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Andhra Pradesh High Court

Case No: CRP No''s. 1448 and 2521 of 1999

P. Venkateswarlu	APPELLANT
Vs	
C. Lakshmi Narasimha Rao (died) by LRs. and others	RESPONDENT

Date of Decision: April 3, 2001

Acts Referred:

- Arbitration Act, 1940 - Section 34
- Partnership Act, 1932 - Section 40, 43, 69(3)

Citation: AIR 2002 AP 62 : (2001) 3 ALD 565 : (2001) 3 ALT 449 : (2001) 2 APLJ 1 : (2001) 3 CivCC 658 : (2001) 4 RCR(Civil) 144

Hon'ble Judges: B.S.A. Swamy, J

Bench: Single Bench

Advocate: Mr. V. Sudhakar Reddy, for the Appellant; Mr. T. Gopala Krishna Murthy, Mr. M.S.R. Subrahmanyam and Mr. Fazal Yousufuddin, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Aggrieved by the orders passed by the Principal District Munsif, Srikalahasti in IA Nos.461 of 1993 and 408 of 1994 filed by respondents 1 and 2 herein as defendants 1 and 2 in the suit, staying the proceedings in the suit in OS No.70 of 1993 filed by the petitioner herein for rendition of accounts which were confirmed by the Senior Civil Judge, Srikalahasti in CMA Nos. 10 of 1996 and 11 of 1996, the petitioner (Plaintiff in the suit) filed these two revision petitions. As the issue raised in both the revision petitions is common, they can be disposed of by a common order.

2. The facts leading to the filing of this case are that the petitioner''s grandfather by name Pasupuleti Sreenivasulu Chetty along with the predecessors in interest of the respondents formed into an unregistered partnership firm in the year 1927 and was

running the Rice Mill in the name and style of Sri Lakshminarayana Rice Mill, Kothapeta, Srikalahasti. As and when the original partners died, their legal representatives are being admitted to partnership. After the death of Srinivasulu Chetty, his sons Rama Murthy, and Venkata Ratnam were admitted to partnership. After the death of Rama Murthy, his son Venkateshwarlu i.e., the present petitioner seems to have been admitted to partnership firm. I need not give much importance to the dates on which the legal representatives of the original partners are admitted to partnership from time to time. But the fact remains that they got the terms of the partnership reduced into writing on 15-2-1982, wherein their shares were also mentioned. It is also not in dispute that the licence of the Rice Mill used to be in the name of Srinivasulu Chetty and after his death in the name of Rama Murthy. It seems disputes have started when the respondents herein purchased the share of one Venkatadri Naidu, without the consent, knowledge and approval of the other partners. For the first time, the respondents filed OS No.336 of 1989 on the file of the District Munsif, Srikalahasti against two partners viz., K. Ramakrishnama Naidu and K. Mimu Swamy and obtained injunction against them from interfering in the affairs of the partnership firm. At this stage, Rama Murthy in whose name the licence was being issued by the Licensing Authority and after his death the petitioner refused to obtain licence for carrying on the business of the Rice Mill. In those circumstances, the respondents again filed OS No.42 of 1992 seeking mandatory injunction restraining the petitioner from interfering with the affairs of the firm. In that suit, the petitioner filed IA No.347 of 1992 stating that the civil Court has no jurisdiction in view of Clause 11 of the Partnership Agreement providing for arbitration in case of disputes between the parties. But the District Munsif dismissed the said application and on what grounds the said application was dismissed is not known, as the copy of the said order is not placed before this Court. Be that as it may, after dismissal of his application, the petitioner got issued a legal notice dated 4-6-1993 expressing his intention to dissolve the firm and called upon the respondents to render true and proper accounts from 1-4-1998 and to pay his share both in profits and in partnership assets within ten days from the date of receipt of the notice. He also made it clear in the said notice that if the respondents failed to comply with his request, he will be constrained to approach the civil Court. In this notice, the petitioner also clearly stated that the respondents have already approached the civil Court ignoring the arbitration clause provided in the partnership agreement and as they themselves had given a go-bye to the Arbitration Clause, the question of seeking intervention of an Arbitrator to settle the disputes may not arise.

3. Both the respondents sent replies individually on 19-6-1993 and 2-6-1993. They have not very much disputed the existence of the partnership, except disputing the extent of shares and stating that the petitioner is being paid profits out of the partnership business. But in the legal notice they categorically stated that as the application filed by the petitioner i.e., IA No.347 of 1992 seeking arbitration was dismissed, he cannot invoke the arbitration clause once again. It is useful to extract the notice issued on behalf of Cherukumudu Laximi Narasimha Rao as under:

"It is the futile attempts of your clients to mention in your notice that the matter involved in the above suits ought to have been referred to arbitration. It is a wonder when first of your client filed the petition IA No.347 of 1992 in OS No.42 of 1992 under Arbitration Act and after due enquiry the learned District Munsif dismissed the same. Having known the same your client cannot invoke the arbitration clause once again in your notice and it tantamounts to contempt of Court".

4. He also stated in the said notice that though the partnership is at will, consent of all the partners for dissolution of the firm is required as contemplated u/s 40 of the Partnership Act. Ultimately the notice ended by saying that the dissolution of partnership is unsustainable.

5. In the notice dated 20-6-1993, given on behalf of Dhwajati Vetikata Subramanyam it is stated as under:

"There is absolutely no dispute to be referred to arbitration. There was no difference among the partners of the firm. Sri Kurugonda Ramakrlshnama Naidu and another tried to obstruct the smooth running of the rice mill and in order to protect the Mill Sri Lakshmi Narasimha Rao, D. V. Subrahtnanyam and K Krishna Murthy filed a suit for permanent injunction in OS No.336 of 1989 and the suit was decreed on 6-12-1989. It is true that the funds of the firm was spenffor the said suit, since it was absolutely necessary to protect the firm and its interest".

6. He also refers to the orders passed in IA No.347 of 1992. Therefore, in the replies the two respondents have taken a stand that there are no grounds for dissolution of the firm and the question of working arbitration clause does not arise. Having received the replies, the petitioner filed OS No.70 of 1993 on the file of the Principal Junior Civil Judge, Srikalahasti seeking rendition of accounts of the partnership firm. At this stage both the respondents filed two applications u/s 34 of the Arbitration Act to stay the trial of the suit on the ground that the petitioner approached the civil Court giving a go-bye to the arbitration under the partnership agreement i.e., without approaching the Arbitrator for resolving their disputes and the plea of the respondents was found favour with by both the trial Court as well as the appellate Court. Hence these two revision petitions.

7. I have no manner of doubt in recording a finding that both the Courts below gravely erred in staying the proceedings in the suit without applying their minds to the facts and circumstances of the case. Admittedly the partnership is a partnership at will and u/s 43 of the Partnership Act, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm from a particular date. If the time is not mentioned, the firm stands dissolved on the date when the partners received the notice. It is useful to extract Section 43 of the Partnership Act, which is as under:

Dissolution by notice of partnership at will :--(1) where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his

intention to dissolve the firm. (2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

8. Admittedly in the legal notice dated 4-6-1993, the petitioner expressed his intention to dissolve the partnership firm and he requested the respondents to render accounts within ten days from the date of receipt of the said notice. The respondents having received the notice started contending in their replies that the consent of all the partners is required u/s 40 of the Partnership Act, which to my mind has no application. Section 40 of the Partnership Act is extracted hereunder :

"A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners".

9. From this it is seen that the partnership can be dissolved with the consent of all the partners or as per the terms of the agreement between the partners and how a partnership at will be dissolved is dealt within Section 43 of the Partnership Act. Thus it is seen that even u/s 40 of the Partnership Act, the partnership firm can be dissolved either with the consent of all the partners or as per the terms of the contract. The agreement being the partnership at will, the petitioner has rightly exercised his right to dissolve the firm. When once the firm is dissolved the question of placing reliance on arbitration clause by the others does not arise. Coming to the next objection that the petitioner filed suit without approaching the Arbitrator. Hence the first objection goes. Secondly when the petitioner has taken the first opportunity by raising this issue in OS No.42 of 1993, by filing IA No.347 of 1992 the respondents opposed the same and their opposition was found favour with the Court below and the said application was dismissed. As that order has become final, between the parties, the same operates as res judicata between the parties. Hence it is too late for the respondents on that date to contend that the petitioner approached the civil Court without first approaching the Arbitrator for resolving their disputes and such a contention has no legs to stand.

10. The learned Counsel for the respondents strenuously contended that in the light of Section 69 of the Partnership Act, the suit is not maintainable in law, as the partnership firm is admittedly an unregistered firm. Again such a submission is made by the respondents without properly looking at Section 69 of the Partnership Act. Suffice it to refer to section 3(a) of Section 69 of the Partnership Act, which deals with the effect of non-registration of the firm which is as under:-

Section 69, Effect of non-registration: -

(1).....

(2).....

(3) The provisions of sub-sections (1) and (2) shall apply also to claim of set-off or other proceeding to enforce a right arising from a contract, but shall not effect:--

(a) the 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 a dissolved firm;

11. from this it is seen that even if the firm is an unregistered firm, enforcement of any right to sue for dissolution of a firm or for rendition of accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm is kept in tact. In other words, an exception is made to that extent in sub-section (3) of Section 69 of the Partnership Act.

12. Further the case law on this aspect is also clear. In Kamal Pushp Enterprises Vs. D.R. Construction Company, , their Lordships of the Supreme Court while dealing with the effect of nonregistration of partnership u/s 69 of the Act categorically held that:-

"The prohibition contained in Section 69 is in respect of instituting a proceeding to enforce a right arising from a contract in any Court by an unregistered firm, and it had no application to the proceedings before an Arbitrator and that too when the reference to the Arbitrator was at the instance of the appellant itself. If the said bar engrafted in Section 69 is absolute in its terms and is destructive of any and every right arising under the contract itself and not confined merely to enforcement of a right arising from a contract by an unregistered firm".

13. Their Lordships further held that post-award proceedings cannot be considered by any means, to be a suit or proceedings to enforce any rights arising under a contract. All the more so when, as in this case, at all stages the respondent was only on the defence and has not itself instituted any proceedings to enforce any rights of the nature prohibited u/s 69 of the Partnership Act.

14. Stating so the judgment of the Madhya Pradesh High Court in CR No.561 of 1994 dated 13-10-1995 wherein it was held that the provisions of Section 69 of the Partnership Act do not stand in the way of an unregistered firm defending a proceedings against it and it precludes only the initiation of any proceedings by such a firm was set aside. To the same effect is the judgment of this Court, in Annapoorna Fertilisers and General Stores Vs. Arunodaya Fertilisers and General Stores and another, .

15. Thirdly the scope and admit of Section 34 of the Arbitration Act was considered by a Division Bench of this Court in M/s. Orissa Engineers and Erectors v. The A. P. State Electricity Board and another 1983 (1) ALT 162, wherein it was held that to exercise the power u/s 34 of the Arbitration Act two conditions have to be satisfied viz., (1) the satisfaction of the Court that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and (2) the applicant seeking the stay of the civil action was ready and willing both at the commencement of the civil action and subsequently to do all things necessary for the proper conduct of the arbitration.

16. Admittedly from the time the disputes have arisen between the partners, the respondents themselves have given a go-bye to the arbitration agreement and filed suits against the partners, i.e., OS No.336 of 1989 and 42 of 1992. But the learned Counsel for the respondents tried to justify their action stating that the both suits are filed seeking bare injunction, they need not go to an Arbitrator. But at the same time, they categorically admitted that because of disputes between the partners and when some of the partners were trying to disturb the business, they approached the civil Court seeking mandatory injunction. From this it is very much evident that the injunction was sought for against the partners of a firm on the ground that they are indulging in acts of waste and not permitting the partnership firm to do its business. From the above it is seen that there are disputes among the partners and they cannot approach the, civil Court waiving clause 11 of the partnership agreement. Further when the respondents filed suits against the petitioner, he raised an objection that the matter has to go before the Arbitrator. But that was objected to by the respondents which found favour with by the Court below. Nextly in reply to the legal notice they categorically stated that there is no necessity for arbitration nor for dissolution of the firm. Hence on both the grounds i.e., that the partnership firm was dissolved by giving a legal notice on 4-6-1993 and on the ground that the respondents are not ready and willing to do all things necessary for the proper conduct of business, the power vested in the Court u/s 34 of the Arbitration Act cannot be exercised. In fact it is the case of the petitioner that the respondents are spending the partnership money for their litigation and in fact they played fraud and misrepresentation on the parties. On that ground also the petitioner expressed his desire to dissolve the partnership. I am not making any observation on this contention, except stating that the respondents have categorically admitted in their reply notice that the required money for the litigation is being met from the partnership funds, while the petitioner and other partners are fighting litigation with their monies.

17. For all these reasons, I hold that the Court below gravely erred in staying the proceedings in the suit and accordingly the order of the Junior Civil Judge in IA Nos.461 of 1993 and 408 of 1994 as confirmed by the learned Senior Civil Judge, Srikalahasti in CMA Nos.10 of 1996 and CMA No.11 of 1996 are declared as illegal and accordingly they are set aside. Since the suit is of the year 1993 and the respondents could successfully drag on the suit for over seven years, the trial Court shall take up the trial of the suit on priority basis if necessary by taking up the trial on day to day basis and dispose of the suit by the end of June, 2001 positively.

18. Accordingly both the revision petitions are allowed. No costs.