

Krishan Kumar Vs. Knitting Industries and ors.

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Court : Delhi

Decided On : Feb-01-1972

Reported in : AIR1973Delhi37; ILR1972Delhi677

Judge : Hardayal Hardy, C.J. and; Prakash Narain, J.

Acts : [Partnership Act, 1932](#) - Sections 19; [Arbitration Act, 1940](#) - Sections 2

Appeal No. : First Appeal No. 28 of 1971

Appellant : Krishan Kumar

Respondent : Knitting Industries and ors.

Advocate for Def. : Shri. B.D. Dhawan

Advocate for Pet/Ap. : K.C. Dua, ; B.D. Dhawan,; K.R. Chaudhary and;

Judgement :

Hardayal Hardy, C.J.

(1) These are two appeals viz. Fao (OS) 28 of 1971 and FAO(OS) 29 of 1971, against an order made by a learned Single Judge of this Court. As both these cases were decided by the same judgment two separate appeals have been filed by Shri Krishan Kumar who was respondent No. 4 before the learned Single Judge and is appellant before us.

(2) The facts are not in dispute. By an instrument of partnership dated 1st April 1967, a partnership firm in the name of Beli Ram Vinod Kumar was constituted. Smt. Kamla Kapur, Shri Vinod Kumar and Shri Sat Pal Mehra were the three partners each having a share of 25 per cent, 25 per cent and 50 per cent. The firm Beliram Vinod Kumar had some dealings with two other firms, namely, Messrs Knitting Industries and Sudershan Sewa Trust. Both these firms belong to Amritsar and claim money to be due to them by the firm Beliram Vinod Kumar. Eventually on 25-10-1967 an agreement referring the disputes to arbitration was executed by these two firms in both the cases on the one hand and the firm Beliram Vinod Kumar acting through Vinod Kumar respondent on the other. In the said agreement respondent No. 4 who was not a partner in the firm Beliram Vinod Kumar on the date of the agreement, stood as a guarantor of the debt in dispute and joined in the reference to arbitration.

(3) Vinod Kumar, respondent No. 2, appeared before the arbitrator on behalf of the firm and eventually on 27th October 1967 an award was made in each case. In the first case (Suit No. 25A of 1968) the award directed payment of Rs. 30,513.00 in one lump-sum against the firm Beliram Vinod Kumar and in the second case (Suit No. 30A of 1968) the award directed payment of Rs. 60,275.00 in Installments mentioned in the award. The award was eventually filed by the arbitrator in both the cases. In the first case (Suit No. 25A of 1968) the award was made a rule of the court and a decree followed the same on 16th April 1968 while in the second case a decree was passed on 31st May, 1968.

(4) Respondent No. 1, i.e. Sudershan Sewa Trust, was represented before the learned Single Judge in the proceedings and the firm Beliram Vinod Kumar was represented by a counsel appointed by Vinod Kumar, respondent No. 2. No notice of the filing of the award was however issued to Smt. Kamla Kapur and respondents 2 and 3 personally.

(5) In the second case, execution of the decree was taken out by respondent No. 1 where upon Smt. Kamla Kapur filed two sets of objections on 29th January 1969 under Section 33 of the Arbitration Act challenging the validity of the award in both the cases. The main ground of objection raised by her was that Vinod Kumar had

no authority either express or implied to refer the dispute to arbitration under the agreement of reference and as such the award did not bind Smt. Kamla Kapur and other partners of the firm. In any view of the matter, so far as Smt. Kamla Kapur and the other respondents were concerned it did not bind them at all, in particular as they had no knowledge of the arbitration proceedings and no notice of the filing of the award had been issued to them and so the decree of the court did not bind them.

(6) Respondent No. 1 in both the cases contested the application and it was alleged that Smt. Kamla Kapur had acquiesced in the arbitration proceedings and in the award and Vinod Kumar had ample authority to make the reference to arbitration and as such the award was binding on her. An objection was also raised against the competence of Smt. Kamla Kapur to move the petition. Respondents 2 and 4 filed affidavits in opposition but later on they absented and proceedings were taken ex-parte against them. Similar objections were also taken by respondent No.3 and it was urged on his behalf that reference to arbitration did not bind him nor was the award obtained against him or his firm in which he was a partner, enforceable against them. It was further urged that the dealings between the parties in respect of which the award was made related to a business which was anterior in time to the business of the firm Beli Ram Vinod Kumar in which he was a partner.

(7) Several issues were framed by the learned Single Judge but the present appeal is confined to issue No.2 which reads as under:-

'IS the petitioner's contention correct that no valid agreement to refer to arbitration ever existed? OPR'

(8) The authority of a partner to refer a matter to arbitration on behalf of a partnership firm is contained in Section 19 of the [Partnership Act, 1932](#). The relevant clause reads as under :-

'19(1) Subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

(9) The authority of a partner to bind the firm conferred by this section is called his 'implied authority'.

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to:

(A) submit a dispute relating to the business of the firm to arbitration.

(10) There was no dispute that in the partnership deed no express authority was conferred on a partner to refer any disputes to arbitration on behalf of the firm nor was any usage or custom of trade alleged or proved on the record. In the absence of any usage or custom of trade there is no escape from the conclusion that Vinod Kumar acting as a partner of Beliram Vinod Kumar had absolutely no authority to bind the firm by referring a dispute to arbitration. In fact the counsel for the parties did not even rely on Section 19(1) of the Partnership Act and therefore the learned Single Judge rightly came to the conclusion that the award which had been obtained by respondent No. 1 in each case against the firm of Beliram Vinod Kumar through respondent No. 2 would not bind any of the other partners of the firm.

(11) Shri B.D. Dhawan, counsel for respondent No. 1 in each case however relied upon a decision of Achhru Ram J. in Hanuman Chamber of Commerce Ltd. Delhi v. Jassa Ram AIR 1949 Pun 46 and on a Full Bench decision of the Punjab High Court in Firm Khetu Ram Bashamber Dass v. Kasmiri Lal Rattan Lal .(2), Both these judgments have however no bearing on the case before us. In the first case the initial reference to arbitration on behalf of the firm was made by one of the partners without any express or implied authority from his other partners but the award was held binding on the firm because the other partners had ratified his act which was unauthorised at its inception and it was said that ratification need not be an express act or declaration and may be implied from conduct. It may be inferred from mere acquiescence or silence or inaction on the part of the such other partners. No such evidence has however been led in the present case, and there is nothing to suggest that there has been any acquiescence or silence or in-action on the part of the other partners. In the second case it was said that arbitration is a matter of agreement between the parties and if a person acts on behalf of another

in the hope that such a person will agree and ratify his action the contract would become valid and binding as between the parties as soon as the party concerned ratifies the act of his agent.

(12) But while the award did not bind the other partners so far as respondent No. 2 as executant of the agreement of arbitration and respondent No. 4 as a guarantor are concerned the award certainly binds them.

(13) It was urged on behalf of the appellant that if the foundation of the award falls the award and the decree following the same will not affect the right, title or interest of respondent No. 2 and since the liability of respondent No. 4 as a guarantor is co-extensive with the liability of respondent No. 2 the award would not effect him either.

(14) In this connection our attention was drawn to a decision of the Supreme Court in *Waverly Jute Mills Co. Ltd. v. Raymon & Co. (India) Pvt. Ltd.* : [1963]3SCR209 (3) and it was urged that a dispute as to the validity of a contract can be the subject-matter of an agreement of arbitration in the same manner as a dispute relating to a claim made under a contract. But such an agreement would be effective and operative only when it is separate from and independent of the contract which is impugned as illegal. Where however it is a term of the very contract whose validity is in question, it has no existence apart from the impugned contract and must perish with it. An agreement for arbitration is the very foundation on which the jurisdiction of the Arbitrator to act rests and where that is not in existence at the time when he enters on his duties the proceedings must be held to be wholly without jurisdiction.

(15) This case has no bearing on the facts before us. The dispute between respondent No. 1 in each case and the partnership firm had nothing to do with some other contract. The only dispute between the parties related to the arbitration agreement and respondent No. 2 was a party to that agreement. As a partner in the firm he purported to represent not only the firm but he also represented himself and so far as the firm is concerned, he had no authority to act on its behalf but there is nothing that prevented him from acting in his individual capacity. He was no doubt a party to that agreement and he admitted it to be so. In these

circumstances, he at least was bound by the arbitration agreement. He was also present not only before the arbitrator but also before the court. The award therefore did bind him.

(16) In *State of Maharashtra v. Dr. M. N. Kaul* : AIR 1967 SC1634 the question that arose for decision was with regard to the enforceability of a guarantee; and it was held that whether a guarantee is enforceable or not depends on the term on which the guarantor bound himself. To this there are some exceptions but the principle of law is that a guarantor cannot be made liable for more than what he has undertaken. In the present case the appellant who was guarantor made himself liable within the meaning of Section 126 of the Contract Act. His liabilities were co-extensive with that of the principal debtor. (See Section 128 of the Contract Act). It is no doubt true that the appellant stood as a guarantor for the firm but if respondent No. 2 is bound by the award the appellant was as much a guarantor for him as for the firm.

(17) The result is that there is no merit in this appeal. The decrees do not bind Smt. Kamla Kapur, Shri Sat Pal Mehra; and respondent No. 1 namely Sudershan Sewa Trust and Messrs Knitting Industries in each case are entitled to execute the decree against Shri Vinod Kumar and his guarantor Shri Krishan Kumar and of their properties. There will however be no order as to costs in these appeals.