

(2006) 02 AP CK 0042
In the Andhra Pradesh High Court
Case No : CRP No. 2674 of 2004

Shaik Bahseer Ahmed and Others	Vs	APPELLANT
Shaik Yakoob Ahmed and Another		RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:

Arbitration Act, 1940 — Section 17, 30
Partnership Act, 1932 — Section 48
Registration Act, 1908 — Section 17

Citation : (2006) 3 ALD 457 : (2006) 3 ALT 510

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : I. Aga Reddy, for the Appellant; Ghanshyamdas Mandhani, for the Respondent No. 1 and B. Vijaya Bhaskar, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The general impression is that Arbitration is a speedier and more effective remedy, when compared to the adjudication by Courts. This case provides an example to demonstrate that the statement is partly true.

2. One Sri Shaik Mohammed was carrying on business of skin tanning a Leather Exports at Warangal. He constituted a partnership firm in the year 1972, with himself and his four sons, as partners. Two years thereafter, another firm by name Shaikoo, was constituted with a slightly different composition of the same family. Shaik Mohammed died on 1-4-1981. The firms were reconstituted by holding his widow, in the first firm. The business was expanded and extended to Madras also.

3. Disputes arose among the partners of the two firms. One Sri Abdul Khader, the 2nd respondent herein, was appointed as an Arbitrator. He passed an award dated 5-9-1995. Petitioners herein filed O.S. No. 258 of 1995 in the Court of I Additional Senior Civil Judge, Warangal, u/s 17 of the Arbitration Act, 1940, (for

short "the Act") for making the award as the rule of the Court. The 1st respondent filed O.P.No. 209 of 1995 u/s 30 of the Act, to set aside the award.

4. On an earlier occasion, the trial Court dismissed the suit, through its judgment dated 16-3-2000, on the ground that the award was not registered. The petitioners filed CRP No. 2604 of 2000 in this Court. The C.R.P. was allowed on 26-6-2002. No opinion was expressed on the merits of the matter. However, it was observed that once the suit is dismissed, O.P. filed by the 1st respondent herein ought to have been allowed, and the award ought to have been set aside. On this basis, the judgment of the trial Court was set aside and the matter was remanded for fresh consideration.

5. After remand, the trial Court dismissed the suit, through judgment dated 9-4-2004, on the ground that though the award was not required to be registerable, insofar as it allotted the assets of the firms to partners, it required registration to the extent the assets of the firms were allotted to non-partners. Hence, this C.R.P.

6. Sri I. Aga Reddy, learned Counsel for the petitioners submits that the firms were constituted by the members of the family for the effective conducting of business, and for all practical purposes, the business was for the benefit of the entire family. He contends that once immovable properties are brought under the purview of a partnership firm, they acquire a mere money value and that the distribution of the same, at the time of dissolution; does not require registration. He places reliance upon the judgment of the Supreme Court in S.V. Chandra Pandian and Others Vs. S.V. Sivalinga Nadar and Others,

7. Learned Counsel for the 1st respondent, Sri Ghanshyamdas Mandhani, on the other hand, submits that the facility, extended in law, as to exemption from the requirement of registration, in relation to dissolution of firms and the distribution of assets through an award, has its own limitations. He submits that once an item of immovable property, forming an asset of a firm is allotted to a person, other than a partner, the award is required to be registered u/s 17 of the Registration Act. He contends that the trial Court had discussed the matter, with reference to the decided cases, and that no exception can be taken to it.

8. On a reference made to him, by the petitioners, and respondent No. 1, the 2nd respondent entered appearance and gave an award dated 5-9-1995. He indicated the manner in which the liabilities of the firm should be discharged, and the remaining assets be distributed among the parties. In addition to that, he made provision of Rs. 5,00,000/-, each to the daughters of late Shaik Mohammed and a sum of Rs. 1,50,000/- to the son by name, Zaheer Ahmed. The two daughters and the son named above were not partners of the firms.

9. In the suit filed by the petitioners herein for making the award as the rule of the Court, the 1st respondent raised an objection that the award cannot be received in evidence, much less made the rule of the Court, since it was not registered. Petitioners relied upon the judgment of the Supreme Court in S.V.

Chandra Pandian's case (supra). The trial Court accepted the contention of the petitioners to the extent the award provided for dissolution and distribution of assets among the partners. However, it took the view that the award required registration, as regards the distribution of assets or making of provision for persons, other than partners. On finding that the award is inseparable, it dismissed the suit. Therefore, the only question that arises for consideration is, as to whether the award dated 5-9-1995, required registration.

10. This very question became the subject-matter of several judgments, including three Full Benches of different High Courts, and of the Supreme Court. The allotment of items of immovable property, through an award, in favour of various parties to arbitration, was examined, with reference to Section 17 of the Registration Act. A Full Bench of the Patna High Court in Seonarain Lal Vs. Prabhu Chand, held that an award of an Arbitrator becomes enforceable only when it is made rule of the Court, and till such time, it cannot be said to have created, declared, assigned, limited or extinguished the right, title or interest, in any parties. This was followed by the Full Bench of the Punjab and Haryana High Court in Sardool Singh Vs. Hari Singh and Others, .It was pointed out that by its very nature, an award is prone to be remanded for further consideration or varied or set aside by a Court, as and when applications are made u/s 17 or 30 of the Act, and axiomatically it must have to be registered on, as many times as it is remanded or where a fresh award is made.

11. A Full Bench of this Court in M. Venkataratnam and Another Vs. M. Chelamayya and Another, did not agree with the view expressed in the above judgments; and it was held that an award cannot be enforced or received in evidence, unless it is registered. In Satish Kumar and Others Vs. Surinder Kumar and Others, the Supreme Court held that the views taken by the Full Benches of Patna, and Punjab and Haryana High Courts do not represent the correct law. It was pointed out that an award, even if it is not made as the rule of the Court, has its own significance and binds the parties. Reference was made to Para 7 of Schedule-I to the Act.

12. A Division Bench of this Court in Indurthi Srinivasa Rao Vs. Indurthi Venkata Narasimha Rao and Another, held that if an award was not registered before the Arbitrators pronounced it, it cannot be registered at a subsequent point of time, since the Arbitrators become functus officio, once they sign the award. The net result would be that if for any reason an award dealing with items of immovable property, whose value exceeds Rs. 100/-, is not registered before it is pronounced, no legal consequences would flow out of it, much less, can it be made rule of the Court. The pronouncements, referred to above, are unequivocal and they hold the field as on today, and there cannot be any deviations from them. However, in view of the submission made on behalf of the petitioners, certain basic, practical and academic questions, which are ancillary in nature. But, they need to be adverted to, by the Supreme Court, as and when the occasion may arise.

13. For instance, the various contingencies provided for u/s 17 of the Registration Act such as, the creation, extinguishment, assignment of any rights, in an immovable property, can be effected only by a person, in whom, property vests. A party who is not vested with the corresponding rights in a property cannot be expected to transfer the same to others, or place any limitations on himself. The mere fact that the dispute in relation to an immovable property has been referred to an Arbitrator, does not create or vest any rights in the Arbitrator vis-a-vis the property. Therefore, a serious doubt persists as to how far an Arbitrator can convey, assign, or limit, the rights vis-a-vis such properties. The purport of Para 7 Schedule-I may be that, the parties to an Arbitration, shall have to arrange their mutual rights and obligations vis-a-vis the property, in the manner directed under the award and that they do not have any option to deviate from. The ultimate legal incidents of vestiture of rights, or the converse of it, has to take place, in accordance with the provisions of Transfer of Property Act, or other analogous enactments.

14. Secondly, the only basis for the Arbitrator to deal with the properties would be, the Arbitration agreement between the parties, or a reference made to him, by a Court. If an unregistered arbitration agreement, or an order of reference, can enable the Arbitrator, to create or extinguish the rights, in relation to an immovable property, which is the subject-matter of reference, a doubt arises as to whether it is not competent for him to allot such property to others, without registration. Put in jurisprudential terms, if vesting of property in an Arbitrator can take place without registration, the process of divesting must necessarily be possible through the same procedure.

15. It is once again reiterated that these are only academic aspects of the matter, which need to be discussed at appropriate levels.

16. The awards rendered by Arbitrators, in relation to dissolution of partnership firms stand on a different footing in the context of requirement of registration. Even where, some of the assets of the firm are items of immovable property and the award proposes to distribute them, in the legal parlance, such assets assume a different character. It is settled principle of law that if an item of immovable property is made part of the assets of a partnership firm, either through the process of contribution, by one of the partners, or by acquisition by the firm itself, it acquires and represents only its money value, and to that limited extent, it loses the character of immovable property. It was in this background, that the allocation of assets of a firm, on the eve of its dissolution was said to have not resulted in transfer, or creation of interests vis-a-vis any immovable property.

17. In S.V. Chandra Pandian's case (supra), the Supreme Court has undertaken extensive discussion on this aspect. The entire scheme of the Indian Partnership Act was analyzed and the operation of Section 17 of the Registration Act vis-a-vis, in the context of distribution of assets of a dissolved firm was discussed. After referring to the decided cases on the subject, the Supreme Court summed up the law as under:

[R]egardless of its character, the properly brought into stock of the firm or acquired by the firm during its subsistence for the purposes and in the course of the business of the firm shall constitute the property of the firm unless the contract between the partners provides otherwise. On the dissolution of the firm each partner becomes entitled to his share in the profits, if any, after the accounts are settled in accordance with Section 48 of the Partnership Act. Thus in the entire assets of the firm, all the partners have an interest, albeit in proportion to their share, and the residue, if any after the settlement of accounts on dissolution would have to be divided among the partners in the same proportion in which they were entitled to a share in the profit.

18. As regards the applicability of Section 17 of the Registration Act, the Hon'ble Supreme Court observed as under:

[I]t becomes obvious that the residue would in the eye of law be movable property i.e., cash, and hence distribution of the residue among the partners in proportion to their shares in the profits would not attract Section 17 of the Registration Act. Viewed from another angle it must be realized that since a partnership is not a legal entity but is only a compendious name each and every partner has a beneficial interest in the property of the firm even though he cannot lay a claim on any earmarked portion thereof, as the same cannot be predicted. Therefore, when any property is allocated to him from the residue, it cannot be said that he had only a definite limited interest in that property and that there is a transfer of the remaining interest in his favour within the meaning of Section 17 of the Registration Act.

19. The trial Court also recognized the applicability of this principle and there was no serious objection from the 1st respondent insofar as the award related to the distribution of the assets of the firm among the partners. The only ground on which the award was set aside was that, the 2nd respondent made provision for non-partners.

20. As observed earlier, basically, the two firms, in question, were the concerns of the family. Further, it is not uncommon that assets of the firm are allotted to non-partners also. For instance, an item of property can be allotted to a creditor to liquidate the liability of the firm. Once the Supreme Court held in categorical terms that all the assets of the firm assume the characteristic of movable property, the question of insistence on compliance with Section 17 of the Registration Act, for distribution of such assets does not arise. It is not as if the assets would be movable property, if allotted to partners, and immovable property, if allotted or made available to non-partners. As long as the same characteristic remains, the person, to whom they are allotted, pales into insignificance.

21. Section 48 itself provides for distribution of assets, not only to partners, but even to others, such as creditors. In fact, the assets can be distributed among the partners only after clearing the liabilities of the firm towards third parties. If

the reasoning adopted by the trial Court is to be accepted, the award, dealing with the dissolution of a firm, cannot provide for allotment of any assets to the creditors or other persons, whom the firm owes liability. That was never the object, either in enacting Section 17 of the Registration Act, Section 48 of the Partnership Act or Section 17 of the Arbitration Act.

22. More than a decade had already elapsed. The remedy, which was chosen to be a speedier and effective one, had proved to be otherwise. This Court would have considered the feasibility of making award as the rule of the Court straightaway, but for the fact that the trial Court did not address itself to the merits of the matter, touching on Sections 17 and 30 of the Act.

23. For the foregoing reasons, the C.R.P. is allowed, and the order under revision is set aside, and the matter is remanded to the trial Court, for disposal with specific reference to Sections 17 and 30 of the Arbitration Act, 1940, without entertaining any objection as to compliance with Section 17 of the Registration Act. It shall proceed to adjudicate the matter on day-to-day basis. There shall be no order as to costs.