

(2001) 09 DEL CK 0219
In the Delhi High Court
Case No : FAO (OS) 182 of 1990

Rattan Lal and Others

APPELLANT

Vs

Krishan Kumar and Others

RESPONDENT

Date of Decision : 27-09-2001

Acts Referred:

Arbitration Act, 1940 — Section 32, 39
Civil Procedure Code, 1908 (CPC) — Section 151
Criminal Procedure Code, 1973 (CrPC) — Section 145, 340
Delhi High Court Act, 1966 — Section 10
Partnership Act, 1932 — Section 40
Penal Code, 1860 (IPC) — Section 191, 192, 193, 199

Citation : (2002) 63 DRJ 233

Hon'ble Judges : Sanjay Kishan Kaul, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Sandeep Aggarwal, for the Appellant; P.K. Seth, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The appellants are aggrieved by the impugned order dated 21.8.90 passed by the learned Single Judge dismissing their application filed u/s 32 of the Arbitration Act, 1940 in the suit filed by the respondents for dissolution of the partnership firm, M/s. National Refrigeration works and for rendition of accounts.

2. There is prior history of disputes between the parties relating to the said partnership firm of M/s. National Refrigeration Works. The parties are closely related as appellant no.1 and respondent no.1 are brothers while appellants 2 and 3 are the sons of appellant no.1 and respondent no.2 is the sone of respondent no.1. The partnership is stated to have been constituted vide partnership deed dated 26.6.1975 but disputes arose between the partners in the year 1978 resulting in a document dated 18.4.1978 described as Power of Attorney but in terms whereof by mutual consent the dispute were referred for adjudication to the arbitration of Shri. Arjan Singh and Shri. Umrao Singh.

3. The factual matrix has been set out by the learned Single Judge in the impugned order. An interim award was given on 18.4.1978 followed by further awards on 19th and 20th April, 1978. The lis between the parties arises because of two rival contentions - the appellants contend that the said awards were acted upon and no disputes survived while on the other hand the respondents contend that the appellants did not implement the awards and certain disputes still remained undecided.

4. Another aspect which is relevant is that the respondents had earlier instituted a suit for dissolution of the partnership and rendition of accounts in this court being suit no. 1169/1979 in which proceedings also the appellants had filed an application u/s 32 of the Arbitration Act, 1940 but ultimately by agreement the disputes were referred to the same arbitrators who had adjudicated upon the disputes earlier and consequently the said suit was withdrawn on 7.5.1980 with liberty to file a fresh suit on the same cause of action, if need be. The respondents filed the present suit from which these proceedings have arisen alleging that there has been no progress in the reference made to the Arbitrators as per order dated 7.5.1980 and the arbitrators were unable to settle the pending issues or implement the pending matters as intimated by the said arbitrators.

5. The application filed by the appellants u/s 32 of the Arbitration Act, 1940 in the present proceedings has been contested by the respondents where the rivals contentions have been advanced as a consequence of the order dated 7.5.1980 in suit no. 1169/79 and the subsequent developments. The respondents have stated that in view of the failure of the arbitrators to decide the matter in controversy, and as a result of the liberty granted to file a fresh suit at the stage of withdrawal of suit No. 1169/1979 on 7.5.1980, the respondents were entitled to maintain the present suit. The appellants have resisted the suit in view of the writing dated 31.3.1983 alleged to be between the partners of the firm to the effect that all disputes inter se the parties had been settled in terms of the awards passed by the arbitrators earlier and nothing survived to be adjudicated upon. It was thus stated that nothing remain to be decided in view of the final award of the arbitrators.

6. The learned Single Judge has considered the submissions advanced on behalf of the appellants propounding the proposition of law that even if an award is not made a rule of the court, the same is binding upon the parties and has recorded that there is no doubt about this legal proposition. We may note that in the submissions advanced before us no dispute has been raised about the said legal proposition.

7. The learned Single Judge rightly noted the controversy between the parties as one which relates to the adjudication of the fact whether all the disputes inter se the parties already stood settled in terms of the award/awards.

8. Mr. Sandeep Aggarwal, learned counsel for the appellants, relied on the

alleged partnership deed dated 21.4.1978 to advance his submission that the said partnership deed records the fact that partnership of M/s. National Refrigeration Works had taken over all the assets and liabilities of the old partnership as a running concern. This partnership deed is signed between all the appellants and is stated to bear signatures of the respondents as witnesses. However, this document is disputed by Mr. P.K. Seth, learned counsel representing the respondents who has contended that the said document was not filed in the earlier proceedings and was a manufactured document.

9. Mr. Sandeep Aggarwal, learned counsel for the appellants, also relied upon the written statement filed on behalf of respondent no.1 in another suit No. 312/85 where it is stated that property No. 11-B, Netaji Subhash Marg, Daryaganj, Delhi would belong to the respondent no.1 while appellant no.1 would be entitled to property No.3, Netaji Subhash Marg, Daryaganj, Delhi. It is thus contended that this was to illustrate that all matters stood adjudicated upon in terms of the awards made earlier. However, what is relevant to note is the categorical averments of respondent no.1 in the same written statement to the effect "however, a number of properties and businesses of National Refrigeration Works will remain to be divided". Mr. Aggarwal has also referred to the plea of respondent no.1 in the said suit to the effect that the suit would be barred in view of section 32 of the Arbitration Act, 1940.

10. Mr. Aggarwal has also referred to the written statement of respondent no.1 who was defendant no.6 in suit No. 803/81 filed by Hoechst Dyes & Chemicals Limited against partnership firm and others wherein it is stated that the transaction in question took place in January, 1979 when respondent no.1 was not a partner of the firm which had dealing with plaintiff in the suit. Further reliance is also sought to be placed on certain statements of respondents no.1 before the SDM in proceedings u/s 145 of Cr.P.C.

11. Mr. P.K. Seth, learned counsel for the respondent on the other hand has referred to the rejoinder filed in the present proceedings to CM 1627/96 to contend that both before the learned Single Judge and in the present proceedings the documents sought to be relied upon by the appellants has been denied including the alleged partnership deed dated 21.4.1978. Similarly, the alleged letter dated 31.3.1983 stated to have been received by the appellants from the two arbitrators is also a disputed document and similarly another document dated 17.5.1978 is also disputed as forged and fabricated. Mr. Seth also drew strength from the fact that the award dated 18.4.1978 itself recorded that the same was made "pending final dissolution".

12. We have considered the rival submissions advanced on behalf of the parties. The moot point remains that when the order was passed on 7.5.1980 in suit No. 1169/1979, the said order recorded the plea advanced on behalf of the appellants that the arbitrators were agreeable to act as arbitrator in terms of the arbitration agreement dated 18.4.1978 and as such counsel for the parties agreed to refer their disputes and differences under the partnership known as

National Refrigeration Corporation to the said two earlier arbitrators. It was also agreed that the arbitrators will also have a power to distribute the assets and liabilities of the partnership and implement the awards, if need be. Not only this liberty was reserved to field a fresh suit on the same cause of act in by the respondent in view of their apparent apprehensions of the respondents about how the proceedings would proceed before the two arbitrators. The natural corollary to such an order would be that there must have been disputes and differences persisting between the parties which were referred to the two arbitrators. If there were no disputes and differences persisting, and nothing further had to be done, there was no occasion for the agreement for reference of these matters to the two arbitrators. Admittedly, the arbitrators have failed to decide the alleged disputes. The learned Single Judge has rightly recorded that the arbitrators could have refused to adjudicate upon the disputes but they could not have recorded that the same stood settled when by agreement the parties agreed to once again refer agreement the parties agreed to once against refer their disputes to the arbitration of the two arbitrators. It has also to be appreciated that even in the earlier suit No. 1169/79 the appellants had field an application u/s 32 of the Arbitration Act, 1940 but instead of taking the said proceedings to its natural conclusion, the appellants agreed for the disputes to be referred to the same two arbitrators. It is thus not open for the appellants to subsequently contend that there did not remain any disputes to be adjudicated upon by the earlier arbitrators. The authenticity and execution of documents subsequent to 7.5.1980 relied upon by the appellants is seriously disputed by the respondents.

13. We may further note that Nr. Aggarwal, learned counsel for the appellants also submitted that in view of the judgment of the Supreme Court in Malabar Fisheries Co. Vs. Commissioner of Income Tax, Kerala, and the provisions of section 40 of the Partnership Act, once a firm is dissolved then distribution is to be done by the partners of the firm and not the firm itself and thus the suit for dissolution was not maintainable. We do not find any relevance of this submission in the present controversy where in our view the admitted position is that there were disputes which were agreed to be referred to arbitration even post the awards when the earlier suit was allowed to be withdrawn on 7.5.1980.

14. We are in full agreement with the reasoning and the conclusions arrived at by the learned Single judge and see no reason to interfere with the order dated 21.8.90.

15. Before parting with the present appeal we may note that the respondents had objected to the maintainability of the present appeal in view of the fact that there was no provision for such an appeal u/s 39 of the Arbitration Act, 1940. Mr. Agarwal, learned counsel for the appellants., placed reliance on a Division Bench judgment of this court in Shri R.K. Sharma and others in RFA(OS) No. 32/2000 Shri Vishnu Kumar Goyal and others in RFA(OS) No.35/2000 Vs. Ashok Nagar Welfare Association and Co., where the Division Bench has observed that where a

legal right is in dispute and the ordinary courts of the country are seized of such disputes, the courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules notwithstanding that the legal right claimed arises under a special statute, which does not in terms confer a right of appeal.

16. In view of the pronouncement in the said case we are of the considered view that the appeal is maintainable. We have not gone into a detailed examination of this question in view of our findings that on merits the order of learned Single Judge is correct and is liable to be sustained. We may, however, note that there is a distinction between proceedings in a suit where such an application is made and a proceedings under the Arbitration Act, 1940 where such an appeal would not have been maintainable in view of the pronouncement of the Division Bench of this court in *Banwari Lal Radhey Mohan Vs. The Punjab State Co-operation Supply and Marketing Federation Ltd.*, . To the same effect is the judgment of the learned Single Judge of this Court in *Virendra Saigal Vs. Sumatilal Jamnalal*, . The present case relates to a suit filed on the original side and an application which would give rise to a right of appeal for which forum is provided u/s 10 of the Delhi High Court Act.

17. We may further note that the appellants had apparently filed an application u/s 340 of the Cr. P.C. read with section 151 CPC, sections 193, 191, 192 and 199 of the IPC alleging that the respondents had been challenging their stance from time to time and these proceedings were liable to be initiated against them. This application was apparently filed on 21.4.1998 but was returned under objections by the Registry. The application was not refiled till 2001 when this application was refiled with an application for condensation of delay in refiling. The application has been numbered as CrL.M 877/2001 and application for condensation of delay is numbered as CM 878/2001. We, however, do not even find the application CrL.M. 877/2001 meritorious enough to issue notice and the same is taken on record and dismissed as being without merit. CM 878/01 for condensation of delay in refiling the said application is allowed.

18. The net result of the aforesaid discussions is that the appeal filed by the appellants against the impugned order dated 21.8.90 is dismissed with costs quantified at Rs. 5,000/-.

19. The interim order granted on 9.11.90 and confirmed on 8.8.91 consequently stands vacated.

20. We are pained to note that a suit filed in 1981 has not been able to proceed. Taking into consideration this fact and the pendency of other lis between the parties we had asked learned counsel to take instructions whether the parties would be agreeable to the arbitration of a retired Judge of a High Court for adjudication of all their disputes. The respondents were agreeable but the appellants were not agreeable to the same and thus we proceeded to decide the appeal on merits.

21. Parties will appear before the learned Single Judge on 8.10.2001 for further proceedings in the Suit No. 1115/81. We hope the learned Single Judge will expedite the matter keeping in mind that the suit is quite old.