

Ramesh Chander Vs Jagdish Chander and Others

Court: Delhi High Court

Date of Decision: July 10, 2001

Acts Referred: Arbitration and Conciliation Act, 1996 â€” Section 11(5), 11(6)

Citation: (2001) 98 DLT 374

Hon'ble Judges: Jiwan Dass Kapoor, J

Bench: Single Bench

Advocate: Mr. Rohit Minocha, for the Appellant; Bawa Shiv Charan Singh Mr. S.D. Sharma and Mr. Harish Malhotra, for the Respondent

Judgement

This Judgment has been overruled by : Jagdish Chander Vs. Ramesh Chander and Others, (2007) 2 ARBLR 302 : (2007) 3

CompLJ 191 : (2007) 6 JT 375 : (2007) 147 PLR 18 : (2007) 6 SCALE 325 : (2007) 80 SCL 149 : (2007) 5 SCR 720

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J.D. Kapoor, J.

This is a petition u/s 11(5)(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of arbitrator in respect of disputes arising between the partners of the firm M/s.Emire Art Indutures. Admittedly, partnership firm was created by way of unregistered deed

of partnership dated 9.1.1964.

2. There are three fold objections. Firstly, that an unregistered deed of partnership firm is not enforceable for the purpose of appointment of

arbitrator even if the arbitration clause existed therein. In support of this contention, learned counsel for respondent no.1 has placed reliance upon

the judgment H.C. Chopra (Retired) (Col.) and Another Vs. Shri V.C. Mehra, . However, this question of law has been decided by the Supreme

Court one for all in the case of Prabhu Shanker Jaiswal Versus Sri Sheo Narain Jaiswal & Ors. 1996(8) Supreme page 153 wherein previous

judgments of the Supreme Court have been dealt with on which learned counsel for the respondent has relied viz. Jagdish Chander Gupta Vs.

Kajaria Traders (India) Ltd., and Smt. Premlata and another Vs. M/s. Ishar Dass Chaman Lal and others, .

3. Nature of disputes involved in the aforesaid two judgments was also discussed and held to be distinguishable so far as the question of law

whether the arbitration clause in a partnership deed of an unregistered firm is enforceable or not. It was held by the Supreme Court that ""Where

arbitration is sought under the arbitration clause in a partnership deed of an unregistered firm for the purpose of dissolution and accounts of the

partnership firm, the partners can maintain all applications/petitions under the Arbitration Act for the purpose of enforcing their right to secure

dissolution and accounts of the partnership firm through arbitration.

4. In view of the settled position of law, objection on this ground appears to be feeble attempt to resist the petition.

5. Second objection is that since in the deed of partnership, arbitration clause did not exist, the instant application is not maintainable. Relevant

clause (Clause 16) provides as under:-

If during the continuance of the partnership or at any time afterwards any dispute touching the partnership arises between the partners, the same

shall be mutually decided by the partners or shall be referred for arbitration if the parties so determine.

6. The interpretation to the aforesaid clause as provided by learned counsel for the respondent is that unless both the parties decided and

determine for referring the disputes to the arbitration, the disputes cannot be referred to arbitration. At first instance, interpretation may appear to

be attractive but when we read this clause in the context of the partnership deed agreed, there is no other inference then that the intent of the

parties was to firstly decide their disputes mutually and if they failed to decide the disputes, the disputes shall be referred for arbitration. Had it not

been the intention of the parties, the question of reference to the determination of the disputes through arbitration would not be arisen at all.

7. The rule of interpretation is to provide positive meaning and to minimise the ambiguity and not to perpetuate it and to arrest the multiplicity of the

litigation. Effort should always be to see that disputes are settled through arbitration if in the documents executed between the parties, there is a

reference of determination of disputes by way of arbitration. It becomes irrelevant whether both the parties agree for arbitration or not. Any party

may approach for seeking determination of the disputes by way of arbitration. It is always the underlying intent and object which should be

perceived while interpreting clause of arbitration or any other covenant.

8. In view of the foregoing reasons, I feel persuaded to conclude that arbitration clause did exist in the deed of partnership and Therefore the

objection raised by the respondent is groundless and without any substance.

9. The third objection is with regard to the delay and laches on the part of the petitioner in seeking the remedy. It is contended by learned counsel

for the respondent that in the notice sent by the petitioner, the petitioner spelt out that the petitioner has been deprived of his share of profits for last

more than 20 years. However, para 7.7 of the petition has explained the delay wherein it has been pleaded that ""it has now come to the notice of

the petitioner, that defendant no.1 is receiving Rs. one lakhs per month from defendant nos.2 to 6 and further defendant no.1 has sold the share of

petitioner to defendant nos.2 to 6 by hatching a conspiracy in clandestine manner, in order to deprive the petitioner of his legal right. When the

petitioner approached defendant nos.2 to 6, he was told that the entire portion of his share in the premises in question has been disposed off.

10. Prior to this, parties agreed in the year 1974 that respondent nos.2 to 6 would supervise the manufacturing/business activities in their factory

premises and Rs.12,000/- would be equally shared by both the partners and this understanding lasted only up to October, 1979 and further the

said amount was enhanced to Rs.20,000/- per month i.e. each partner would get Rs.10,000/- per month and this arrangement worked for some

time and from time to time, the amount was mutually enhanced by both the partners till 1989 and it was in January, 1997, the above said amount

which was agreed by respondent nos. 2 to 6 worked out to be Rs.50,000/- per month as part of the share of the petitioner.

11. In view of the aforesaid arrangement that lasted till 1979 and in view of the alleged revelation of conspiracy by respondent nos.2 to 6 and the

concealment of the fact that respondent no.1 has been receiving Rs. one lakh per month from respondent nos.2 to 6, there is no delay that has

remained unexplained. The very fact that after 1974, the parties have been having a mutual arrangement of receiving a fixed amount which was

enhanced from time to time and it was in January, 1997 that the said amount came to be Rs.50,000 as part of the share of the petitioner, the

accusation of delay or laches on the part of the petitioner in initiating the instant action does not appear to be justified and tenable.

12. However, as regards impleadment of respondent nos.2 to 6, Mr.Harish Malhotra, learned counsel for respondents contends that they are

neither parties to the partnership firm nor there is an agreement of arbitration between them. However, in view of the fact that respondent no.1 had

been allegedly receiving the amount from respondent nos.2 to 6 and further that respondent nos.2 to 6 have any liability or not shall be decided by

the arbitrator. In the given facts and circumstances of the case, such an objection is not maintainable is limited to the extent that whether this is a

case for appointment of arbitrator or not and whether this is a case for appointment of arbitrator or not and whether there was an agreement

between the parties to settle their disputes by way of arbitration or not and whether respondent nos.2 to 6 are necessary parties or not.

13. The aforesaid reasons persuade me to allow the petition. Hon"ble Justice Santosh Duggal, retired Judge of this Court is appointed as

Arbitrator. The learned Arbitrator shall fix her remuneration.