

Pran Nath Pushkarma Vs. Madan Mohan

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Court : Delhi

Decided On : May-28-1975

Reported in : 1975RLR427

Judge : Prithvi Raj, J.

Acts : [Arbitration Act, 1940](#) - Sections 34

Appeal No. : Interim Application Appeal No. 257 of 1964 and Suit Appeal No. 386 of 1972

Appellant : Pran Nath Pushkarma

Respondent : Madan Mohan

Advocate for Pet/Ap. : Rameshwar Dayal,; A.N. Parekh and; M.L.Varma, Advs

Judgement :

Prithvi Raj, J.

(1) This is defendant No. 1's application under section 34 of the Arbitration Act (herein called 'the Act') seeking stay of the suit on the ground that deed of partnership dated 1st July, 1957, executed between the plaintiff and defendant No. 1 contains arbitration clause which is comprehensive and covers all disputes between the parties and that the suit having been filed in respect of matters covered by the arbitration clause is liable to be stayed.

(2) The case of defendant No. 1 is that he had taken no steps so far in the suit except for filing of the Vakalatnama by his counsel on 7th January, 1974. It is further averred that he was always ready and willing to submit any dispute to arbitration in accordance with law and that he is still ready and willing to submit to arbitration proceedings if such proceeding? would lie in law ; that the disputes and differences between the parties had in fact been referred to arbitration sometime in June/July, 1971 and that the suit had been filed with a view to avoiding the arbitration clause contained in the agreement.

(3) The plaintiff opposed the application alleging that the arbitration clause is vague and uncertain as appointment of the Arbitrator depends upon the mutual consent of the parties; that when disputes arose between the partners, they came together and the matter of referring the dispute to Arbitration in accordance with the terms of clause was considered. The partners, however were not agreeable on the appointment of one Arbitrator nor on the name of the Arbitrator to whom the dispute could be referred. Clause 12, the plaintiff avers, became inoperative from that point of time. Apart from the arbitration clause, it is averred, the partners agreed to refer their disputes to defendants 3 to 5 as Arbitrators. A mutual reference was made sometime in June, July, 197 and that in the premises it was wrong to say that the arbitration clause was still subsisting or that it is enforceable at the instance of one partner against the other. The plaintiff further contends that a written arbitration agreement was executed between the partners sometimes in June/July, 1971, referring the disputes to defendants 3 to 5. Proceedings continued before the Arbitrators. There were several sittings but the Arbitrators could neither bring about any amicable settlement between the parties nor deliver any award within a fixed period of four months. Neither party, it is alleged, applied for extension of time to the competent Court. The arbitration proceedings had thus become infructuous. The parties had not been able to agree upon the appointment of any arbitrator which necessitated the filing of the present suit.

(4) The case of the plaintiff is that all efforts of getting the disputes settled by arbitration had failed finally. The arbitration clause no longer subsisting, no case for reference to arbitration arises.

(5) Defendant No. 1 in his rejoinder averred that the arbitration clause was neither vague nor uncertain or that the arbitration clause had become inoperative. If the partners were unable to agree on the appointment of one Arbitrator it was open to the plaintiff to take steps under section 20(4) of the Act. The plaintiff, it is averred, had suppressed material facts inasmuch as while admitting the reference of disputes to three Arbitrators on or about June/ July, 1971, the plaintiff had not stated that vide agreement dated 30th September, 1971, all disputes had been settled amicably between the parties and a deed of dissolution was executed on 30th September, 1971. The stamp paper, it is averred, on which the said deed of dissolution was written was purchased by the plaintiff and he signed the said deed of dissolution in the presence of the witnesses. It was stated that defendant No. 1 was still ready and willing to submit to arbitration proceedings if such proceedings lie in law. It was averred that the arbitration clause was is available to the parties at all times and the plaintiff having failed to take steps in accordance with law, the suit was liable to be stayed.

(6) Clause 12 of the partnership deed executed .between the partners reads as under :-

'THAT in case of any dispute arising between the partners, none of the partners shall be allowed to go to the court of law, but the same shall be referred to an Arbitrator appointed mutually, whose decision shall be binding upon all the partners.'

(7) This clause, however, was substituted by a subsequent agreement dated 29th June, 1971, Exhibit P/I, recording that serious differences had arisen among the partners and that all of them wanted to dissolve the partnership immediately and appointed S/Shri Puran Singh ji Arora, Krishan Gopal Vaidya and L.R. Chopra as arbitrators to hear and to decide their case with the stipulation that the decision of the arbitrators will be final. It is, therefore, evident that clause 12 of the partnership deed stood revoked and was substituted by new agreement, Exhibit P/I. It is consequently not open to the applicant to contend that clause 12 of the partnership deed exists and that in compliance with the said clause the disputes are liable to be referred to arbitration.

(8) Having superseded the earlier arbitration agreement by accepting the new agreement, Exhibit P/I it is futile to contend that re-course to the provisions of the earlier arbitration agreement could be resorted to.

(9) A party applying under section 34 of the Act has to state in the application the existence of the dispute which it requires to be referred to arbitration. (See Dhaman Anand and another V. Him Lal and others 1973 P.L.R. 929 and Manohar Lal and another v. Moti Lal and another 1974 P.L.R. 251.

(10) In Anderson Wright Ltd. V. Moran and Co. : [1955]1SCR862 , it was observed that in order that a stay may be granted under section 34 of the Act it is necessary, among other conditions, to fulfill the following condition, namely, that a party applying for stay 'should satisfy the court not only that he is but also was at the commencement of the proceedings ready and willing to do every thing necessary for the proper conduct of the arbitration.'

(11) In the instant case the deft. No. 1 placed on record photostat copy of deed of dissolution dated 30th September, 1970, Exhibit P/2, alleging that the parties had already dissolved the partnership which is witnessed by Krishan Gopal and Puran Singh Aroura to whom the disputes were referred vide Exhibit P/I, resulting in accord and satisfaction of the arbitration agreement. If that be so, obviously no dispute subsists between the parties which required to be referred to arbitration. Besides, the dispute now raised by this suit is clearly outside the ambit of arbitration clause.

(12) The respondent having failed to specify the points of dispute required to be referred to arbitration and having failed to show that not only he is willing but was also ready and willing to refer the said points of dispute to arbitration, in view of my discussion noted above, the application fails and is hereby dismissed.