

(1989) 08 GUJ CK 0012
In the Gujarat High Court

Case No : Civil Revision Application No's. 1238 and 1239 of 1983

Maheshchandra Morarji Jani and Others	APPELLANT
Vs	
S.M. Shukla and Others	RESPONDENT

Date of Decision : 19-08-1989

Acts Referred:

Arbitration Act, 1940 — Section 14, 2(c), 30
Bombay Court Fees Act, 1959 — Section 6(iv)(i)

Citation : AIR 1990 Guj 171 : (1990) 2 GLR 753

Hon'ble Judges : S.B. Majumdar, J

Bench : Single Bench

Advocate : Mohit S. Shah, for the Appellant; R.H. Mehta, for the Respondent

Judgement

1. In these revision applications u/s 115 of the Code of Civil Procedure, a neat question of jurisdiction of Court of Civil Judge (J.D.), Devgadhi-Baria in connection with the proceedings under Ss. 14 and 30 of the Arbitration Act, 1940 arises for consideration., In order to appreciate this question, in its proper perspective, a few introductory facts are required to be noted.

2. A partnership firm in the name of Ramanlal Maheshchandra and Company was carrying on business at village Piplod of Baria taluka of Panchmahals district. The petitioners on the one hand and respondents Nos. 2 to 6 on the other were partners in the said partnership firm. Certain disputes arose in connection with partnership business and in view of the arbitration clause in the partnership deed, these disputes were referred to arbitration of respondent No.1 herein who is common respondent in both these revision applications. Disputes were referred by respondents Nos. 2 and 3. Written terms of Reference a copy of which was furnished to me showed that respondents Nos. 2 and 3 requested the first respondent to arbitrate in the matter and to resolve the disputes. In clause 4 of the said terms of Reference, it was provided that partners are not in a position to carry on partnership business and therefore, a declaration was required to be given that partnership is dissolved after deciding the liabilities of

the concerned partners as per their shares and after taking accounts of profit and loss and other inter se dues. In clause 6 of the terms of Reference, it has been provided that proper accounts have to be taken of the partnership business and profit and loss had to be ascertained up-to-date and shares of the concerned partners have to be ascertained both in profit and losses. That the arbitrator had also to fix the date from which the partnership will be treated to have been dissolved. In the light of these terms of Reference, the first respondent entered upon arbitration and heard the parties. Respondents Nos. 2 and 3 filed their claim statement and as per the claim statement, they submitted that they would be entitled to Rs. 61,546.16 from the remaining partners. Terms of Reference were prepared in February 1980 and the statement of claim given by respondents Nos. 2 and 3 before the arbitrator was dated 26-6-1980. After the arbitrator declared his award, he filed the same in the Court of the Civil Judge (J.D.), DvgadhBaroda u/s 14 of the Arbitration Act. The contesting partners filed their written Objections under S. 30 of the Arbitration Act raising various objections to the Award. It is at that stage that objection as to jurisdiction of the trial Court in connection with -the proceedings u/s 14 as well as 30 of the Arbitration Act was raised. As these objections covered all the proceedings viz. S. 14 as well as S. 30 applications filed by different objectors, they were all consolidated and the question of jurisdiction was decided by the learned trial Judge after hearing the concerned parties. The learned trial Judge has taken the view that the Court of the Civil Judge (J. D.) had ample jurisdiction to entertain and try civil misc. applications under Ss. 14 and 30 of the Arbitration Act. It is this common judgment of the trial Court that has been brought in challenge by the contesting parties by way of these two revision applications. As these revision applications raise common point of jurisdiction based on common facts, they were heard together and are being disposed of by this common judgment.

3. In order to appreciate the question about jurisdiction of the Court to entertain these proceedings under the Arbitration Act, it is necessary to look, at Section 14 of the Arbitration Act:--

Section 14(1) provides-

"When the arbitrators or umpire have made their award they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award."

Section 14(2) provides -

"The arbitrator or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court and the Court shall

thereupon give notice to the parties of the filing of the award."

It is obvious that objections to award u/s 30 have to be filed in the same Court in which the award is tendered for being made Rule of the Court. It is not in dispute that award in question has directed the contesting respondent and the petitioners to pay various amounts to the respondents Nos. 2 and 3 which were exceeding Rs. 20,000/- which is pecuniary jurisdiction of the trial Court. The question is whether such award can be filed in the Court of Civil Judge (J.D.). Answer to this question is provided by S. 2(c) of the Act which reads as under:-

"2. In this Act, unless there is anything repugnant in the subject or context -

(c) "Court" means a Civil Court having jurisdiction to decide the questions forming the subject-matter of the Reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings under S. 21, include a Small Cause Court."

We have therefore, to find out as to whether the suit pertaining to subject-matter of the Reference could have been filed in the Junior Division Court or not. The subject-matter of the Reference is the dispute between partners of a partnership firm and the arbitrator is required to take accounts of the partnership business and to ascertain the correct shares of partners in profit and loss - in the partnership business. Thus, it is a claim for settlement of accounts of partnership business and to ascertain shares of the concerned partners after dissolving the partnership. If such a claim was made subject-matter of the suit, it would have been required to be filed with appropriate Civil Court. It is that Court which can entertain applications u/s 14(2) as well as S. 30 of the Arbitration Act.

4. Mr. Mohit Shah for the petitioners submitted that the terms of Reference will have to be read in the light of the statement of claim put forward by respondents Nos. 2 and 3 before the arbitrator and in that statement, they have clearly stated that according to them, Rs. 60,000/- are due and payable to them. Mr. Shah, therefore, submitted that if respondents Nos. 2 and 3 instead of going to arbitrator, had filed a civil suit claiming Rs. 60,000/- they would have been required to file the same in Senior Division Court and hence, the Court of Civil Judge (S.D.) at Godhra would be the appropriate Court under S. 2(c) of the Act for entertaining application under S. 14(2) as well as objections u/s 30.

5. It is now well settled that suit for taking accounts of a partnership firm would fall under S. 6(4)(i) of the Bombay Court-fees Act, 1959 which speaks of suits for accounts and the court-fee has to be paid according to the amount at which the relief sought is valued in the plaint or the memo of appeal subject to the provisions of S. 8, and subject to a minimum fee of Rs. 20/- . As per Section 8 of the Suit Valuation Act, for such suits, valuation for the purpose of court-fees will govern valuation for the purpose of jurisdiction and it will be the same. Section 8 of the Suit Valuation Act as applicable to Gujarat reads as under: -

"Where in suits other than those referred to in clause (c) of paragraph (iv),

paragraphs (v), (vi), (vii) and (x) and clause (d) of paragraph (xi) in S. 6 of the Bombay Court-fees Act, 1959, court-fees are payable under the Bombay Court-fees Act, 1959, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same."

6. As the disputes which are subject matter of Reference pertain to dissolution of partnership and for taking accounts of partnership business, if they would have been made subject-matter of a suit, the suit would have been governed by S. 6(iv)(i) of the Bombay Court-fees Act. Section 6(iv)(i) of the Bombay Court-fees Act provides for minimum court-fee of Rs. 20/-. Valuation in such a suit for accounts, normally will be in the vicinity of the figure, which would entitle the plaintiff to file suit on minimum court-fees. Such a suit therefore could have validly been filed in the Court of Civil Judge (J.D.) if the matter was not referred to arbitration but was made subject-matter of civil suit. In this connection, it is also pertinent to refer to a Division Bench judgment of the Bombay High Court in the case of Ishwarappa Malleshappa Manvi Vs. Dhanji Bhanji Gujjar, , wherein Patkar, J. speaking for the Division Bench has laid down that in suits for accounts the valuation for the purpose of court-fees and for the purpose of jurisdiction shall be that which has been fixed by the plaintiff in the plaint. It is the plaintiffs valuation that fixes the jurisdiction of the Court and not the amount which may be found and decreed by the Court. It was further held that the jurisdiction of a Court in a suit for accounts is not therefore ousted after a preliminary decree for accounts is passed by the fact that on taking accounts a sum more than the pecuniary jurisdiction of the Court has been found to be due. Mr. Shah for the petitioners did not and could not object to the aforesaid settled legal position. However, his submission was that in the present case, the terms of Reference will have to be read with the statement of claim of respondents Nos. 2 and 3 and a conjoint reading thereof makes it clear that they were claiming decree of Rs. 60,000/ from the arbitrator and if they had claimed such a decree in the civil suit, they would have been required to go to the Court of Civil Judge (S.D.). It is not possible to agree with this submission, for the simple reason that express language of S. 2(c) of the Arbitration Act points out to the contrary. It states that the Civil Court which can decide the question regarding subject-matter of reference would be the competent Court to entertain the proceedings under the Arbitration Act. Therefore, subject-matter of reference is to be seen for deciding the jurisdiction of the Court under the Arbitration Act in the light of S. 2(c) and not subsequent statement of claim to support the case of the concerned parties.

7. Mr. Shah for the petitioners next submitted that even if that were so, in the terms of Reference, there is no indication that valuation put forward by the respondents Nos. 2 and 3 in connection with their claim was such which would have enabled them to go to the Court of Civil Judge (J.D.) if they had filed a suit, instead of having approached -the arbitrator. Mr. Shah submitted that when the claim is not valued in the terms of Reference, it can be treated to be an analogous situation where the plaintiff does not value his claim in the suit and in such cases, it is the Court of Civil Judge (S.D.) which could have entertained

such suit. Even this contention cannot be accepted for the simple reason that in terms of the Reference, respondents Nos. 2 and 3 were not required to value their claim for the purpose of court-fees " as they had not to pay any court-fees before the arbitrator. If they would have filed a suit, what valuation they would have put on their claim would be a different matter. That would be in a way, a matter of conjecture. But S. 2(c) provides for such contingency and permit such conjecture. However, it lays down that the Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject matter of a suit would be competent to proceed under the Arbitration Act. Subject matter of the Reference is taking of accounts of the partnership business and fixing shares of the concerned partners. Thus, subject-matter of Reference could have been valued legitimately by the plaintiff in such a manner as to bring it within the jurisdiction of the Civil Judge (J.D.) as at that stage, it would be impossible to predict as to what will be the exact amount which will be payable to the plaintiff. Preliminary decree would have been required to be passed and only after the Commissioner had taken account, question of passing final decree would have arisen. Such a suit will fall within the pecuniary jurisdiction of the Civil Judge (J.D.). Hence it will be that Court which will be competent to entertain application under S. 14(2) as well as objections under S. 30 of the Act. Mr. Shah placed strong reliance on a decision of the Jammu and Kashmir High Court in the case of Shahadas v. Mohd. Abdullah AIR 1967 J&K 120. While interpreting Ss. 2(c) 20 and 43 of the Arbitration Act, a learned single Judge of the J. & K. High Court held that the word "Court" within the meaning of S. 2(c) read with Ss. 20 or 43 has to be interpreted in technical sense throughout the Act. It can mean only Court having civil jurisdiction over subject-matter of reference. In that case partnership was having investment above Rs. 20,000/-, forming subject-matter of reference and it was held that word "Court" would be applicable to High Court and Court of First Additional Munsiff not being competent Court within the meaning of S. 2(c) would have no jurisdiction to entertain application under S. 20 or 43. In that case, subject-matter of reference itself was in connection with investment above Rupees 20,000/-. As the subject-matter itself was of that value, naturally it had to be held on the express language of Section 2(c) that Munsiff's Court had no pecuniary jurisdiction to entertain the proceedings in connection with such highly valued subject-matter of reference. But as we have seen earlier, in the present case, the subject-matter of reference is dispute about partnership accounts and request for settling the account between the partners after taking account of partnership business. Such claim will squarely fall within the sweep of S. 6(iv)(i) of the Court-fees Act and if suit could have been filed for enforcing the said claim in a Civil Court, Junior Division Court would have jurisdiction to entertain such a suit and consequently, the award in connection with such Reference can be legitimately filed in that Court under S. 14 of the Act.

8. Consequently, the reasoning adopted by the learned Judge and conclusion to which he reached cannot be found fault with. It must be held that the Court of

Civil Judge, Junior Division had jurisdiction to entertain the present proceedings. Therefore, these revision applications fail and they are dismissed. Rule issued in each of them is discharged. Interim relief shall stand vacated in each one of them. No costs.

9. Applications dismissed.