

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.2987 of 2008

Date of Decision.21.04.2016

Anmol Singh and others

.....Petitioners

Vs.

Lachman Dass and others

.....Respondents

Present: Mr. A.K. Jain, Advocate and
Dr. Aswani Kumar Bansal, Advocate
for the petitioners.

Mr. Yogesh Goyal, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J.

1. The revision petitioner was the applicant at whose instance an Arbitrator was appointed for considering the plea of dispute between two partners. The partnership had been executed between the petitioner and the respondent on 14.01.1983. The partnership deed contained reference to the fact that the capital investment to the properties shall remain as per the books of accounts and the shares in profit and loss shall be done equally at 50:50. Evidently, the distribution of profits was necessarily on the basis of the capital put in Clause 6 provided that the partners shall try to maintain equal investments.

2. As it turned out at the time when the matter came up for arbitration for dissolution of partnership, the petitioner had on the

books of account ₹8,04,141.85 towards his share of the capital and the respondent had a debit of ₹8,305.35. The Arbitrator made a list of assets and liabilities of the firm and passed an award allowing the petitioner to take over the firm in lieu of the share capital of ₹8,04,141.85 and directed the respondent to pay to the firm ₹15,176.05. The petitioner was also directed to pay under the liability of ₹1,11,523.25 to the Oriental Bank of Commerce, Nabha.

3. The respondent was aggrieved about the manner of dissolution carried out by the Arbitrator and he stated that the arbitral award had been passed without even following the procedure as to notice. It was also stated that the Arbitrator had completely mis-directed himself by taking the value of the land for the award passed on 28.10.1991 at the book value of the property in the year 1983. The similar valuation of the building at the book value of 1983 was contested by the petitioner as an invalid basis for dissolution of partnership and for rendition of accounts. The value of the machineries was also stated to be wrongly done on the book value and one of the items of the assets was not properly described, namely, it had been taken as though only tractor was available when there was also a trolley worth ₹30,000/-. In essence, the respondents' objection was the manner of reckoning of the accounts and the dissolution as ordered by the Arbitrator were erroneous and it amounted to a misconduct within the definition of Section 30 of the Arbitration Act of 1940.

4. The Court of 1st Instance rejected the plea that there had been no valid notice but found the contention raised by the respondent that the book value adopted by the Arbitrator and handing over the

entire assets to be retained in lieu of the capital were erroneous and set aside the award. The Appellate Court affirmed the same. It is against the concurrent findings of the two Courts below that the petitioner is before this Court to challenge the judgments of the two Courts below on the grounds: (i) The clause in the partnership deed itself provided that the capital investments of the partners shall remain as per the books of accounts and they must be understood as making possible a division of assets on the basis of book value. (ii) It is further contention that the Arbitrator was himself a Chartered Accountant and he knew the manner of drawing up accounts and if he had ultimately allowed for taking over the assets and liabilities of the partnership, his award cannot be challenged as in violation of Section 48 of the Partnership Act since a specific objection regarding the violation of Section 48 had not been taken before the Court to which an application for challenging the award was made. (iii) The counsel appearing on behalf of the petitioner would further contend that the applicability of Section 48 itself is not mandatory and it is always subject to contract between the parties. The counsel would argue that Clause 5 of the Arbitration that the capital investments of the partners shall be as per the book of accounts would constitute a contract to the contrary. The counsel would refer to me decisions that held that the Arbitrator's award cannot be challenged on ground that objection under Section 30 was not brought before the Courts below.

5. I would reject all the contentions of the petitioner for, although a specific objection by reference to Section 48 of the Partnership Act had not been made, the objection to the award by the

respondent was only on the ground that the Arbitrator had committed a mistake in taking the book value of the assets of the year 1983 and set it off against the capital contributed by the petitioner and directed the amount which stood to the debit of the respondent to be paid to the partners. The respondent was also pointing out to even an omission of one of the items of assets namely the trolley and mode of reckoning of accounts and allowing for the entire partnership to be taken over by the petitioner. Section 48 of the Partnership Act refers to mode of settlement of account between partners. The expression “assets of the firm” is always to be understood as value of the assets at the time when the dissolution was made unless there is a contract to the contrary. Clause 5 in the partnership deed has nothing to do with the manner of reckoning the value of the assets as per the books of account. On the other hand, it merely states that the capital investment shall remain as per the books of accounts. It does not talk about the value of the assets to be retained as in the books of account at the time of dissolution. In **N. Muhammad Hussain Sahib Vs. S.N. Abdul Gaffoor Sahb AIR 1950 Mad 758**, the Madras High Court had held that where the articles of partnership itself did not provide the method of winding up the partnership after it was dissolved or there was no agreement between the partners as to the method by which the accounts would be taken of the assets and if the partnership was dissolved, the assets should be valued on the basis of the market value on the date of dissolution of the partnership and not on the basis of its book value. The Court reasoned that the book value could not be adopted for such purpose even though the true substance of partnership assets were taken by their book value

for the purpose of actual account. That precisely is how even clause 5 must be read as not enabling the dissolution to be made by reckoning the book value of the assets. In this case, it constitutes a very serious prejudice for the reason that one of the partners has contributed in large amount to the capital and he has been allowed to retain all the assets of the partnership on the basis of book value while actually the terms of the partnership provided for division of profits and losses in the ratio of 50:50 irrespective of the capital put in. The Kerala High Court has in Popular Automobiles Vs. Commissioner of Income Tax (1989) ITR 179 Ker. observed that on the dissolution of firm, distribution at the cost price of closing stock amongst the partners for the purpose of settlement of accounts, has to be valued on the market value and not at book value.

6. If the Arbitrator was, therefore, rendering an award which was on the face of it against the provisions of law and the manner of reckoning accounts, he surely misconducted himself and the Courts below were justified in setting aside the award and directing a fresh reckoning to be made.

7. There is also an argument by the counsel appearing on behalf of the respondent that the arbitral award itself is not valid since it was making a distribution of the asset namely of an immovable property on whose value was more than ₹100/- and therefore, it was required to be registered. I reject this argument, for the assets of partnership firm involve a pre-existing interest to the partners and the division at the time of dissolution does not require to be registered. In

S.V. Chandra Pandian and others Vs. S.V. Sivalinga Nadar and

others (1993) 1 SCC 589, the Supreme Court held that when dissolution of partnership takes place and residue distributed among partners after settlement of accounts, no partition, transfer or extinguishment of interest takes place attracting compulsory registration. The award in such a case, therefore, did not require registration.

8. The orders passed by the two Courts below are maintained and the revision petition is dismissed. The matter shall be remanded to the Arbitrator. There is already a direction that the parties shall appear before the Arbitrator Sh. Bhim Sen Goel on 24.02.2002 at the time when the Court of 1st Instance passed the judgment. More than a decade has passed and it has to be elicited whether the Arbitrator is available. If the Arbitrator is still available, any one party is at liberty to take the copy of this order and serve it to him to secure his concurrence. If he is not willing to act as an Arbitrator, any one party will resort to the provisions of the Act for suitable appointment of a fresh Arbitrator.

(K. KANNAN)
JUDGE

April 21, 2016
Pankaj*