Dismissed.

9. However, since this petition is very old, therefore, now it would not be appropriate to send the matter to the sole Arbitrator, as recorded in the agreement, rather it would be expedient in the interest of justice to send the matter to the trial Court, which would appoint the Arbitrator afresh, after issuing notice to both the parties. As such, copy of this order be sent to the Civil Judge (Senior Division), Tarn Taran, who would call for the parties and proceed in accordance with law.