

Sanjay Kumar Talwar Vs. Varsha Promoters and Developers and ors.

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Court : Delhi

Decided On : Apr-04-1994

Reported in : 1994IIAD(Delhi)187; II(1994)BC266; 1994(29)DRJ101

Judge : Sat Pal, J.

Acts : [Partnership Act, 1932](#) - Sections 43

Appeal No. : Suit No. 1345 of 1993

Appellant : Sanjay Kumar Talwar

Respondent : Varsha Promoters and Developers and ors.

Advocate for Pet/Ap. : Dharmesh Mishra and; A.S. Chadha, Advs

Judgement :

Sat Pal, J.

(1) On 10th February, 1994 when this suit came up for hearing, the learned counsel for the respondents submitted that the suit itself was not maintainable in view of the bar under Sub-sections (2) and (3) of Section 69 of the Indian [Partnership Act, 1932](#) (hereinafter referred to as 'the Act'). Accordingly the following preliminary issue was framed:-

'WHETHER the suit filed on behalf of the petitioner is maintainable?'

On that day the learned counsel for the parties also submitted that the said preliminary issue did not require any evidence and accordingly the case was listed for arguments on the said preliminary issue for 18th March, 1994, the date on which the arguments.

(2) Briefly stated, the facts of the case are that the petitioner entered into partnership with respondents 2 and 3 by way of partnership deed dated 22nd December, 1988 and the said partnership firm functioned in the name and style of M/s. Varsha Promoters & Developers (hereinafter referred to as 'the firm'). It may be pointed out here that it is the admitted case of the parties that the said partnership firm was not registered with the Registrar of firms. The partnership was at will and the partnership was to carry on the business of trading, developing, building and investing in lands, houses, buildings, etc. As per the allegations made in the petition, land was purchased by the firm at Sewaba Mauja, Khajuri, Tehsil & District Rewari admeasuring 294 Kanal, 19 Marias and the said land was to be developed by the firm. It is also stated in the petition that the partnership did not make any profit. It is further alleged in the petition that respondents 2 and 3 were fraudulently trying to sell the land at Rewari belonging to the firm for their own benefit and not turn the benefit of the firm.

(3) It is further stated in the petition that though the partnership stood dissolved, disputes and differences had arisen regarding the mode of settlement of accounts between the parties and regarding payments of debts and the profits to be paid to each partner after dissolution. In view of these allegations the petitioner filed the present petition under Section 20 of the Indian Arbitration Act, 1940 and in this petition it has been prayed that the following disputes be referred to arbitration in terms of the arbitration clause contained in the partnership agreement dated 22nd December. 1988:-

A)What is the mode of settling the accounts between the partners of M/s Varsha Promoters and Developers subsequent to its dissolution? b) What is the manner and mode in which assets of the firm should be applied in paying debts of the firm to third parties and in paying to each partner rateably what is due to him from the firm for advances? c) In what manner are the assets of the firm to be applied for

paying to each partner rateably what is due to him on account of capital? d) What amount is to be paid to the petitioner towards profits from the residue

(4) Mr. Chadha, title learned counsel appearing on behalf of the respondents submitted that the partnership firm of the petitioner and respondents 2 and 3 was unregistered partnership and in terms of Section 69 of the Act, no suit to enforce a right arising from a contract or conferred by this Act could be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm was registered and the person suing was or had been shown in the Register of Firms as a partner in the firm. The learned counsel. therefore, contended that that since in the present case the firm was admitted not registered with the Registrar of Firms, the petition filed by the petitioner was not maintainable. He further contended that the proceedings under the Arbitration Act were also covered under Section 69 of the Act in view of Sub-sections (2) and (3) of the said Section. In support of his submissions, the learned counsel relied on a judgment of the Supreme Court in Jagdish Chandra Gupta vs . Kajariu Traders (India) Ltd., : [1964]8SCR50 and two judgments of this Court in M/s. Paras Ram Darshan Lal vs . Union of India and unother, : AIR1979 Delhi135 and Jagat Mittar Saigal vs. Kailash Chander Saigal and another, .

(5) The learned counsel also contended that since no notice under section 43 of the Act for dissolution of the firm was served on the respondents, the present petition was not maintainable. In support of this submission, he placed reliance on the Supreme Court judgment in the case of Banarsi Das (supra).

(6) Mr. Mishra. title learned counsel for title petitioner submitted that title petitioner had mentioned four disputes in para 9 of the petition to be referred to the arbitration but in fact the petitioner wanted to confine his prayer turn reference of only one dispute to arbitration. namely, settlement of accounts consequent to the dissolution of partnership and to realisation of the amount due to him. The learned counsel drew my attention to Sub-section (3) of Section 69 of the Act and submitted that Sub-sections (1) and (2) were not applicable in a suit/proceedings for the enforcement of any right to sue for the dissolution of a firm or for accounts

on a dissolution of firm. He. thereforee, contended that since the petitioner was seeking the relief for reference of the disputes only for accounts of the dissolved firm and for realisation or the amount due to him consequent to die dissolution of partnership, the present petition was maintainable. In support of his contention he placed reliance on a judgment of the Supreme Court in Banarsi Das vs . Kanshi Ram and others, : [1964]1SCR316 and a judgment of this Court in the case of Jagat Mittar Saigal (supra) and a judgment of Madhya Pradesh High Court in Ram Kumar Aggawal vs . Ram Kishan Tayal Fouji and others, : AIR 1991 MP188

(7) I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have also perused title record. Admittedly the partnership firm is not registered with the Registrar of Firms and as such will be covered under Section 69 of the Act and a suit or proceeding is maintainable for the enforcement of a right to sue for the dissolution of a firm or for accounts of the dissolved firm in a case where the firm is not registered with the Registrar of firms. Since the learned counsel for title petitioner has stated that the petitioner is only seeking the relief for reference of the disputes with regard to the enforcement of his right for the dissolution of firm and for rendition of accounts of the dissolved Finns and for realisation of the amount due to him consequent to the dissolution of the firm, I am of the view that the case of the petitioner is fully covered under Sub-section (3)(a) of Section 69 of the Act and the present petition filed by die petitioner under Section 20 of the Indian Arbitration Act, 1940 is maintainable. The view I have taken finds full support from the judgment of this Court in the case of Jagat Mittar Saigal (supra) and from title judgment of the Madhya Pradesh High Court in the case of Ram Kishan Aggarwal (supra).

(8) As regards the contention urged on behalf of the learned counsel for the respondents that the present petition was not maintainable as no notice for dissolution of firm was served by the petitioner on the respondents, I do not find any merit in this contention. In the case of Banarasi Dass (supra) the Supreme Court has held that in case where the partnership was at will, one of the partners can call for the dissolution of the firm by giving a notice as provided in Sub-section (1) of Section 43 of the Act but if he does not choose to do that and wants to go to the Court turn effecting the dissolution of the firm, he will be bound by the

procedure laid down in Order Xx Rule 15 of the Code of Civil Procedure. In terms of Order Xx Rule 15 of the Code of Civil Procedure where a suit is for the dissolution of partnership, or taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved. From this it is clear that in case a notice as provided under Section 43(1) of the Act has not been served, the Court shall fix the date on which the partnership shall stand dissolved or be deemed to have been dissolved.

(9) In view of the above discussion the preliminary issue is decided in favor of the petitioner and against the respondents and it is held that the present petition filed on behalf of the petitioner is maintainable.

(10) Written statement and reply to is No.5740/93 on behalf of the respondents he now filed within four weeks. Replication/rejoinder and documents he filed within four weeks hereafter. List the case before the Joint Registrar for admission/denial of documents on 6th July, 1994. Interim order to continue till further orders.