

APPELLATE CIVIL

Before Prem Chand Pandit, J.

KAILASH CHAND AND ANOTHER,—Appellants.

versus

NAND LAL PUTLA AND OTHERS,—Petitioner.

First Appeal from Order No. 105 of 1968.

November 9, 1970.

Arbitration Act (X of 1940)—Sections 6, 8 and 33—Partnership deed containing an arbitration clause—Death of a partner—Whether discharges the arbitration agreement—Party claiming a particular dispute not referable to arbitration—Such claim—Whether has to be decided by Court itself and not to be referred to the arbitration.

Held, that where a partnership deed contains an arbitration clause, on the death of a partner of the partnership, the arbitration agreement is not discharged. It is enforceable both by and against the legal representatives of the deceased. Section 6 of Arbitration Act is quite clear on this point and it says that an arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representatives of the deceased. (Para 15)

Held, that when a party claims that a particular dispute cannot be referred to arbitration, because it is outside the arbitration agreement, it is for the Court to decide that matter and not leave it to the Arbitrator to pronounce on the same. It is only after the Court comes to the conclusion that the dispute can in law be referred to the Arbitrator for decision, the same can then be so referred. (Para 17)

First Appeal from Order of the Court of Shri R. D. Aneja, Sub-Judge, Ist Class, Panipat, dated 3rd April, 1968, dismissing the application with no order as to costs.

ROOP CHAND AND S. S. MAHAJAN, ADVOCATES, for the appellants.

R. K. AGGARWAL, ADVOCATE, for Respondent No. 2.

JUDGMENT

PANDIT, J.—(1) This order will dispose of First Appeal from Order, No. 105 of 1968 and Civil Revision No. 568 of 1968. Both these cases have arisen out of the following facts:—

(2) One Som Nath, Advocate of Panipat, District Karnal, is stated to have given all his property by a will to the Punjab

University after disinheriting his widow Shrimati Raj Rani. The University is said to have obtained a probate also regarding the same. It is alleged that before he died, he was carrying on some farming business in village Urlana Khurd, Tehsil Panipat, along with Kailash Chand Madan Mohan and Nand Lal as his partners. A deed of partnership was also said to have been executed on 22nd June, 1962. Some dispute regarding the settlement of accounts of crops from Kharif 1962 to Rabi, 1964, arose amongst the partners. As there was an arbitration clause No. 16 in the deed of partnership, the said dispute was referred to one Sher Singh, Arbitrator, who gave his award on 11th June, 1964. That award was made a rule of the Court on the next day, viz., 12th June, 1964. On 31st October, 1964, Som Nath died. On 4th November, 1965, Kailash Chand and Madan Mohan made a petition under section 8 of the Indian Arbitration Act, 1940, hereinafter referred to as the Act, for the appointment of an Arbitrator under clause 16 of the partnership-deed for the settlement of accounts regarding the crops from Kharif 1964 to Rabi 1965. In this petition apart from Nand Lal partner, the legal representatives of Som Nath, including the Panjab University, were made respondents. During the pendency of this petition, an application under section 33 of the Act was made by the Punjab University on 26th April, 1966, to the effect that as Som Nath had died, the partnership-deed, which contained the arbitration clause, came to an end on his death and no Arbitrator could be appointed for settling a dispute regarding the period subsequent to his death, because such a dispute would be outside the arbitration agreement. It was also said that the alleged partnership-deed was a faked document and was never acted upon. The prayer in the application was that the arbitration agreement be declared as invalid and inoperative.

(3) It may be stated that Nand Lal, also filed an application under section 33 of the Act on somewhat similar lines.

(4) The Punjab University and Nand Lal, filed their respective replies to the petition under section 8 of the Act put in by Kailash Chand and Madan Mohan. The stand taken by the University therein *inter alia* was that it was a corporate body and, therefore, not bound by the arbitration clause in the partnership-deed.

(5) In the reply filed by Kailash Chand and Madan Mohan to the applications under section 33 of the Act, it was mentioned that

the partnership business was actually transacted under the terms and conditions laid down in the deed of partnership which was valid and binding on the parties, and further that the arbitration clause there in was enforceable at law.

(6) The following issues were framed in the applications under section 33 of the Act:—

- (1) Whether the partnership-deed which contains the arbitration clause was a sham transaction and was not intended to be acted upon in the circumstances given in the petition ?
- (2) Whether the partnership-deed is bad for the reasons contained in para 2 of the petition ?
- (3) Whether the signatures of Nand Lal were obtained on the partnership-deed under undue influence as alleged in the petition and if so to what effect ?
- (4) Whether the Arbitration Clause is ambiguous and if so to what effect ?
- (5) Whether on account of death of Som Nath, the matter cannot be referred to arbitration if it is held there is an arbitration clause which could be enforced in his life time ?

(7) Both these applications were decided earlier that is, on 9th January, 1968. Both of them were dismissed and it was held that the partnership-deed containing arbitration clause was not a sham transaction that the said deed was not bad on any account that the arbitration clause contained therein was not ambiguous, that the signatures of Nand Lal on the said deed were not obtained under undue influence and that the question whether on account of the death of Som Nath, the matter in dispute could be referred to arbitration or not would be decided in the petition under section 8 of the Act filed by Kailash Chand and Madan Mohan.

(8) Against this decision, the Punjab University has filed Civil Revision No. 568 of 1968 in this Court.

(9) In the petition under section 8 of the Act, the following issues were framed :—

- (1) Whether on account of death of Som Nath, the matter cannot be referred to Arbitrator as alleged ?

- (2) Whether this application under section 8 of the Arbitration Act is not maintainable in view of the fact that the Punjab University respondent is a corporate body and created under a statute as alleged?"

(10) This petition was dismissed by the same trial Judge on 3rd April, 1968. He held that the petition under section 8 was not maintainable in view of the fact that the Punjab University was a corporate body created under a statute and there was no provision in the University Act that the said University could enter into arbitration. If the power was not given to a corporate body under the statute creating it to refer matters in dispute to arbitration, it was not competent for the corporate body to do so. The said arbitration clause in the partnership-deed, according to the trial Judge, could not in any manner bind the University. On issue No. 1, his finding was that the question whether on account of the death of Som Nath, the matter could be referred to an Arbitrator or not would be decided by the Arbitrator himself.

(11) Aggrieved by this decision, Kailash Chand and Madan Mohan have filed the First Appeal from Order No. 105 of 1968 in this Court.

(12) As regards Civil Revision No. 568 of 1968, it may be stated that the finding of the trial Judge on issues Nos. 1 and 3 are pure findings of fact recorded after appraisal of evidence. The said findings being not erroneous in any way, cannot be challenged in a revision petition. As regards issues Nos. 2 and 4, it could not be pointed out by counsel as to how the partnership-deed was bad in law and how the arbitration clause in the said deed was ambiguous in any manner. It is, therefore, not possible to assail the findings in these issues as well. Coming to issue No. 5, it was stated by the learned Judge that the counsel for both the parties had conceded before him that the said issue did not arise in the proceedings in an application under section 33 of the Act and the appropriate stage for deciding that issue would be when the petition under section 8 filed by Kailash Chand and Madan Mohan would be taken up. The finding on that issue was, therefore, left open by the learned Judge. Under these circumstances, no case has been made out for my interference with the order of the trial Judge. The revision petition (Civil Revision No. 568 of 1968) is, accordingly, dismissed, but with no order as to costs.

(13) Now coming to First Appeal from Order No. 105 of 1968, a preliminary objection was raised by the learned counsel for the Panjab University, that no appeal was competent against an order dismissing the petition under section 8 of the Act.

(14) Learned counsel for the appellants conceded this point and prayed that the First Appeal from Order may be treated as a Civil Revision and I do so accordingly.

(15) The finding of the trial Judge on issue No. 2 is, in my view, incorrect in law. Som Nath, the predecessor-in-interest, had entered into a partnership and the deed contained the arbitration clause. On his death, the arbitration agreement could not be said to have been discharged and it was enforceable both by and against the legal representatives of the deceased. Section 6 of the Act is quite clear on this point and it says that an arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representatives of the deceased. That being so, the petition under section 8 filed by Kailash Chand and Madan Mohan, against the Panjab University would be maintainable, even though the said University was a corporate body and created under a statute. This decision was not seriously contested by the counsel for the University. The finding of the trial Judge on issue No. 2 is, consequently, reversed.

(16) As regards issue No. 1, the position taken up by the Panjab University was that the dispute regarding the settlement of accounts for the crops of Kharif 1964 to Rabi 1965, could not be referred to arbitration, because, it related to a period after the death of Som Nath and, therefore, it was outside the arbitration agreement. The trial Judge repelled this contention because he was of the opinion that in an application under section 8 of the Act, the Court was concerned only with regard to the appointment of an Arbitrator and it would be for him to decide whether or not certain dispute related to the affairs of partnership business. The learned Judge observed that the death of Som Nath, by itself did not mean the revocation of the arbitration agreement. According to him, there was no point in holding as to which dispute related to the affairs of the partnership business and for that purpose the Arbitrator was the sole Judge.

(17) After hearing the counsel for the parties, I am of the opinion that the view taken by the learned Judge was erroneous in law. When a party claims that a particular dispute cannot be referred to arbitration, because it related to a period after the death of a partner and it was, therefore, outside the arbitration agreement, it is for the Court to decide that matter and not leave it to the Arbitrator to pronounce on the same. It is only after the Court comes to the conclusion that a particular dispute can in law be referred to the Arbitrator for decision that the same can be so referred. The view that I have taken is supported by a decision of the Madhya Pradesh High Court in *Hindustan Steel Ltd., Bhilai Steel Project, Bhilai, District Durg. v. M/s. Kaushal Construction Company, Architects Engineers and Contractors, Durg. M.P. (1)*, and there it was held that where one of the parties contended that a certain dispute, which was placed before the Arbitrator, was outside the scope of the arbitration agreement, it was his right to have the question determined by the Court. I would, therefore, reverse the decision of the trial Judge on issue No. 1 and hold that it is for the Court to decide whether the dispute sought to be referred to arbitration for the period subsequent to the death of Som Nath, fell within the arbitration agreement and was covered by the partnership-deed. It is needless to point out that if any dispute is so covered, the same can be referred to arbitration.

(18) In view of what I have said above, I would direct the trial Judge to redecide issue No. 1 in the light of the observations made above. The revision petition is disposed of accordingly.

N. K. S.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

BADLU,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ No. 2806 of 1970.

November 9, 1970.

The Punjab Chaukidara Rules (1876)—Rules 11 and 42—The Punjab Laws Act (IV of 1872)—Section 39-A—The Punjab General Clauses Act

(1) A.I.R. 1966 M.P. 249.