

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5631 OF 2014

Prashant Madhukar Rahane Vs. Ramakant Natthuji Zade & Ors.

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri R. M. Sharma Adv for petitioner.
Shri Girish Purohit Adv for respondent nos 1 to 3.

CORAM: A.S.CHANDURKAR J.

DATED: 24th JULY, 2015.

The petitioner is aggrieved by the order dated 13.08.2014 passed by the trial Court below Ex. 9 whereby the application moved by the present respondent nos. 1 to 3 for referring the dispute to an Arbitrator under Section 8 of the Arbitration and Conciliation Act, 1996 (for short the Act of 1996) has been allowed.

The petitioner is the original plaintiff who has filed suit for declaration that the shop premises in question has been purchased by him along with defendant no.1 in the name of partnership firm. A further declaration is sought as regards a share in the suit block with a prayer for partition and possession. In said suit the defendant no. 1 moved an application under Section 8 of the Act of 1996 for referring the dispute to an Arbitrator in terms of agreement between the parties and by the impugned order the trial Court has allowed the said application.

Shri R. M. Sharma, learned counsel for the the petitioner submitted that though the partnership firm was formed on 15.06.2004, the petitioner had retired from the partnership firm in view of deed of retirement executed on 28.12.2010. According to him, in the deed of retirement it was agreed that the petitioner would cease to be a partner while the firm would be continued by the remaining partners who are defendant nos. 1 and 2. He submitted that the arbitration clause would therefore apply only to the existing partnership and in relation to partnership business with which the petitioner was not concerned after his retirement. He further submitted that a specific case had been made out in the plaint that the shop in question though purchased in the name of the firm was actually funded by the petitioner. He, therefore submitted that after his retirement from the firm there was no question of referring the proceedings to an Arbitrator in terms of clause 17 of the retirement deed. He submitted that the trial Court however directed appointment of Arbitrator and while allowing the application also made various observations that the shop block had been purchased in the name of the partnership firm and was its property.

Shri G. Purohit, learned counsel appearing for respondent nos. 1 to 3 supported the impugned order. According to him after the partnership was formed on 15.06.2004, the shop block had been purchased on 11.05.2006. Even if the petitioner had retired on 28.12.2010, Clause 17 of the retirement deed covered disputes in relation to the partnership business. He also submitted that an identical clause was present in the deeds dated 15.06.2004 and 01.04.2010. He further submitted that the sale deed itself referred to the shop block being purchased in the name of the firm and it was the property of

the partnership. He referred to the provisions of Indian Partnership Act and placed reliance on the decision of the Supreme Court in *Agri Gold Exims Ltd. Vs. Sri Lakshmi Knits & Wovens and others* (2007) 3 Supreme Court Cases 686.

I have considered the respective submissions. The initial deed of partnership dated 15.06.2004 refers to the nature of business to be undertaken by the firm and also contains the clause for arbitration. The sale deed dated 11.05.2006 refers to the partnership firm as a party to the said document. The deed of retirement by which the petitioner ceased to be a partner also refers to the shop block in question and also contains an arbitration clause. The suit as filed is in respect of seeking rights of the present petitioner and also for partition and separate possession.

The trial Court while considering provisions of Section 8 of the Act of 1996 has considered the deeds dated 15.06.2004, 01.04.2010 and 28.12.2010. The consideration of the trial Court indicates that in terms of the arbitration clause mentioned in the deed, disputes were to be resolved by the arbitrator.

The Supreme Court in *Agri Gold Exims Ltd.* (supra) while considering provisions of Section 8 of the Act of 1996 has observed that the expression “dispute” has a wide amplitude and can cover disputes of all nature that have to be considered by the arbitrator. In the present case the partnership deed by which the partnership was formed refers to the business of the firm and the place where the business was to be conducted. The suit as filed also seeks declaration in respect of the property in question which presently stands in the name of the partnership firm. The trial Court in this backdrop was therefore justified in referring the dispute to be settled by the

arbitrator in terms of arbitration clause.

It is however to be noted that the trial Court in the impugned order has made certain observations as regards the status of the suit property and has observed that the same belongs to the partnership firm. While referring the dispute to arbitrator it was not necessary to record any such finding in that regard. Hence the following order is passed:

Order dated 13.08.2014 passed below Ex. 9 is confirmed. It is however clarified that observations made by the trial Court in para 10 of the order are only for the purposes of the referring the dispute to the arbitrator and both parties are free to canvass their respective stands in the arbitration proceedings. Writ Petition stands disposed of accordingly. No costs.

JUDGE

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