

Court No. - 46

Case :- ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 71 of 2021

Applicant :- Ved Prakash Bali (Deceased)

Opposite Party :- M/S Balsons And 2 Others

Counsel for Applicant :- A.G.Karunakar

Counsel for Opposite Party :- Raj Kumar Khanna, Amber Khanna

Hon'ble Ashwani Kumar Mishra, J.

This petition has been filed under Section 11 of the Act of 1996 for reference of dispute to arbitrator. The parties are partners in a partnership firm which is not registered. The existence of arbitration clause in the agreement between the parties as well as accrual of dispute between them is not seriously questioned. However, what is questioned by the respondents with reference to para 14 of the counter affidavit is that the agreement not being registered, as is mandatorily required under Section 69 of the Indian Partnership Act, 1932, as such the prayer for appointment of arbitrator is misconceived.

In respect of such contention, Mr. Khanna appearing for the opposite parties places reliance upon the judgment of the Supreme Court in Jagdish Chandra Gupta vs. Kajaria Traders (India) Ltd AIR 1964 SC 1882, wherein the Supreme Court examined the import of term 'other proceedings' occurring in sub-section 3 of Section 69 of the Indian Partnership Act, 1932 to hold as under in para 9 of the judgment:-

"9. In our judgment, the words "other proceeding" in sub-section (3) must receive their full meaning untrammelled by the words "a claim of set-off". The latter words neither intend nor can be construed to cut down the generality of the words "other proceeding". The sub-section provides for the application of the provisions of sub-sections (1) and (2) to claims of set-off and also to other proceedings of any kind which can properly be said to be for enforcement of any right arising from contract except those expressly mentioned as exceptions in sub-section (3) and sub-section (4)."

Per contra, learned counsel for the applicant places reliance upon a subsequent judgment of Supreme Court in Umesh Goel vs.

Himachal Pradesh Cooperative Group Housing Society Ltd (2016) 11 SCC 313 wherein previous judgment of the Supreme Court in Jagdish Chandra Gupta (supra) has been referred to in para 27 of the judgment. The Supreme Court examined the distinctive features of the Arbitration Act of 1940 viz-a-viz the provisions contained under the Act of 1996 and upon elaborate discussion of the issues raised therein the Court proceeded to hold that the rigors of Section 69 of the Indian Partnership Act, 1932 would not be attracted in the proceedings initiated for appointment of arbitrator. The conclusions drawn by the Supreme Court in para 37 of the judgment holding Section 69 not to be applicable to arbitral proceedings clinches the controversy and is reproduced hereinafter:-

"37. Though the learned Senior Counsel for the appellant and the respondent referred to certain other decisions in support of their respective submissions, as we are fortified by our conclusion, based on the interpretation of Section 69 of the Partnership Act vis-à-vis the 1996 Act and the 1940 Act as well as supported by the decisions in Jagdish Chander [Jagdish Chander Gupta v. Kajaria Traders (India) Ltd., AIR 1964 SC 1882 : (1964) 8 SCR 50] and Kamal Pushp Enterprises [Kamal Pushp Enterprises v. D.R. Construction Co., (2000) 6 SCC 659] , we do not find any necessity to refer to those decisions in detail. Having regard to our conclusion that arbitral proceedings will not come under the expression "other proceedings" of Section 69(3) of the Partnership Act, the ban imposed under the said Section 69 can have no application to arbitral proceedings as well as the arbitration award. Therefore, the appeal stands allowed, the impugned judgment of the Division Bench is set aside and the judgment of the learned Single Judge stands restored. No costs."

Having considered the respective submissions, this Court finds that the issue raised by the opposite parties is no longer *res-integra* inasmuch as the authentic pronouncement of law on the issue settles the controversy raised herein. The provision contained in Section 69 of the Indian Partnership Act, 1932 requiring registration of partnership agreement would not thus be a bar to entertain proceedings under the Act of 1996 for appointment of arbitrator. Existence of arbitration clause as well as accrual of dispute between the parties is otherwise not in issue.

In that view of the matter, this petition filed for appointment of arbitrator is liable to succeed.

Let Mrs. Justice Vijay Lakshmi (Former Judge), R/o 30-B, Beli

Road, Near 'D' Park, New Katra, Allahabad (U.P.), Mobile No.9335401281, 6307134974, be appointed as an Arbitrator to enter upon the reference and adjudicate the dispute in accordance with provisions of Arbitration and Conciliation Act, 1996, subject to his consent in terms of section 11(8) of the Arbitration and Conciliation Act.

The Registry is directed to obtain consent of the proposed learned Arbitrator, in terms of Section 11(8) of the Act, within four weeks.

List after four weeks.

Order Date :- 17.11.2023

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