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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6567-2014 [O&M]

Date of Decision : January 22nd , 2016

Rajiv Malhotra

.... Petitioner

Versus

Sanjay Malhotra and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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?

Present Mr. Adarsh Jain, Advocate,
for the petitioner.

Mr.A.K.Sachdeva, Advocate and
Ms. Ayushi Sachdeva, Advocate,
for respondent No.1.

Mr. Rajinder Goyal, Advocate,
for the applicant in CM No. 2825-CII of 2015.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside the order dated 31.05.2014 passed by Civil Judge [Junior Division], Jagadhri whereby application filed by Sanjay Malhotra, defendant No.1, [respondent no.1 herein] for referring the matter to arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 [for short, "the Act"] was accepted.

2. Relevant facts for the purpose of decision of the present revision petition ; that plaintiff – Rajiv Malhotra [petitioner herein] filed a suit for

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possession for half share in the suit property by way of partition of the property situated at Industrial Area, Yamuna Nagar including plot Nos. E-8 and E-9 and for dissolution of firm, named, M/s Maurya Timber, a partnership firm and for settlement of accounts. Relief of permanent injunction was also sought to restrain defendant No.1 from alienating, transferring, conveying or charging the nature and construction over the property in dispute. During the pendency of the said suit, defendant No.1, Sanjay Malhotra moved an application under Section 8(1) of the Act with the plea that as the dispute is relating to the settlement of accounts of the partnership firm and as per clause [14] of the Partnership Deed dated 1.4.2009, duly executed between the plaintiff and defendant No.1, the same be referred to the Arbitrator.

3. Said application was contested by the plaintiff, *inter alia*, taking the pleas that the application was not maintainable as defendants No.2 and 3 i.e., Haryana State Industrial & Infrastructure Development Corporation Limited and Uttar Haryana Bijli Vitran Nigam Limited respectively, are not party to the arbitration clause. More so, as per defendant No.1/applicant, Mrs. Raman Malhotra is the exclusive owner of the property in dispute, but she was not party to the arbitration clause. Moreover, the main suit was for partition of immovable property which is not covered by the arbitration clause and it was prayed that the application be dismissed.

4. Learned counsel for the petitioner submitted that the real controversy is whether the property is of Mrs. Raman Malhotra, mother of the plaintiff and defendant No.1 or of the firm. More so, an application for

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impleading Mrs. Raman Malhotra as a party was moved before the trial Court. As per reply submitted by HSIIDC, plot No. E-8 was bifurcated in two equal parts by Sh. Mulakh Raj and Madhusudan Lal and the department also regularized the said bifurcation. The western part of plot No.E-8 fell to the share of Maurya Timber and the eastern portion fell to the share of Madhusudan Lal Malhotra. In the reply filed by Sanjay Malhotra, defendant No.1 to application filed under Order 39 Rules 1 & 2 CPC, plea was taken that Mrs. Raman Malhotra is the exclusive owner in possession of the suit property which devolved upon her consequent upon the death of her husband, Shri Mulakh Raj Malhotra.

5. Learned counsel for the petitioner also submitted that as defendant Nos.2 and 3 are not party to the arbitration clause and the suit has been filed against all the three defendants, as such, the matter cannot be referred to the Arbitrator. He further submitted that relief claimed in the main suit is for partition and that cannot be the subject matter of arbitration as the arbitration clause pertains to differences amongst the partners with regard to ownership and that clause cannot be construed to be inclusive of dispute regarding partition of immovable property.

6. Learned counsel for the petitioner also submitted that even relief cannot be bifurcated into two parts, i.e., one to be referred to arbitrator for adjudication and the other to be decided by the Civil Court. On this point, reliance has been placed upon the Supreme Court judgment of **Sukanya Holdings (P) Ltd. Vs. Jayesh H. Pandya and another, 2003(5) SCC 53.** Reliance was also placed upon a judgment from the Coordinate bench of this Court in **M/s Sharda Ginning Pressing & Oil Mills & Ors. Vs. Smt.**

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Bimla Devi 2007(1) RCR (Civil) 818, wherein view was taken by this Court that in a petition under Section 8 of the Act, the litigation regarding dissolution and rendition of accounts of partnership cannot be adjudicated by the arbitrator and the said controversy can be decided the Civil Court alone and as such, the order passed by learned Court below is not in accordance with law and the same be set-aside.

7. Learned counsel for respondent No.1 submitted that it is settled proposition of law that the plaint is to be read as a whole and if the entire plaint in the case in hand is considered, the controversy is for dissolution of firm and settlement of accounts only and that can be and should be decided by the Arbitrator only. The parties had duly consented for arbitration clause mutually and the Court below has rightly passed the order and the present petition is without any merit and the same be dismissed. In support of his arguments, reliance has been placed upon decisions of Hon'ble Supreme Court in **Raptakos Brett & Co. Ltd. Vs. Ganesh Property, AIR 1998 SC 3085; Addanki Narayanappa & Anr. Vs. Bhaskara Krishtappa and others, AIR 1996 SC 1300; Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and another 2003(5) SCC 531 and V.H.Patel & Co. and others Vs. Hirubhai Himabhai Patel and others 2004(4) SCC 368.**

8. Learned counsel representing Mrs. Raman Malhotra [applicant in CM No.2825-CII of 2015] submitted that Mulakh Raj Malhotra became the owner in possession of Plot No. E-8 [Western side] on the basis of a Court decree dated 30.9.1986 and after his death, applicant – Mrs. Raman Malhotra became the owner. Thereafter, Mrs. Raman Malhotra transferred

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the said property to Sanjay Malhotra.

9. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the controversy before the Civil Court on the basis of the plaint filed by Rajiv Malhotra was suit for possession of $\frac{1}{2}$ share by way of partition i.e., (i) $\frac{1}{2}$ portion of Plot No. E-8, (ii) portion of plot No. E-9 and relief was also sought for dissolution of the partnership firm, namely, M/s Maurya Timbers, E-8, Industrial Area, Yamunanagar and settlement of accounts and for seeking permanent injunction for restraining defendant No.1 from alienating and creating any sort of charge over the suit property. The said suit was filed against three defendants, namely, 1). Sanjay Malhotra, (2). Haryana State Industrial & Infrastructure Development Corporation Limited and (3). Uttar Haryana Bijli Vitran Nigam Limited. Plea was raised by defendant No.1 to refer the matter to the Arbitrator in view of arbitration clause between the plaintiff and defendant No.1. Admittedly, defendants No.2 and 3 are not party to the partnership deed dated 1.4.2009. The relevant clause (14) of the partnership deed dated 1.4.2009 is extracted below:-

“That in case of any differences amongst the partners with regard to this partnership, the matter shall be referred to and got decided by Arbitration in accordance with the provisions of Indian Arbitration Act, in force.”

10. The above clause of partnership deed makes it ample clear that any dispute amongst the partners with regard to the partnership should be referred to the Arbitrator. This makes two factors clear that the matter could be referred to the Arbitrator firstly, if there was any difference

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amongst the partners and secondly, the dispute must be regarding the partnership. If the said clause No. 14 is looked into to the present controversy, which was subject matter of the suit, the present dispute is not amongst the partners alone. More so, the dispute is not with regard to the differences amongst the partners only. On that account alone, the matter could not be referred to the Arbitrator under clause (14) of the partnership deed.

11. Hon`ble Supreme Court of India in **Sukanya Holdings's case [supra]** while interpreting scope of Section 8 of the Act made it clear that if the subject matter of the suit falls partly within arbitration agreement and partly outside the same, such a matter cannot be referred to arbitration under Section 8 of the Act because relief cannot be bifurcated. More so, if all the defendants to the suit are not parties or partners in the partnership firm, the terms of the partnership deed including the arbitration clause are not binding upon them. Further, there is no power conferred on the Court to add parties who are not parties to the agreement in the arbitration proceedings. Except Section 8 of the Act, there is no other provision in the Act that in a pending suit, the dispute is required to be referred to the Arbitrator.

12. Hon`ble Supreme Court of India also observed that under Section 8 of the Act, the matter is not required to be referred to Arbitral Tribunal if, (1). the parties to the arbitration agreement have not filed any such application for referring the dispute to the arbitrator; (2). in a pending suit, such application is not filed before submitting first statement on the substance of the dispute; or (3) such application is not accompanied by the

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original arbitration agreement or duly certified copy thereof. However, the relevant language used in Section 8 of the Act is "in a matter which is subject of an arbitration agreement". Where, however, a suit is commenced "as to a matter" which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8 of the Act.

13. Similar matter was before the Co-ordinate Bench of this Court in **M/s Sharda Ginning Pressing & Oil Mills's case [supra]**, where this Court was seized of similar controversy and some of the parties to the litigation were not parties to the arbitration clause in the partnership deed and this Court took the view that in such cases, the matter could not be referred to the Arbitrator because primarily the suit should be in respect of a matter which the parties have agreed to refer and which comes within the ambit of arbitration clause. Identical view as taken by this Court in **Sanjeev Goyal Vs. H.L.Goyal and others, 2010(2) RCR (Civil) 44.** Hon`ble Delhi High Court in **Om Parkash Vs. Mrs. Usha Rani, 2002(1) RCR (Civil) 437** held that in such like cases involving rendition of accounts and dissolution of partnership, proceedings under Section 8 of the Act is not maintainable because such a controversy is within the scope of the civil suit only and the only remedy for the partners is to file a civil suit for rendition of accounts and dissolution of partnership, which has been done by the plaintiff in the case in hand. However, the Court below has completely ignored these facts while passing the order under challenge and the said order stands set-aside being not in accordance with

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law.

14. Resultantly, the present petition stands allowed and the impugned order, dated 31.05.2014 passed by Civil Judge [Junior Division], Jagadhri, is set-aside.

(SHEKHER DHAWAN)
JUDGE

January 22nd, 2016
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