
(1980) 04 CAL CK 0039
In the Calcutta High Court
Case No : Special No. Nil of 1980

Balmukund Mundhra

APPELLANT

Vs

Shew Prosad Haralka and Others

RESPONDENT

Date of Decision : 08-04-1980

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : AIR 1980 Cal 331

Hon'ble Judges : Salil K. Roy Chowdhury, J

Bench : Single Bench

Advocate : A.C. Bhabra and P.K. Mullick, for the Appellant; J.N. Ray, for the Respondent

Judgement

THE COURT:

Salil K. Roy Chowdhury, J.—This is an application u/s 20 of the Arbitration Act. The petitioner's case as laid down in the petition, which is not disputed by the respondents, who are appearing before me as they have entered caveat to the present application, that by a deed of partnership dated 6th March 1977 the parties to the proceedings entered into a partnership to carry on business as exhibitors of cinematographic films under the name and style New Cinema Co. under the terms and conditions contained in the said partnership deed. It is also admitted that the said partnership was at will and a notice of dissolution has been served on the respondents, some of them are in Calcutta within the jurisdiction, for dissolution of the said partnership by a letter dated 26th March 1980 and it is stated in para 10 of the petition that the petitioner is entitled to the properties of the said partnership firm after payment of the debts and liabilities thereof and to have the surplus distributed amongst the partners according to the respective rights but the respondents Nos. 5 and 6, who are residents of Darjeeling District, are disputing the claim of the petitioner and as such the petitioner has made this application u/s 20 for filing the arbitration agreement and reference of the said disputes which have arisen after the

dissolution of the partnership regarding collection of debts and liabilities and winding up of the firm according to the shares of the parties under the Partnership Act. Admittedly the partnership deed contains an arbitration clause of very wide amplitude which is set out in para 1, sub-para (i) of the petition being the Clause 31 of the partnership deed. It is admitted that the partnership business contains both movable and immovable as set out in the schedule of the said partnership deed which are annexed to the petition at pages 30 to 32. This being an application u/s 20 certain conditions, as laid down in Section 20, Sub-section (1), have to be satisfied i. e., there is no suit pending regarding the subject-matter of the suit or any part of it and also difference has arisen to which the arbitration agreement applies and the court in which the application is made is a court having jurisdiction in the matter to which the agreement relates. There is no dispute that there is an arbitration agreement before filing any suit on the subject-matter of the agreement and there is also no dispute that dispute has arisen after the dissolution of the partnership and the only dispute sought to be raised is the question of jurisdiction of this court as the said partnership has admittedly immovable properties in Siliguri where part of the partnership business as exhibitors was carried on. It is also clear from the pleading in the petition that part of the cause of action has arisen within the jurisdiction of this court being the business carried on in Calcutta by drawing cheques in Calcutta by some of the partners and also the notice of dissolution was served in Calcutta on some of the respondents. It has been specifically mentioned in para 12 of the petition as to what part of the cause of action has arisen within the jurisdiction of this court. Therefore, the test is as to whether this court has jurisdiction to entertain a suit had the subject-matter of the reference would have been the subject-matter of a suit in this court or not

2. Mr. J. N. Ray, appearing for respondents Nos. 5 and 6, who are residing at Siliguri and Mahanandapara, District Darjeeling, submitted that from the petition only dispute is the distribution of the assets and payment of liabilities of the dissolved firm and as the dissolved firm includes immovable properties being cinema house at Siliguri this court has no jurisdiction as the suit would be the suit for land as the partnership possesses immovable properties admittedly. In support of his contention Mr. Roy cited a Division Bench decision of this court in AIR 1955 NUC 5612 where it was held that contract granting exclusive right and licence for stated number of years to cut and fell bamboo and remove them from the specified area is a right to use the land, roads and stream and thereby creating an interest in the land where the bamboo is situated and, therefore, the land being outside the jurisdiction of the court application u/s 20 of the Arbitration Act in this Court being the Calcutta Court cannot be entertained. Relying on the said decision Mr. Roy submitted that distribution of partnership assets, which include immovable properties, must be held to be a right to immovable properties and the said properties admittedly situated outside the jurisdiction of this Court no application can be entertained by this Court and this is not the Court within the meaning of Section 2(c) of the Arbitration Act. Mr. Roy

also cited a decision of the Allahabad High Court in *The Indian Minerals Co. Vs. The Northern India Lime Marketing Association*, , where it was held that to determine the jurisdiction and to find out what is the subject matter of the reference, as if the same had been the subject matter of a suit, the Court necessarily has to weigh the pleading of the parties in order to find out as to what are the points of difference between the parties. The Court has, therefore, to formulate the issues which the Arbitrator is called upon to decide. Those are set out from the Head Note-B which have faithfully reproduced the judgment and relying on the said decision, Mr. Roy submitted that here the petitioner has failed to formulate the points of difference and, in any way, the only difference as set out in para 10 of the petition relates to immovable property also and has not clearly specified difference and as such the Section 20 application is not maintainable.

3. Mr. Roy also referred to a Division Bench decision of the Madras High Court in *The Electrical Manufacturing Co. Ltd., Calcutta and Another Vs. The Crompton Engineering Co., (Madras) Ltd., Madras*, , where it was held that the subject matter of the dispute under reference being entirely outside the jurisdiction of the Court, where an application u/s 20 was sought to be filed, the said Court being the Madras High Court had no jurisdiction to entertain the same, as that was not the Court u/s 2(c) of the Arbitration Act. Relying on the said decision, Mr. Roy submitted that the only dispute, if any, is regarding the immovable properties of the partnership which are situated in Siliguri, admittedly outside the jurisdiction of this Court, being the subject matter of the dispute to be referred, this Court is not the Court u/s 2(c) of the Arbitration Act. Therefore, this Court will not entertain the application u/s 20 of the Arbitration Act. Mr. Roy referred to para 10 of the petition and submitted that that is the only dispute sought to be raised by the petitioner and that includes the sale of immovable property and, therefore, this Court has no jurisdiction u/s 20(1) read with Section 2(c) of the Arbitration Act and the present application is not maintainable and Section 20 application should not be allowed to be filed in this Court which has no jurisdiction,

4. Mr. A. C. Bhabra, appearing with Mr. P. K. Mullick for the petitioner, submitted that this is not a suit for land as understood by the various decisions of this Court and also the Supreme Court and the Madras High Court, which Mr. Bhabra cited. He submitted, relying on the Supreme Court decision in *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, , where the nature of partnership business and the properties of the partnership have been denned and laid down being that the share of the partners in the partnership is the assets as on the date of dissolution and retirement after deduction of liabilities and prior charges. It is not an immovable property, according to Mr. Bhabra, having regard to the said Supreme Court decision.

5. Mr. Bhabra also cited a decision of the Madras High Court in *Dorairaj Vs. K. KR. Karuppiiah Ambalam and Others*, , where it was held that the Court in India

has jurisdiction to entertain suits for accounts of a dissolved partnership firm having the assets in form of immovable property in a foreign country and, if necessary, to appoint Receiver to realise the assets of the partnership situated in foreign country. Mr. Bhabra referred the principles as laid down in paras 9 and 15 of the said judgment and, in my view, those principles are well settled.

6. The next decision cited by Mr. Bhabra is the Division Bench decision of this Court in *Kellie v. Fraser* ILR 2 Cal 445, where a similar question arose and it was held by this Court by Garth, C. J. at page 462 that as the subject matter in dispute was a tea garden at Darjeeling and as both the litigants were resident there, the suit being a suit for land must have been brought in Darjeeling District and, therefore, Darjeeling Court was the only Court capable of confirming the award. That was the contention raised before the Court which was rejected and it was observed by Garth, C. J. that the award, which was sought to be filed in the Court and which related to the reference of disputes arising out of a partnership business and which possessed a tea garden at Darjeeling, was only to dissolve the partnership to avoid all the disputes over the partnership property, which Garth, C. J. considered just and most reasonable terms. Therefore, the suit instituted by one of the partners to carry out those jobs would not have been a "suit for land" properly so-called and as such the High Court might have given leave to bring such a suit in the High Court that Court has also jurisdiction to confirm the award. The same view was also taken by Macpherson J. the other member of the said Division Bench. It was observed by Macpherson J. at page 464 that "for the mere fact that the object of the partnership was the carrying on of a trade concern, it is not a Court to take a suit for adjustment of accounts and dissolution of the partnership in a suit for land. If it takes, then the result would follow that although all the members were permanently resident of Calcutta and doing business of the partnership at the time of suing and always had been taking in Calcutta a suit for accounts and dissolution would not lie here, if one assets of the partnership happens to be Indigo or tea garden. Yet in this case suggested, there cannot be a manner of doubt that a suit can be entertained by this Court on the Original Side and such suits have, in fact, been repeatedly entertained." The said Division Bench decision in *Kellie v. Fraser* was also considered by the Federal Court in *M/s. Moolji Jaitha & Co. v. Khandesh Spinning & Weaving Mills Co. Ltd.* AIR 1950 FC 83 in para 147 of the judgment of B. K. Mukherjea J. as he then was.

7. From all these decisions and the principles laid down, Mr. Bhabra submitted that this Court has jurisdiction to entertain the present application u/s 20 of the Arbitration Act as a suit for distribution of the surplus after collection of the assets and liabilities of the dissolved partnership firm, wherein part of the cause of action has arisen within the jurisdiction of this Court, as pleaded in the petition. Therefore, the present Court is the Court within the meaning of Section 20(1) read with Section 2(c) of the Arbitration Act and the Section 20 application should be filed in this Court.

8. Considering the respective contentions very carefully I am of the view that, in the facts of this case, this Court has jurisdiction as admittedly part of cause of action as pleaded in para 12 of the petition arose on the face of the pleading within the jurisdiction of this Court and that this Court has jurisdiction within Section 20(1) read with Section 2(c) of the Arbitration Act, 1940.

9. In a recent Supreme Court decision in Union of India (UOI) Vs. Prafulla Kumar Sanyal, , wherein an appeal from an order made u/s 20(4) of the Arbitration Act as it appears, the trial Judge held that part of the cause of action as pleaded in the petition having arisen within the jurisdiction of the Court, the Calcutta High Court had jurisdiction to try any suit in respect of the said subject matter, if such suit had been filed in the Calcutta High Court, and the objection raised by the Union of India in respect of the jurisdiction on the ground that the Court has no jurisdiction was rejected by the Court as part of cause of action arose within the jurisdiction of this Court. Therefore, it appears that the whole test is whether a suit, in this case, after dissolution of the admitted partnership between the parties could have been maintained in this Court. If so, then this Court has jurisdiction to entertain also Section 20 application.

10. From the pleading of Section 20 of the Arbitration Act, at this stage, as has been argued by counsel appearing for both the parties, it appears to me that on the admitted position being the partnership agreement and the arbitration clause and the nature of the disputes, after dissolution of the partnership, being only the distribution of surplus after collection of the assets and liabilities of the dissolved partnership, according to the shares of the partners, which questions are now being disputed by some of the respondents, being respondents Nos. 5 and 6, for whom Mr. J. N. Ray, appears, there is a dispute regarding the subject matter of the agreement being the partnership agreement, which includes both movable and immovable properties. And the said dispute and difference are covered within the ambit of arbitration clause, which is wide enough. Admittedly, there is no suit pending in any Court regarding the subject matter of the agreement between the parties being the partnership assets or the accounts relating to the partnership. Therefore, all the conditions u/s 20 are satisfied, at this stage, and this Court has jurisdiction to entertain the present application u/s 20 of the Arbitration Act, as part of the cause of action as pleaded in the petition arose within the jurisdiction of this Court and also four of the respondents are residing within the jurisdiction of this Court. Therefore, I have no hesitation in holding that this Court has jurisdiction to entertain the Section 20 application.

11. In that view of the matter, the Section 20 application is admitted, subject to scrutiny, and is made returnable three weeks hence. It is recorded that the service of the Notice of Motion is waived by the respondents Nos. 5 and 6, who are appearing through Mr. J. N. Ray, and it is also recorded that the copy of the petition has also been furnished to the Advocate-on-record of the said respondents Nos. 5 and 6, who has entered general caveat in respect of the said matter. So far as the other respondents are concerned, it is made returnable

fortnight hence.

12. Mr. A. K. Dutta of Messrs. B. M. Bagaria & Co., Advocates-on-record for the petitioner, is appointed Receiver to furnish the requisite stamp in respect of the said petition by 10-4-80.

13. The said Receiver and all parties to act on a signed copy of the minutes, on the usual undertaking.