

Shiv Kumar Jain Vs. Akshay Jain and Ors

Shiv Kumar Jain Vs. Akshay Jain and Ors

SooperKanoon Citation : sooperkanoon.com/30087

Court : Jharkhand

Decided On : Jan-16-2015

Appellant : Shiv Kumar Jain

Respondent : Akshay Jain and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI --- C.R. No. 26 of 2013 -----
Shiv Kumar Jain, S/o late Misrilal Jain, residing at Mineral House, 27 A, Camac Street, P.O and P.S. Camac Street Kolkata, West Bengal ... Petitioner Versus 1. Akshay Jain, S/o Late Ashok Kr. Jain residing at M.D. House, Amlatola, P.O. Chaibasa, P.S. Sadar, Dist. West Singhbhoom 2. The Branch Manager, Canara Bank Chaibasa Branch 3. The Branch Manager, Union Bank, Chaibasa Branch 4. Deven Chand Jain, S/o Misrilal Jain, residing at 10, Empire Estate, Sultanpur, P.O. Mehrauli, New Delhi 5. Tara Jain, W/o Late Ashok Kr. Jain residing at M.D. House, Amlatola, P.O. Chaibasa, P.S. Sadar, Dist. West Singhbhoom 6. Aayushi Jain, D/o Ashok Kr. Jain residing at M.D. House, Amlatola, P.O. Chaibasa, P.S. Sadar, Dist. West Singhbhoom Opposite Parties ---- CORAM : HON'BLE MR. JUSTICE AMITAV K. GUPTA --- For the Petitioner : M/s. S. Talukdev Sr. Advocate S.K. Dutta, Advocate S. Dasgupta, Advocate Indrajeet Sinha For the Respondent No.1 Mr. Rajiv Ranjan, Advocate For the Respondent No.3 Mr. P.A.S.Pati, Advocate For the Respondent No.4 Mr. Ananda Sen, Advocate -----

ORDER

1016/01/2015 The present Civil Revision application is directed against the order dated 28.08.2013 passed by the learned Sub Judge-1, Chaibasa in T.S. Case No. 12 of 2013, whereby the application dated 20.07.2013 filed by Shiv Kumar Jain, petitioner(defendant No.3 in the suit), under Section 5 read with Section 8 of the Arbitration and Conciliation Act, 1996 was dismissed and learned court refused to refer the case for arbitration.

2. The brief facts of the case are as under:- The opposite Party No.1, Akshay Jain (Plaintiff in the original suit) filed the suit against six defendants viz. The Branch Manager, Canara Bank, the Branch Manager, Union Bank, Shiv Kumar Jain, Deven Chand Jain, Tara Jain and Aayushi Jain, defendant Nos. 1 to 6 respectively, stating that Ashok Kumar Jain, the father of the plaintiff-Shiv Kumar Jain and Deven Chand Jain - defendant Nos. 3 and 4 were in mining business. The said business was carried out in the name of M/s. Misrilal Jain and Sons, a partnership firm. That they have executed a partnership agreement on 31.03.2004 having its Head Office at Chaibasa. The said firm has its accounts with Canara Bank, Chaibasa and Union Bank, Chaibasa. One of the partners- Ashok Kumar Jain i.e. father of the plaintiff died on 12.04.2013 and the plaintiff, Viz. Akshay Jain and the defendant Nos. 5 and 6 are his heirs. It is the case of the plaintiff that according to clause 17 of the partnership agreement dated 31.03.2004, the partnership shall not dissolve due to the death of a partner. The heirs of the deceased-partner shall be substituted in his place. Accordingly, the plaintiff and defendant Nos. 5 and 6 joined the partnership firm as partners on the demise of Ashok Kumar Jain. They send this information to Union Bank, Chaibasa and Canara Bank, Chaibasa. Union Bank, Chaibasa accepted the plaintiff as a partner of the firm and admitted him as its authorised signatory but Canara Bank, Chaibasa requested the plaintiff to produce the reconstituted partnership deed whereupon the plaintiff requested the defendant Nos. 3 and 4 for a reconstituted partnership deed for the firm so that it can be sent to different authorities but defendant No.3, instead of reconstituting the partnership deed, claimed that the living partners i.e. defendant Nos. 3 and 4 are the only partners of the partnership firm and took no steps to include the plaintiff in the partnership firm due to which Canara Bank, Chaibasa did not recognize him as a partner of the partnership firm and refused to allow him to operate the firms account in the absence of the

reconstituted partnership deed. The plaintiff, therefore, has an apprehension that defendant No. 3 will misuse the funds of the firm and wishes to transfer the same from Chaibasa to Kolkata, hence, the suit has been filed for a decree, declaring the status of plaintiff as a partner of the firm with the same rights, powers and liability as that of his late father Ashok Kumar Jain, in terms of partnership deed dated 31.03.2014; a decree directing the Canara Bank(defendant No.1) to recognise the plaintiff as a partner of the firm; a decree directing defendant No.3 to execute the reconstituted deed of partnership as per terms of partnership deed and for permanent injunction restraining defendant Nos. 1 and 2 from transferring any amount from any of the accounts of the partnership firm.

3. Defendant No.3-Petitioner appeared in the suit and filed an application on 20.07.2013 for sending the suit to the arbitrator under the Arbitration and Conciliation Act. The learned trial court, relying on the judgment passed in Sukanya Holdings Pvt. Ltd. Versus Jayesh H. Pandya and another, reported in 2003 AIR (SC) 2252, rejected the application and refused to send the suit to an arbitrator.

4. Heard the learned lawyer for the parties. The learned trial court has relied upon the judgment passed in the case of Sukanya Holdings Pvt. Ltd. Versus Jayesh H. Pandya and another, reported in 2003 AIR (SC) 2252 wherein, inter alia, it has been held as follows:- HELD: the relevant language used in Section 8 is in a matter which is the subject matter of an arbitration agreement Court is required to refer the parties to arbitration. Therefore, the suit should be in respect of ' a matter' which the parties have agreed to refer to, and which comes within the ambit of arbitration agreement. Where, however, a suit is commenced' as to a matter' which is outside the arbitration agreement and is also between some parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The words ' a matter' indicates that entire subject matter of the suit should be subject to arbitration agreement. It has been further held: It would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say subject matter of the suit, or in some cases bifurcation of the suit between parties, who are parties to the arbitration agreement, and others is possible. This would be laying down a totally new procedure not contemplated

under the Act. If bifurcation of the subject matter of a suit was contemplated the legislature would have used appropriate language to permit such a course. Since there is no indication in the language, implies that bifurcation of the subject matter of an action brought before a judicial authority is not allowed. Secondly, such bifurcation of suit in two parts- one to be decided by the arbitral tribunal and other to be decided by the Civil Court- would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such a procedure. It would also increase the cost of litigation and cause harassment to the parties. There is also a possibility of conflicting judgments and orders by two different forums. Reliance was placed on Section 89 C.P.C in support of the arguments that the matter should have been referred to arbitration. In my view, Section 89 C.P.C. cannot be resorted to for interpreting Section 8 of the Act as it stands on a different footing and it would be appreciable even in cases where there is no arbitration agreement for referring the dispute to arbitration. Further, for that purpose, the court has to analyse the condition contemplated under Section 89 of the C.P.C and even if application under Section 8 of the Act is rejected, the court is required to follow the procedure prescribed under the said Section.

5. Learned counsel for the petitioner has referred to the judgment passed in Chloro Controls India Pvt. Ltd. Versus Severn Trent Water Purification Inc, reported in 2013(1) SCC641 Having gone through the said judgment, it transpires that the facts of the case are different and not relevant in deciding the instant matter. Further, judgment of Sukanya Holdings Pvt. Ltd. (supra) has not been distinguished. In the said case, the group of Companies Doctrine has been applied whereby an arbitration agreement entered into by a company, being one within a group of companies, can bind its non-signatory affiliates or sister or parent concerned, if the circumstances depict, that the mutual intention of all the parties was to bind both the signatory and non-signatory affiliates, but in the instant case suit has also been filed against the Bank, which is not a signatory to the partnership agreement.

6. In the instant case, the petitioner has prayed to send the suit for arbitration where the Bank is a party and relief has also been claimed by the plaintiff against

them. Further, the petitioner has not accepted the plaintiff as a partner under the partnership agreement. Therefore, considering the facts and circumstances of this case, the court is of the view that in such a situation, the learned trial Judge has rightly appreciated the materials on record and concluded that the disputes raised in the suit are not fully covered by the provisions of Clause 19 of the partnership deed dated 31.03.2004 because Canara Bank and Union Bank, Chaibasa are also a party to the plaintiff's suit, whereas they are not signatories to the partnership agreement and the entire relief prayed for by the plaintiff does not come under the matters that can be referred for arbitration.

7. On perusal of the findings recorded by the court below, it appears that no irregularity or illegality has been committed by the court below while passing the said order rather the court below has rightly considered the materials on record and refused to send the suit for arbitration. The subject matter of suit does not fall within the purview of arbitration agreement. Therefore, in the opinion of this court, no interference is called for in the impugned order.

8. In the result the present Civil Revision application is devoid of merit and it is hereby dismissed. (Amitav K. Gupta, J.) Biswas

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com