
(1988) 09 DEL CK 0008

In the Delhi High Court

Case No : S. No. 1360-A of 1986 and I.A. No. 1861 of 1986

Luda Rani Ved Parkash

APPELLANT

Vs

Maharani of India and Another

RESPONDENT

Date of Decision : 20-09-1988

Acts Referred:

Citation : AIR 1989 Delhi 169

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : K.C. Dewan, for the Appellant; G.L. Rawal and Meerja Mehra, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bahri, J.—Shri Mohan Lal, Sole Arbitrator, had filed the award dated Jan. 3, 1986, of which due notices were sent to the parties concerned. The objections have been filed by M/s. Maharani of India, a partnership firm and one of its partners Smt. Nirmal Kapur.

2. The facts leading to the present proceedings, in brief, are that the petitioner-partnership firm filed a claim petition before Delhi Hindustani Mercantile Association (Regd.) pleading that the petitioner is a partnership firm duly registered u/s 58(1) of the Indian Partnership Act and Shri Ramesh Kumar, through whom the petition is filed, is one of its registered partners and the firm is carrying on business of sale of cloth in wholesale and the firm is the member of the aforesaid Association and has been selling goods to its customers on credit according to the terms and conditions, rules and regulations of the said Association and that the respondent-firm through its partner respondent 2 purchased goods from the petitioner-firm on credit in between the period April 1, 1980 to March 22, 1983 and had made payments in part, but a balance sum of Rs. 39,499/49p remained due which the respondents did not pay in spite of repeated demands, and there was an agreement to pay interest at the rate of 18% per annum on delayed payments and as disputes have arisen between the

parties and the goods have been sold on the basis of bills copies of which had been attached with the claim, the petitioner claimed Rs. 39,499.49p as principal amount and Rs. 69,476/- as interest, Rs. 75/- as miscellaneous expenses and Rs. 100/- as expenses regarding arbitration. The copies of the bills filed along with the claim petition show that there is a printed clause appearing in all the bills that "the goods are sold according to the rules and regulations of Delhi Hindustani Mercantile Association, Delhi, and in case of any dispute between the parties in respect of goods, the reference to the arbitrator appointed by the Association and its decision shall be binding on the parties". The bills also contained a printed clause that interest at, 18% per annum will be charged after seven days if the bill is not paid within seven days.

3. The Arbitrator had issued notices to the respondents under postal certificate and by registered A.D. post. Those were served on the respondents. Peremptory notices have been also issued to the respondents that if they failed to appear on dates on hearing they would be proceeded against ex parte and ultimately after many notices have been served on the respondents, the respondents having failed to appear before the Arbitrator in spite of being warned clearly that they would be proceeded against ex parte, the Arbitrator held ex parte proceedings and after recording the evidence of the petitioner, he made the award against the respondents for recovery of Rs. 1,09,150/49p and with interest at 18% per annum from the date of the claim till recovery.

4. The award has been challenged on various grounds by the respondents. The objection petition has been contested by the petitioner and following issues were framed:

1. Whether the award is liable to be set aside for the reasons stated in the objection petition? OPD

2. Relief.

The matter was required to be decided by taking evidence in the shape of affidavits. Counsel for the objectors has challenged the award on the grounds that no arbitration agreement has been entered into by the objector and thus the reference could not be made to any arbitrator and that one of the partners of the objector-firm had no power to enter into any arbitration agreement and that the arbitrator misconducted the proceedings inasmuch as no peremptory notices were given to the objectors indicating that on failure of the objectors to appear on a particular date they shall be proceeded against ex parte and lastly, that the arbitrator had no jurisdiction to allow any interest claimed by the claimant upto the date of the claim and also interest pendente lite and future interest.

5. It is, indeed, not in dispute that the goods have been sold to the objector-firm vide the bills which contained the clause regarding the goods having been sold in accordance with the rules and regulations of Delhi Hindustani Mercantile Association, Delhi. The mere fact that objectors are not members of the said Association would not mean that if they had purchased the goods according to

the aforesaid condition they would not be bound by the rules and regulations of the said Association. It is not disputed that the rules and regulations of the said Association contain the arbitration clause and also the mode how the reference to the arbitrator is to be made. The law does not require that an arbitration agreement must be signed by the parties before the same could not be considered binding. The only requirement of Section 2 of the Arbitration Act is that the arbitration agreement must be in writing. However, this point stands now settled by this Court in various judgments given from time to time. Reference may be made to Chaudhary Hukam Chand & Sons v. Sagar Silk and Sarees, (1982) 22 Delhi LT 196, Chhajjmal Sumer Chand and Another Vs. Firm Sohan Lal Kanhaiya Lal and Others, , and Krishan Chander Ramesh Chander & Brothers v. Sohan Lal, (1983) 23 Delhi LT 9. All these are single Bench judgments. However, in Sohan Lal v. Krishan Chander Ramesh Chander & Brothers, (1983) 24 Delhi LT 305, a Division Bench of this Court also held that if goods are sold subject to the rules and regulations of Delhi Hindustani Mercantile Association the arbitration clause appearing in the said rules and regulations would be deemed to be binding on the parties even though the purchaser is not member of the said Association and such a clause appearing in the bills on the basis of which the goods are sold even though bills are not signed by the purchaser would bring about arbitration agreement between the seller and the purchaser. Counsel for the objectors tried to distinguish this judgment by arguing that in the said case at least some of the bills were signed by the purchaser. The ratio of law laid down in the judgment is not based on this fact alone because out of 84 bills in the said case only very few of them had been signed, but the arbitration agreement was held to be arrived at between the parties in respect of the bills including the bills which did not bear signature of the purchaser. So, mere fact that objectors had not signed the bills would not mean that no arbitration agreement had come into existence between the parties when the facts show indisputably that the goods were sold on the basis of the bills which contained a printed clause that they are being sold subject to the rules and regulations of the said Association.

6. It has been next argued by the learned Counsel for the objectors that reference to arbitration by one of the partners could not bind the partnership firm or the other partners. He has made reference to Section 19(2) of the Partnership Act which clearly lays down that in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to submit a dispute relating to the business of the firm to arbitration. It was the case of the petitioner-claimant before the Arbitrator that the goods have been purchased on behalf of respondent No. 1 firm by its partner-respondent 2 on credit on the basis of the sale vouchers containing the arbitration clause. It is not the case of the objectors that the aforesaid partner had no implied authority to make purchases of the goods. It could be argued that in the present case there had been no agreement made by one of the partners to submit any existing disputes for arbitration but only goods have been purchased

by one of the partners on behalf of the firm for the purposes of running the business of the firm subject to the conditions appearing in the bills issued by the petitioner and the partnership firm should be deemed to be bound by the conditions on the basis of which the goods have been purchased and as a matter of fact, the partner has not submitted any existing dispute for reference to arbitration. However, there is a judgment of this Court on this aspect of the case reported as National Small Industries Corporation Limited Vs. Punjab Tin Printing and Metal Industries and Others, . In the cited case, a hire-purchase agreement was entered into by one of the partners of the firm and one of the conditions of the said agreement was that disputes which may arise pertaining to the contract made on the basis of such agreement would be referable for decision by an arbitrator. A contention was raised that one of the partners could enter into arbitration agreement to bind the firm. The contention was repelled and it was held that the word "submit" appearing in Section 19(2) means and relates to agreement to refer as well as to actual reference. In Sohan Lal Vs. Firm Madho Ram Banwari Lal and Others, , it has been held that unless there is some usage or custom of trade alleged and proved, a partner has no authority to enter into arbitration agreement on behalf of the partnership firm.

7. Counsel for the petitioner has cited K.A. Lona etc. Vs. Dada Haji Ibrahim Hilari and Co. and Others, . This judgment is of no help to the petitioner because the court was not considering in this judgment as to whether one of the partners of the trading firm can be treated to have any implied, authority for submitting the disputes to arbitration. In the said case, a negotiable instrument appears to have been executed by one of the partners on behalf of the firm for getting loan and it was held that a partner has the implied authority by virtue of Sections 18 and 19 of the Partnership Act to act as an agent of the firm for the purposes of carrying on business and the act of the partner which is done to carry on only in the usual way, the business of the kind carried on by the firm binds the firm subject, of course, to the provision of Section 22 of the said Act. It was found as a fact that the partnership deed proved on the record contemplated the firm raising loans for the purpose of business. So, in this background, it was held that the firm was bound by the said negotiable instrument executed by one of its partners and so also the other partners.

8. The matter does not end here. The mere fact that respondent No. 2, in view of Section 19 of the Partnership Act, had no authority to submit the, disputes pertaining to the business of partnership for arbitration does not help the case of the objectors because here it was clearly pleaded by the petitioner that the goods have been sold on the basis of the aforesaid vouchers containing the arbitration clause and part payments have been received in respect of those goods from the respondents, meaning thereby that the partnership firm accepted the goods on the basis of the said vouchers and had utilised those goods and had also made part payments. No partner of the respondent-firm has filed any affidavit taking the plea that he was not aware of the fact of goods having been purchased in the name of the partnership firm by respondent No. 2 and part

payments having been made in respect of those goods. The arbitration agreement made by one of the partners of the firm can always be ratified by the other partners later on. Such ratification can be proved by conduct of the said partners. It has been held in *Miss. Mohinder Kaur Kochhar v. Punjab National Bank Ltd.*, AIR 1981 Delhi 106, that though Section 19(2)(a) of the Partnership Act does not empower a partner to submit any dispute relating to the business of the firm to arbitration on behalf of another partner, there is nothing in law which prevents a partner, who was not a party to the reference to arbitration, to ratify this act of reference and this ratification can be done either expressly or impliedly. It was observed that if on facts it can be established that a partner though not a signatory to the reference to arbitration has by his or her conduct ratified the same, he or she would be as much bound by the award as the partners who had actually signed the reference. Similarly, in *S.S. and S.N. Goenka v. Union of India*, AIR 1981 NOC 44 (Delhi), the facts were that a tender had been signed by one of the partners on behalf of the partnership firm and the tender contained an arbitration clause. It was held that ratification of a contract by another partner would have the effect of binding the said partner also with the said arbitration clause. So, from the facts appearing in this case, it can be safely held that other partner of the partnership firm had by conduct ratified the contents of the vouchers on the basis of which the goods were purchased in the name of the partnership firm by respondent No. 2 and thus, the partnership firm as well as the other partners are bound by the said arbitration clause. So, I negative this contention of counsel for the objectors.

9. Then, it has been argued by the learned Counsel for the objectors that reference to Arbitrator was unilateral and thus, the whole of the proceedings before the Arbitrator were vitiated. There is no merit in this contention in view of the ratio laid down by a Division Bench of this Court in *P.C. Aggarwal Vs. K.N. Khosia etc.*, . In the cited case also, there were the Rules of Delhi Stock Exchange Association subject to which the contracts had been made and the said Rules provided the whole machinery as to how the disputes are to be referred to arbitration. Taking resort to the said provisions, the Arbitrator was appointed and it was held by the Division Bench that a separate reference to the arbitration is necessary only where there is a bare agreement between the parties that disputes between them shall be decided by resort to arbitration and Section 2(a) of the Arbitration Act is comprehensive enough to cover both a bare arbitration agreement and an agreement that dispute shall be decided by resort to arbitration with a reference of the dispute between the parties to arbitration. It was held that consent of the parties to the reference is distinct from a mere agreement to refer disputes. The consent can be given in advance in a written agreement or submission or a written comprehensive arbitration agreement in advance before the arising of the future dispute and that the nature of reference has become consensual in the law of arbitration. So, making reference to the Rules and Regulations of the Association, it was found that as parties have agreed to be bound by the said Rules and Regulations, the appointment of

arbitrator and reference of disputes to the said arbitrator in accordance with the said Rules and Regulations could not be considered to be a unilateral reference. This judgment was followed in *M/s. Tikkan Lai Sewa Ram v. M/s. Seth Jiwan Dass Des Raj*, (1980) 18 Delhi LT 248 by S.B. Wad, J., where also the goods have been sold on the basis of Beejhaks containing an agreement to be bound by Rules and Regulations of Delhi Hindustani Mercantile Association. The only point raised in this case was that the reference to arbitration was unilateral and thus was void. It was held following the ratio laid down by this Court in the case of *P.C. Aggarwal* (supra) that such a reference is not unilateral when it is made in accordance with the Rules and Regulations of the association and no fresh agreement for reference was needed in such like cases. I, following the aforesaid judgments, hold that a reference to the arbitration was not unilateral.

10. On merits it has been argued that the Arbitrator had no power to allow any interest. Upto the date of the claim before the Arbitrator, the interest was liable to be allowed because the term printed on the bills clearly contemplates payment of interest at 18% per annum if the payment was not to be made within seven days. However, the Arbitrator had no power to allow pendente lite interest and future interest in view of the pronouncement of the Supreme Court in *Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others*, . It has been held that in case the arbitration is not made through the court, the arbitrator has no power of a Court to award pendente lite interest and the future interest. However, this part of the award is separable from the main award. Hence, this Court can set aside this part of the award.

11. In view of the above discussion, I dismiss the objection petition and make the award rule of the court to the extent that respondents shall pay Rs. 1,09,150/49P only to the petitioner. I grant future interest @ 18% per annum from the date of the award till realisation. The decree shall be prepared accordingly. The petitioner shall have costs from the respondents which are quantified at Rs. 1,000/-.