

(1975) 07 AHC CK 0033

In the Allahabad High Court

Case No : First Misc. Civil Appeal No. 6 of 1968 and F.A.F.O. No. 52 of 1971

Smt. Rampa Devi and Others

APPELLANT

Vs

Bishambhar Nath Puri and Others

RESPONDENT

Date of Decision : 24-07-1975

Acts Referred:

Arbitration Act, 1940 — Section 20

Partnership Act, 1932 — Section 58, 58(3), 58(4), 69

Citation : AIR 1976 All 19

Hon'ble Judges : T.S. Misra, J; R.L. Gulati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T.S. Misra, J.—This appeal arises in the following circumstances.

2. The appellants, before instituting the suit which has given rise to this appeal, had filed an application u/s 20 of the Arbitration Act for appointment of an arbitrator in terms of the arbitration agreement contained in the deed of partnership. That application was rejected by the Court below on the ground that the partnership deed was not duly registered u/s 58 of the Indian Partnership Act and therefore the petition was barred by the provisions of Section 69 of that Act. The matter was brought to this Court in appeal. The order of the court below was upheld with the observations that the petition u/s 20 was not maintainable because of the bar created by Section 69 of the Act. The plaintiff-appellants thereafter filed the suit for rendition of accounts and. In the alternative, for dissolution of the firm in which the defendants were the partners. The defendants before filing the written statement filed an application u/s 34 of the Arbitration Act for stay of the suit on the ground that there subsisted an arbitration agreement between the parties whereunder the matter in dispute should have been referred to arbitration and that the defendants had been ready and willing to refer the matter to arbitration on the date of the institution of the suit and were still ready and willing to do so. In reply to that application the

plaintiffs stated, inter alia, that "if the defendants are still ready to get the dispute decided through the forum of arbitration, the plaintiffs agree that in this very suit an application be made u/s 21 of the Arbitration Act and get the dispute decided by the arbitrator appointed by this Hon"ble Court". It was also urged before the Court below that in view of the decision given in the petition u/s 20 of the Arbitration Act, the arbitration agreement was void and unenforceable. Hence the defendants were not entitled to invoke the provisions of Section 34 of the Arbitration Act. In support of their contention they had placed reliance mainly on the decision of this Court given in their petition u/s 20 of the Arbitration Act. The court below did not accept that contention and held that the arbitration agreement was not void but was valid. Since it did not find that the defendants were not ready and willing to go in arbitration or that the defendants had taken part in the proceedings before filing an application u/s 34 of the Arbitration Act, the court below exercised its discretion in staying the suit by its impugned order. The plaintiffs have now come up to this court in first appeal.

3. For the appellants it was urged that the arbitration agreement was void inasmuch as the partnership deed which contained the clause relating to arbitration had not been registered u/s 58 of the Partnership Act. We are unable to accept this contention. It is not mandatory that all partnership agreements must be got registered u/s 58 of the Partnership Act failing which they would be void. A partnership agreement may be got registered and may not be got registered. The registration of the partnership agreement becomes relevant only when a suit to enforce a right arising from a contract or conferred by the partnership Act is instituted in a court by or on behalf of a person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in a firm. However, in certain matters the registration of the partnership may not be necessary. As provided by Sub-sections (31 and (4) of Section 69 of the Partnership Act if a suit or a claim or a set off does not exceed Rs. 800/- in value, it would not be necessary to have the partnership deed registered before maintaining the suit. Similarly, if the suit is instituted for accounting or dissolution of the firm, it would not be necessary to have the partnership registered before filing the suit. In other cases as mentioned in Sub-sections (1) and (2) of Section 69 of the Act, the registration of the partnership deed would be necessary, otherwise, the suit would not be maintainable. In the instant case, the plaintiffs had commenced the proceedings for rendition of accounts. The case, therefore, falls within the ambit of Sub-section (3) of Section 69 and for that purpose, the non-registration of the partnership deed would not be a hindrance to the maintainability of the suit. It is thus quite manifest that non-registration of a partnership deed must not invariably render the partnership agreement invalid and void, nor would it render an arbitration agreement contained in the partnership deed void.

4. It was next contended that the plaintiffs had filed an application u/s 20 of the Arbitration Act before instituting the present suit and as the defendants had resisted that application, it was not necessary for the plaintiffs to give another

notice for arbitration before filing the present suit. This contention, in our view, is also meritless. True, it is that the plaintiffs had commenced an action u/s 20 of the Arbitration Act in which they failed mainly on the ground that the petition was barred by the provisions of Section 69 of the Partnership Act. but it was nowhere laid down that the arbitration agreement was void. It was merely held that because of the non-registration of the partnership deed, the remedy to file a petition u/s 20 of the Arbitration Act to enforce the arbitration agreement was not available. But this did not mean that the plaintiffs and the defendants could not refer the dispute to arbitration without the intervention of the court- They had agreed that "in case of any. dispute between the partners relating to partnership, the matter shall be referred to arbitration and the award of the arbitrator will be binding on all the partners." In terms of this agreement the parties thereto could appoint an arbitrator and refer the dispute to him. This they could do outside the court and without seeking any help of the court. The defendants pleaded in their application u/s 34 of the Arbitration Act that "even at the time of the commencement of the proceedings in the above noted suit and also at present the applicants are ready and willing to settle the dispute or disputes, if any, through arbitration as laid in the partnership agreement dated 23-10-1952". The plaintiffs having failed to give any notice to the defendants to appoint an arbitrator and to refer the dispute to an arbitrator so appointed, could not, in our view, resist the claim set up u/s 34 of the Arbitration Act by the defendants. In our view the court below did not commit any error in exercise of its discretion u/s 34 of the Arbitration Act in staying the suit.

5. No other point was urged.

6. In the result, this appeal fails and is, accordingly, dismissed. As none has appeared on behalf of the respondents, we make no order as to costs.