IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5132 of 2015(O&M)
Date of decision : March 31st , 2016

Ram Niwas Goyal and another
.... Petitioners
Versus

Subhash Goyal and others
.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Hemant Bassi, Advocate
for the petitioners.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate
for respondent No.1.

Ms. Charu Sharma, Advocate for
Mr. Raman Sharma, Advocate
for respondent No.2.

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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?

Amit Rawal, J.

The petitioners-defendants are aggrieved of the dismissal of the application filed under Section 8 of the Arbitration and Conciliation Act, 1996 in a suit seeking declaration to the effect that the plaintiff is entitled to 1/4th share of assets and liabilities of defendant No.2 on the basis of Will dated 15.5.2011 executed by Smt. Shanti Devi widow of Hanuman Dass Goyal in his favour and the same was registered after her death vide vasika No. 112 dated 12.12.2011 as well as for rendition of account of defendant No.2-firm for the period from 1.4.1996 till date on the basis of partnership deeds dated 1.4.1996 and 23.9.2000 and further, distribution of all assets among the plaintiff and other partners, and also for restraining defendant No.1 from supplying the petroleum products i.e. Petrol, diesel and mobile oil to defendant No.2 as their partnership came to an end on account of death of Shanti Devi and alleged partnership deed dated 1.4.2007 was forged and fabricated much less, based upon fraud which has no effect upon the right of the plaintiff and defendant No.3 namely PurshotamDass Goyal.

Learned counsel appearing on behalf the petitioners submits that the suit aforementioned was filed on 16.6.2015 and as per condition No.16 of the partnership deed dated 1.4.1996, it has clearly been mentioned that in case of dispute between the partners or their “legal representatives”, resolution of dispute shall be through arbitration, in essence the matter shall be referred to CH/SR Divisional Manager of DPCL. Even as per condition No.16 of the partnership deed dated 23.9.2000 a dispute, as mentioned above, is liable to be referred to arbitration. The trial court erroneously held that it is a complicated question of fact and while erroneously dismissing the application held that the subject matter of the suit cannot be adjudicated through arbitration proceedings.

He further submits that the respondents-plaintiffs are none else but legal representative of deceased Shanti Devi and the decision of the arbitration proceedings shall be binding upon all the parties. He further submits that the order under challenge lacks reasons. No complicated question of law or issues are involved, therefore the application was liable to be allowed as the dispute is arbitrable.

Learned Senior counsel appearing on behalf of the respondents submits that no doubt that provisions of Section 8 of 1996 Act envisage reference of dispute to the arbitrator in case of clause of arbitration but the fact remains that where there is an allegation of fraud and mal practice on the part of the respondents in respect of the amount, in such a situation the matter can only be settled by a civil court and cannot be referred to the arbitrator. Since genesis of the suit based on a Will dated 15.5.2011 and authenticity of the same cannot be adjudicated by the arbitrator as detailed evidence, much less that of an expert is required to be produced and in such a situation evidence cannot be appreciated by the arbitrator who may not be conversant with the intricacy of the Indian Evidence Act, 1872, much less Code of Civil Procedure. In the suit there is a specific allegation with regard to the fraud. In support of his contentions, he has relied upon the judgments of Hon'ble Supreme Court in **N. Radhakrishnan Vs. M/s Maestro Engineers & others 2010 (3) RCR (Civil) 445, Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Panya and another 2003 (3) RCR (Civil) 647, judgment of Delhi High Court in Akhtar (Mohd) Vs. Suman Jain & others 2014 (7) RCR (Civil) 2702,** thus submits that there is no illegality and perversity in the order under challenge and prays for dismissal of the petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no merit in the submissions of Mr. Bassi as the suit is based upon following prayer. The prayer clause of the suit reads thus:-

> "*It is, therefore most respectfully prayed that the suit of the plaintiff be decreed with costs and against the defendants and a decree for declaration to the effect that the plaintiff is entitled to 1/4th share of assets and liabilities of defendant No.2 on the basis of Will dated 15.5.2011 executed by Smt. Shanti Devi widow of Shri Hanuman Dass Goyal in favour of the plaintiff and the same was got registered after her death vide vasika No.112 dated 12.12.2011 by which she bequeathed all her rights in respect of movable and immovable properties situated at Siwani Tehsil Siwani, Distt. Bhiwani and all over India and rendition of account of the defendant No.2 for the period from 1.4.1996 till to date on the basis of partnership deeds dated 1.4.1996 and 23.9.2000 and distribution of all the assets amongst the plaintiff and other partners and the defendant No.1 be restrained from supplying the petroleum products i.e.petrol, diesel and mobile oil to the defendant No.2 as the partnership deed dated 1.4.1996 and 23.9.2000 came to an end on the death of Smt. Shanti Devi and the alleged partnership deed dated 1.4.2007 of defendant No. 2 is fake, fictitious, forged, fabricated and based upon fraud and the same has no effect upon the rights of the plaintiff and the defendant No.3 the same is liable to be set aside and consequential relief of permanent injunction seeking to restrain the defendant No.1 to supply the diesel/petrol and mobile oil to the defendant No.2 and a receiver be appointed under Order 40 Rule 1 CPC for taking the charge of the defendant No.2 and to run the same; be passed in favour of the plaintiff and against the*

defendants with costs. Any other relief to which the plaintiff is found entitled may also be granted to him."

In paragraph 6 there is a specific averment with regard to the alleged fraud. The same reads thus:-

"*That the defendant No.3 and 4 are very clever and cunning persons have continued to take the supply of the said petroleum products from defendant No.1 in collusion with its official and defendants No.2 and 3 by concealing the fact of dissolution of firm upon the demise of Smt. Shanti Devi.*

That prior to it, the defendant No.4 to 5 who are clever, cunning and shrewd persons, fabricated a fake, fictitious and forged partnership deed dated 1.4.2007 of defendant No.2 and in the said partnership deed, the signatures of defendant No.2,3 and Smt. Shanti Devi mother of the plaintiff have been forged as the defendant No.2 and 3 and Smt. Shanti Devi, mother of the plaintiff never signed the alleged partnership deed. The alleged partnership deed has been manufactured by the defendant No.4 and 5 in collusion with Norang Rai and Ramesh Kumar who are the partners of M/s Kishan Lal Lakhi Ram and Shree Ji Communication Net Work. They in collusion with each other changed the goodwill clause in favour of defendant No.4. The defendant Nos. 4 and 5 be directed to produced the alleged partnership deed dated 1.4.2007. The plaintiff reserves his right to file a criminal complaint under Sections 420/467/468/471/120-B IPC against the defendants No. 4 and 5 and the witnesses mentioned therein. The alleged partnership deed does not bear the signatures of Smt. Shanti Devi. The plaintiff came to know about the alleged partnership *deed when his appeared in the suit titled as 'Ram Niwas Vs. Bharat Petroleum etc."*

The aforementioned case squarely falls within the ratio decidendi culled out in **N. Radhakrishnan's case and Sukanya Holdings Pvt. Ltd.'s case(supra)** wherein it has been categorically held that where dispute involves serious question of law, much less complicated question of fact, adjudication of which will depend upon detailed and documentary evidence though the civil court has power to refer the matter to the arbitrator. The present case is a case where prima facie, allegations involve complicated question of fact and law and there are allegations of manipulation of accounts, fraud and misrepresentation, rightly so, the reference to the arbitrator has been rejected. I am in agreement with the findings rendered by the trial court.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed. Nothing mentioned above shall be construed as an expression of opinion on the merits of the pending suit.

(AMIT RAWAL)
JUDGE

March 31st, 2016
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