

(2012) 11 MP CK 0115
In the Madhya Pradesh High Court
Case No : Civil Revision No. 79 of 2012

Mukesh Singh Tomar and Umesh Singh Tomar	APPELLANT
Vs	
Rakesh Sharma and The State Bank of India, Branch Jiwajiganj, Morena (M.P.)	RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115, 151

Citation : (2012) ILR (MP) 2859 : (2013) 1 MPHT 79 : (2013) 1 MPLJ 233

Hon'ble Judges : Brij Kishore Dube, J

Bench : Single Bench

Advocate : N.K. Gupta, for the Appellant; Anand V. Bhardwaj, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Hon. Shri Justice Brij Kishore Dube

1. This Civil Revision u/s 115 of the Code of Civil Procedure, 1908 is directed by the revisionists/defendants No. 2 & 3 against the impugned order dated 11.06.2012 passed by the Additional District Judge, Ambah, District Morena in Civil Suit No. 5A/2012, whereby an application filed by the defendants No. 2 & 3 under Order 7 Rule 11 and Section 151 of CPC to reject the plaint of the plaintiff on the ground that the plaint is barred by law has been rejected. The respondent No. 1/plaintiff has filed a suit for declaration and permanent injunction against the defendants. The reliefs sought by the plaintiff in the plaint runs as under:-

2. Shri N.K. Gupta, learned Counsel appearing on behalf of the revisionists has submitted that the plaintiff has filed the suit for enforcement of the partnership deed dated 05.05.2008 between the parties and the main relief i.e. relief No. 1 was sought with regard to the same document. According to him, unless and until main relief is granted, the other reliefs cannot be granted as they are consequential reliefs. As per clause 15 of the aforesaid partnership deed if any

dispute arises between the partners, the same has to be referred to arbitration. Thus, the suit filed by the plaintiff for declaration and permanent injunction is not maintainable by virtue of arbitration clause in the partnership deed and, therefore, the suit is barred u/s 8 of the Arbitration and Conciliation Act, 1996. Hence, the learned Trial Court has committed an error of jurisdiction in rejecting the application filed by the revisionists.

3. Shri Anand V. Bhardwaj, learned Counsel appearing on behalf of the respondent No. 1 has supported the impugned order and submitted that the relief of declaring the agreement dated 26.08.2011 and partnership deed dated 20.10.2011 as null and void is not consequential relief, but basically the same are independent reliefs, therefore, the arbitration clause would not come in the way for prosecuting the suit. He has relied upon the following decisions:-

(1) Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others,

(2) Vijay Goyal Vs. Modanlal Goyal and Others,

4. As per Order 7 Rule 11 of CPC, the plaint is liable to be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9.

(Emphasis supplied)

5. In Saleem Bhai and Others Vs. State of Maharashtra and Others, , it has been held by the Apex Court that for the purpose of deciding an application under clauses (a) & (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant would be wholly irrelevant at that stage. In Ram Prakash Gupta Vs. Rajiv Kumar Gupta and Others, , the Apex Court held that while deciding the application under Order 7 Rule 11 CPC, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read.

6. It is not in dispute that the plaintiff and defendants No. 1 & 2 have entered into an agreement, executed a registered partnership deed dated 05.05.2008 and carrying on the business in the name and style of M/s. Balaji Cold Storage and Ice Factory. The clause 15 of the partnership deed dated 5.5.2008 provides that if a legal dispute arises between the partners, the same has to be referred to arbitration.

7. In the plaint, it is pleaded by the plaintiff that plaintiff and defendants No. 1 & 2 are carrying on business in the name and style of M/s. Balaji Cold Storage and Ice Factory under a registered partnership deed dated 05.05.2008. But the defendants have prepared forged and fabricated agreement on 26.08.2011 by putting his forged signature. Subsequently, they also prepared an unregistered partnership deed dated 20.10.2011 for substituting the registered partnership deed dated 05.05.2008 by putting his forged signature. The aforesaid documents were neither signed by him nor they were prepared with his consent. On the basis of aforesaid forged documents, the defendants are going to oust him from the business of M/s. Balaji Cold Storage and Ice Factory. The plaintiff prayed that documents dated 26.08.2011 and 20.10.2011 be declared as null and void. The plaintiff also prayed for enforcement of registered partnership deed dated 05.05.2008. Therefore, the subject matter of the suit is capable of adjudication by the Civil Court and the relief claimed can only be granted by the Civil Court (Atul Singh and Others Vs. Sunil Kumar Singh and Others, referred to).

8. While considering the scope of Section 8 of the Arbitration and Conciliation Act, 1996 the Apex Court in Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd. and Others, has observed as under:-

19. Where a suit is filed by one of the parties to an arbitration agreement against the other parties to the arbitration agreement, and if the defendants filed an application u/s 8 stating that the parties should be referred to arbitration, the court (judicial authority) will have to decide:

- (i) whether there is an arbitration agreement among the parties;
- (ii) whether all the parties to the suit are parties to the arbitration agreement;
- (iii) whether the disputes which are the subject-matter of the suit fall within the scope of arbitration agreement;
- (iv) whether the defendant had applied u/s 8 of the Act before submitting his first statement on the substance of the dispute; and
- (v) whether the reliefs sought in the suit are those that can be adjudicated and granted in an arbitration.

33. But where the issue of "arbitrability" arises in the context of an application u/s 8 of the Act in a pending suit, all aspects and arbitrability will have to be decided by the court seized of the suit, and cannot be left to the decision of the arbitrator. Even if there is an arbitration agreement between the parties, and

even if the dispute is covered by the arbitration agreement, the court where the civil suit is pending, will refuse an application u/s 8 of the Act, to refer the parties to arbitration, if the subject-matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a special court or Tribunal.

For the foregoing reasons, I am of the considered view that the application for rejection of the plaint filed by the revisionists has been rightly rejected by the Trial Court. There is no error of jurisdiction in the impugned order that may call for any interference by this Court in exercise of its revisional jurisdiction u/s 115 of CPC. The revision, therefore, stands dismissed.