
(1996) 02 BOM CK 0053

In the Bombay High Court

Case No : Chamber Summons No. 863 of 1992, in Arbitration Suit No. 1904 of 1992

Harishankar Singhania and Others

APPELLANT

Vs

Dr. Gaur Hari Singhania and Others

RESPONDENT

Date of Decision : 13-02-1996

Acts Referred:

Arbitration Act, 1940 — Section 20

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : (1996) 4 BomCR 67 : (1996) 98 BOMLR 112

Hon'ble Judges : S.M. Jhunjhunwala, J

Bench : Single Bench

Advocate : S.H. Doctor and D.J. Khambatta, instructed by Malvi Ranchoddas and Co., for defendants 1 to 9, M.H. Shah and A. Wandrewala, instructed by Mulla and Mulla and Craigie Blunt and Caroe, for defendants 10 to 17, for the Appellant; D.D. Madon and Milind Vasudeo, instructed by Hariani and Co., for the Respondent

Judgement

S.M. Jhunjhunwala, J.—This Chamber Summons has been taken out on behalf of defendants 1 to 9 in Arbitration Suit No. 1904 of 1992 for revocation of leave granted to the plaintiffs under Clause XII of the Letters Patent for filing the said suit in this Court.

2. On the terms and conditions reduced to writing in the Deed of Partnership executed on 21st February, 1980, plaintiffs 1, 2 and 3 representing their respective Hindu Undivided Families, one Shripati Singhania and defendants 1, 4, 7 and 10 and original defendants No. 14 representing their respective Hindu Undivided Families entered into partnership for carrying on business in the firm name and style of "Jugilal Kamlapath Bankers" (for short, "the said firm"). The said firm held substantial assets and properties including Immovable properties, money in Bank account and shares in various companies. Such properties were situated at Bombay, Calcutta and Kanpur. Since disputes and differences arose amongst the partners in the said firm, the partners of the said firm agreed to

settle their disputes by dissolving the said firm and dividing the assets of the said firm amongst themselves. A Deed of Dissolution dated 26th March, 1987 was executed and the said firm was dissolved with effect from 19th March, 1987. The said Deed of Dissolution contained an arbitration agreement. By and under the said Deed of Dissolution, the parties thereto agreed to divide and distribute various assets of the said firm as specified therein.

3. As per Clause 4 of the said Deed of Dissolution, the parties thereto agreed to distribute the immovable properties mentioned in Annexure II thereto free from all encumbrances in proportion to their respective shares in the partnership. The distribution was to be completed as soon as possible and the parties were to strive to accomplish the same by 31st May, 1987. By Clause 7(a) of the said Deed of Dissolution, the parties thereto agreed to do all such other acts, deeds and things and execute such further deeds and documents as might be necessary or required for more fully assuring the ownership of and exercise of the rights in relation to the assets to be divided and distributed amongst the partners and for completing the winding up of the partnership. By Clause 11 of the said Deed of Dissolution the parties thereto agreed to sign and execute all such further documents to do execute or perform such further acts or things as might be required to implement or give effect to the said Deed of Dissolution.

4. In pursuance of the said Deed of Dissolution, the immovable properties were to be distributed amongst the parties thereto in species free from all encumbrances. A Supplementary Agreement dated 28th March, 1987 was also executed wherein defendants 1, 4 and 7 took upon themselves the responsibility of obtaining vacant possession free from encumbrances in respect of Kanpur Properties and the defendant No. 10 and original defendant No. 14 took upon themselves the responsibility of obtaining vacant possession free from encumbrances in respect of the said properties. In the facts of the case, it appears that the said Supplementary Agreement was executed in part implementation and in part performance of the said Clauses 4, 7(a) and 11 of the said Deed of Dissolution relating to the winding up of the affairs of the said partnership. It may be mentioned here that the said Shripati Singhania who was then partner in the said firm died on 4th December, 1988 leaving behind him plaintiffs 4, 5, 6 and 7 as his heirs. The original defendant No. 14 died on 22nd June, 1992. According to the plaintiffs, the defendants 14-A to 14-C are the only heirs of the original defendant No. 14 as per law of interstate succession. However, in view of the Last Will and Testament left by the original defendant No. 14, the defendants 14-A to 14-D are executors in his estate.

The disputes and differences having arisen, the plaintiffs intended to file an application under the provisions of section 20 of the Arbitration Act, 1940 (for short, "the Act") for filing the said arbitration agreement in this Court and for order of reference to arbitration in accordance therewith and obtained leave under Clause XII of the Letters Patent for that purpose. Thereafter, the plaintiffs filed the application which is registered and numbered as suit, being Arbitration

Suit No. 1904 of 1992, under the provisions of section 20 of the Act. The present Chamber Summons has been taken out on behalf of defendants 1 to 9 to the Arbitration Suit for the reliefs as aforesaid.

5. Mr. Doctor, learned Counsel appearing for defendants 1 to 9 has submitted that this Court has no jurisdiction to entertain and try the suit and as such, the leave granted under Clause XII of the Letters Patent is liable to be revoked. Mr. Doctor has further submitted that as per section 20 of the Act, the Court having jurisdiction in the matter to which arbitration agreement relates would have jurisdiction to entertain and try the suit and not this Court. Mr. Doctor has further submitted that as defined by section 2(c) of the Act, "Court" means a Civil Court having jurisdiction to decide the question forming the subject matter of the reference if the same had been the subject matter of a suit and since the subject matter is virtually dissolution of partnership and accounts, no part of cause of action has accrued within the territorial jurisdiction of this Court and as such, leave under Clause XII of the Letters Patent obtained by the plaintiffs is liable to be revoked. Mr. Doctor has also submitted that suit for dissolution of partnership and accounts is not a suit for land and irrespective of an immovable property belonging to the said erstwhile partnership firm being situate at Bombay, this Court has no jurisdiction to entertain and try the suit more particularly when it is not even averred that the business of erstwhile partnership firm was carried at Bombay. In support of his submissions, Mr. Doctor has put reliance on the judgment of Calcutta High Court in the case of Tilokram Ghosh and Others Vs. Smt. Gita Rani Sadhukhan and Others, wherein it has been held that a suit for dissolution of partnership and accounts cannot be treated as a suit for land even if its assets consists of Immovable properties. Reliance has also been placed on the judgment of the Lahore High Court in the case of Allah Ditta v. Shankar Das, reported in AIR 1916 Lah 260 wherein it has been held that the forum for a suit for dissolution of partnership and rendition of accounts cannot be governed by the place in which capital for the partnership is subscribed. Mr. Doctor has also placed reliance on the judgment of Madras High Court in the case of Thimmappa v. Balakrishna Mudaliar, reported in AIR 1926 Mad 427, wherein it has been held that where partnership business is carried on at two places, the cause of action arises in both the places and the Courts have jurisdiction to entertain the suit for dissolution of partnership in either of these places.

6. Mr. Madon, learned Counsel appearing for the plaintiffs, has submitted that the subject matter of the intended reference to arbitration if the same had been the subject matter of a suit is not dissolution of partnership and accounts but enforcement of the said Deed of Dissolution read with the said Supplemental Agreement and distribution of Immovable properties belonging to the erstwhile partnership firm in species and since one of the Immovable properties belonging to the erstwhile partnership firm admittedly situate at Juhu, Bombay and the erstwhile partnership firm had an account with a Bank at Bombay, leave under Clause XII of the Letters Patent has been justly and properly obtained and the Chamber Summons taken out on behalf of defendants 1 to 9 is liable to be

dismissed. Mr. Madon further submitted that since defendants 10, 11, 12, 13, 15, 16 and 17 reside and original defendant No. 14 resided at Bombay, this Court has the jurisdiction and leave under Clause XII has been rightly obtained. While submitting that none of the judgments relied upon by Mr. Doctor has applicability to the facts of the instant case, Mr. Madon has put reliance on the judgment of this Court in the case of *Cursetji Jamshedji Ardaseer Wadia Vs. Dr. R.d. Shiralee*, wherein while interpreting section 2(c) of the Act, it has been held that section 2(c) does not mean that a Court has jurisdiction to receive an award only if the whole cause of action arose within the jurisdiction of the Court. It has been further held that u/s 2(c) any Court which would have jurisdiction to decide the question arising from the subject matter of the reference, would be the proper Court in which the award may be filed. To give the Court jurisdiction it is not necessary that the whole cause of action should arise there. The Court has jurisdiction between the parties also when the parties reside within its jurisdiction or the land was within its jurisdiction. Mr. Madon has also put reliance on the judgment of the Delhi High Court in the case of *Ram Rattan Bhartia Vs. Food Corporation of India and Others*, wherein it has been held that apart from a Court having jurisdiction to entertain the proceedings under the Act within whose jurisdiction the cause of action to sue arises, the Court within the local limits of whose jurisdiction the defendant or each of the defendants at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, will also have jurisdiction to entertain the proceedings under the Act in terms of Clauses (a) and (b) of section 20 of the Code of Civil Procedure, 1908. Reliance has also been placed on the judgment of the Supreme Court in the case of *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, wherein while deciding the nature of interest of partner in partnership property during subsistence of partnership and after its dissolution in the light of sections 14, 15, 29, 32, 37, 38 and 48 of the Indian Partnership Act, 1932 it has been held that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. It may, however, be mentioned that rules for settling accounts of a firm after dissolution required to be observed as per section 48 of the Indian Partnership Act are subject to agreement by the partners and in the instant case, the agreement made provision for distribution of Immovable properties belonging to the erstwhile partnership firm in species.

7. Mr. Shah, learned Counsel appearing for defendants 10, 13, 14-A to 14-D, 15 to 17, has supported Mr. Doctor and submitted that the leave obtained by the plaintiffs under Clause XII of the Letters Patent is liable to be revoked.

8. In the facts of the case, it appears that the movable properties of the said firm have been substantially distributed amongst the parties in accordance with the

said Deed of Dissolution. However, according to the plaintiffs, the defendants alongwith the members of their respective families have been enjoying the bulk of the Immovable properties of the said firm mentioned in Annexure II to the said Deed of Dissolution though the plaintiffs have on several occasions called upon them to divide the same in species free from all encumbrances. It is also the case of the plaintiffs that notwithstanding strenuous efforts made on behalf of the plaintiffs and notwithstanding repeated demands of the plaintiffs, the defendants have been enjoying alongwith their respective family members the bulk of the Immovable properties mentioned in Annexure II to the said Deed of Dissolution and have refused to carry out their obligations in accordance with the said Deed of Dissolution read with the provisions contained in the said Supplementary Agreement.

Hence, it is not possible to hold that the subject matter of the intended reference to arbitration if the same had been the subject matter of a suit is dissolution of partnership and accounts and as such, the judgments relied upon by Mr. Doctor are of no assistance in deciding the issue involved.

9. As per the averments made in the plaint filed and perusing the correspondence ensued prior to filing of the suit, copies whereof are annexed to the plaint, it is obvious that the outstanding disputes amongst the parties are in connection with distribution of immovable properties belonging to the erstwhile partnership firm in species and as such, the subject matter of the intended reference if the same had been the subject matter of a suit is distribution of the said immovable properties in species free from encumbrances. Since one of such immovable properties is admittedly situate at Juhu, Bombay and defendants 10 to 13, 15 to 17 and original defendant No. 14 at the time of institution of the suit resided at Bombay a part of the cause of action arose within the territorial jurisdiction of this Court and as such, this Court has jurisdiction to entertain and try the suit u/s 20 of the Code of Civil Procedure, 1908. In this view of mine, I am supported by the judgment of this Court in the case of Cursetji Jamshedji Ardeseer Wadia, (supra) as also by the judgment of the Delhi High Court in the case of Shri Ram Rattan Bhartia, (supra). Hence, the Chamber Summons is liable to be dismissed.

10. Moreover, Clause XII of the Letters Patent deal with Original Jurisdiction as to Suits. Barring certain suits specified at the end of this clause the High Courts of Calcutta, Madras and Bombay are empowered to try the following suits in the exercise of their Ordinary Original Civil Jurisdiction, namely ---

I. Suits for land or other Immovable property---

(a) if the land or property is situated wholly within the local limits of the Ordinary Original Civil Jurisdiction of the said High Court; or

(b) where the land or property is situated in part only within the said limits, if the leave of the Court shall have been first obtained.

II. Suits other than those for land ---

- (a) if the cause of action has arisen wholly within the said limits; or
- (b) where the cause of action has arisen in part only within the said limits if the leave of the Court shall have been first obtained; or
- (c) if the defendant at the time of the commencement of the suit dwells or carries on business or personally works for gain within such limits.

Section 20 of the Act deals with application to file in Court arbitration agreement. As per section 20, all or any of the parties to an arbitration agreement may apply to have it filed in Court and a reference made to arbitration. As per sub-section (2), the application u/s 20 must be in writing. Such an application, when filed, will be numbered and registered as a suit with the applicant as "plaintiff" and the other party as "defendant". Mere numbering and registration of the application as a suit will not, however, change the nature of the proceeding and the application does not become a suit within the meaning of the Code of Civil Procedure, 1908, and Clause XII of the Letters Patent. For the determination of the question whether a proceeding is a suit within the meaning of Clause XII of the Letters Patent the test to be applied is not whether it is initiated by presentation of plaint, or by summons or by notice. But whether the proceeding is intended to terminate in a final adjudication of the rights by a decree in that proceeding. In the case of application u/s 20 of the Act, all that the Court is required to do is to pass an order filing the agreement and making an order of reference. The proceedings come to an end by the passing of the said order. The wordings of sub-section (2) of section 20 that the "application shall be numbered and registered as a suit" do suggest that it is not a suit in the fullest sense of the term. Hence, an application u/s 20 of the Act is not to be treated as a "suit" within the meaning of Clause XII of the Letters Patent and leave as contemplated in Clause XII is not required to be obtained before filing such application. Accordingly, since no leave under Clause XII of the Letters Patent was required to be obtained by the plaintiffs prior to filing of the application registered and numbered as "Arbitration Suit No. 1904 of 1992" the question of revocation of such leave does not arise.

11. In the result, the Chamber Summons is dismissed with no order as to costs thereof.