

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 84 of 2015 (O&M)
Date of Decision: 17.07.2015

Vinod Kumar Chadha

..Petitioner

versus

Vijay Kumar Chadha and another

..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Animesh Sharma, Advocate, for the petitioner.
Mr. Parveen Kumar Kataria, Advocate, for the respondents.
Mr. Hem Raj Bhardwaj, Advocate, for the applicants.

S.J.VAZIFDAR A.C.J. (Oral)

This is an application under section 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of the Arbitrator to adjudicate upon the disputes and differences between the parties.

2. The parties carried on business as partners in the firm name & style of '*Jagannath Om Parkash*' on the terms & conditions contained in the partnership deed dated 01.04.2007. Clause 15 of the partnership deed which contains the arbitration agreement reads as under:-

“15. That in case any dispute arises or shall arise between the partners or their legal heirs or representatives, the same shall be referred to arbitration under the provisions of Indian Arbitration Act, as amended upto date.”

3. The applicant had filed a suit before the Court of Additional Civil Judge (Senior Division), Amritsar for dissolution of the firm and rendition of accounts. The respondent filed an application under Section 8 of the Act which was allowed by an order and judgment dated 08.02.2013.

The learned Judge upheld the respondent's contention that the arbitration

agreement covers all the disputes in the suit between the parties and that nothing remains to be decided in the original action i.e. the suit. The learned Judge expressly stated that the suit relates to disputes with regard to the partnership concern of which the parties thereto are the partners.

4. Curiously, the respondent now contends that the disputes are not arbitrable. It was on the respondent's application under Section 8 of the Act that the parties were directed to have the disputes and differences in the suit referred to arbitration. I will presume that despite the same if infact the disputes are not arbitrable, it will be open to the respondent to raise the contention in the arbitration proceedings. As such, in any event, an action for dissolution and accounts of a partnership firm is arbitrable. If, while taking accounts, any claim is made, which an Arbitrator/Arbitral Tribunal does not have the jurisdiction to entertain, the contention can always be made in the arbitration proceedings and any challenge to the award, if necessary.

5. The present application clearly states the above facts including that the applicant seeks dissolution of the partnership and accounts. The contention that the application does not set out the disputes or the reliefs claimed is unsustainable.

6. It was then contended that this application filed under section 11(6) of the Act is not maintainable as the arbitration clause does not prescribe the procedure.

7. The applicant had by a notice dated 19.03.2013 communicated that he had appointed an Arbitrator and called upon the respondent to appoint an Arbitrator. The respondent failed to appoint an Arbitrator. Under sub Section (4) of Section 11 of the Act, the appointment must be made by the Chief Justice or any person or Institution designated by him upon the request of the parties. The respondents' contentions are, therefore, rejected.

7. The applicant in CAM No. 13714-CII of 2015 seeks to intervene. He is the brother of the parties to this application. He states that his rights would be affected in the event of any collusive award being made. The intervenor is not a party to the arbitration agreement. He is not a partner in the said firm and he has no concern with the firm. Needless to say that no award can ever effect the rights of a third party. Thus, whether the award is collusive or not, it would make no difference whatsoever to the rights of the intervenor. The parties to this application and to the arbitration proceedings cannot claim any rights whatsoever against the intervenor based upon the award. The award would be binding only between the parties to the arbitration proceedings.

9. In the circumstances, the application is allowed and Justice N.K.Sud, former Judge of this Court, is appointed as an Arbitrator on behalf of the respondents.

Civil Misc. Application No. 13714-CII of 2015 filed by the applicants for intervention is dismissed subject to the above observations.

17.07.2015
'ravinder'

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE