

Sewa Singh and Others Vs Swinder Kaur and Others

Court: High Court Of Punjab And Haryana At Chandigarh

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, 1st 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 Amercian 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 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 since 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.