

Hari Abdullah and anr. Vs. Safiullah

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Court : Kolkata

Decided On : Jun-02-1920

Reported in : 64Ind.Cas.204

Judge : Asutosh Mookerjee, Acting C.J. and ;Ernest Fletcher, J.

Appellant : Hari Abdullah and anr.

Respondent : Safiullah

Judgement :

Asutosh Mookerjee, Acting C.J.

1. This is an appeal by the plaintiffs in a suit for damages for breach of obligation by their partner. The plaintiffs and the defendant entered into a partnership contract on the 29th November 1912. Article 3 of the deed laid down that the business would be carried on for two years certain. Article 12 provided that none should carry on singly or jointly with others either in his own name or benami or in anywise join in or keep concern with similar business at Tinsukia. Article 18 finally stated that if any difference should arise between the partners or their respective representatives in regard to the construction of any of the articles therein contained or to any act or thing to be made or done in pursuance thereof or in regard to the rights or liabilities of any partner thereunder or to any other matter or things relating to the said partnership or the affairs thereof, such difference would be forth with referred to three arbitrators, one to be appointed by each of the

partners or parties, and the parties would be bound by the award of the majority of the arbitrators. The case for the plaintiffs is that in contravention of the terms of the agreement the defendant has started a shop. The Court of first instance decreed the suit. Upon appeal the District Judge has reversed that decision substantially on two grounds, namely, first, that there was no breach of obligation on the part of the defendant, because the shop in question was opened not merely by himself but also by his father, and, secondly, that the suit was barred under the provisions of Section 21 of the Specific Relief Act. In our opinion, the view taken by the District Judge cannot possibly be supported.

2. It is plain that there was a breach of duty on the part of the defendant. It was immaterial to the plaintiffs whether the shop opened by the defendant was carried on by himself or along with other people as partners. This consequently is no answer to the suit. As regards Section 21 of the Specific Relief Act, it is clear that the District Judge has overlooked paragraph 22 of Schedule II of the Code of Civil Procedure, which provides that the last thirty-seven words of Section 21 of the Specific Relief Act, 1877, shall not apply to any agreement to refer to arbitration or to any award, to which the provisions of the Schedule apply. The scope of that provision was explained by this Court in the case of *Dinabandhu Jana v. Durga Prasad Jana* 51 Ind. Cas. 80 : 23 C.W.N. 716 16 C. 1041 29 C.L.J. 399. It may be pointed out, however, that the terms of the arbitration clause really do not apply to the events which have happened, and further that an attempt made to have the matter settled by arbitration, was infructuous because the arbitrators declined to decide the controversy.

3. Finally, the respondent has contended that he was obliged to leave the partnership business on account of the misconduct of the plaintiffs and, that such justification on his part disentitles the plaintiffs to damages. In our opinions this does not furnish an answer to the claim of the plaintiffs. Sub-clause (9) of Section 253 of the Indian Contract Act provides that 'where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court.' If it be true that the defendant was treated in such a way by the plaintiffs as to make it impossible for him to continue to be a

member of the partnership, his remedy was under Sub-section 5 of Section 254, it was not open to him to act in contravention of the terms of the partnership deed.

4. The result is that this appeal is allowed, the decree of the District Judge set aside and that of the Court of first instance restored. This order will carry costs both here and before the District Judge.

Ernest Fletcher, J.

5. I agree.

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