

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.4408 of 2013
Date of decision : 05.12.2017

Karnail Singh and another

...Petitioners

Versus

Harbhajan Singh (since deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. M.L. Saggar, Sr. Advocate with
Mr. Rohit Joshi, Advocate for the petitioners.

Mr. Sudeep Mahajan, Advocate and
Ms. Manjit Saini, Advocate for respondent Nos.1 to 3 & 6.

ANIL KSHETARPAL, J.

The petitioners have filed this revision petition against the order passed by the Civil Judge (Senior Division), Patiala dated 31.01.2005 confirmed in appeal by Additional District Judge, Patiala on 11.02.2013.

Learned Civil Judge had dismissed the application under Section 14 read with Section 17 of the Indian Arbitration Act, 1940 (hereinafter to be referred as the 'Act of 1940') filed by the petitioners while allowing the objection petition filed by the respondents under Sections 30 and 33 of the Act of 1940. Parties to this litigation belonged to two families, one headed by Karnail Singh and second headed by Harbhajan Singh, brothers. Both these brothers are married to sisters namely Smt. Harpal Kaur and Smt. Rajpaul Kaur.

Learned First Appellate Court has extracted the alleged arbitration agreement. Correctness whereof is not being disputed. It reads as under:-

“We Harbhajan Singh Mast son of Harnam Singh and Karnail Singh son of Harnam Singh, residents of Patiala repose faith in the members of brotherhood, as mentioned hereunder, gathered from Delhi and other places, for resolving the dispute of joint property, comprising immovable property, brick kilns and working places and agree that whatsoever decision, is given by them, will be acceptable to us and we will remain bound and accept the same-

1. *S. Mohan Singh Tajeja,*
2. *S. Ram Singh Ishpunea,*
3. *S. Gurbaksh Singh Singhra,*
4. *S. Gajraj Singh Singhra,*
5. *S. Jawala Singh Ladwa,*
6. *S. Jasbir Singh Ahuja,*
7. *S. Paramjit Singh Ishpunea,*
8. *S. Jasbir Singh Ishpunea,*
9. *S. Charan Singh Giani.”*

Pursuant to the aforesaid arbitration agreement, the alleged Arbitrators gave award on 04.09.1987. Properties owned by the various members of the family of Karnail Singh and Harbhajan Singh were divided.

Learned trial Court after examining the evidence available on the file found various reasons for allowing the objection petition filed under Sections 30 and 33 of the Act of 1940. Learned trial Court has held that the alleged arbitration agreement is not signed by all the members of the families who are individual owners of the various property. The alleged

arbitration agreement is only signed by Karnail Singh and Harbhajan Singh. Learned Court also found that the alleged award of the Arbitrators cannot be given effect too on the ground that the alleged award is unregistered although it is creating rights in the immovable property.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below as well as the record.

Learned counsel for the petitioners has submitted that the award passed by the Arbitrators is only giving directions and no rights in the immovable properties are being created for the first time. He has further submitted that partially the award has been implemented as the various moveables including trucks have already been exchanged between the parties. He has further submitted that the dispute is between the family members as Karnail Singh and Harbhajan Singh are sons of Sardar Harnam Singh, therefore, the family settlement is not required to be registered. He has further submitted that with regard to the immovable property, the award is only making adjustment but no rights for the first time are being created.

On the other hand, learned counsel for the respondents has submitted that the reference to the arbitration/agreement for referring the matters to the arbitration is not signed by other members of the family. He has further submitted that the amount as adjusted/directed in the arbitration award has not been paid. The award has not been acted upon and the main dispute between the parties i.e. fuel station was not part of the joint property as it was a exclusive property of Harbhajan Singh. He has further submitted that the alleged agreement for reference to the Arbitrator does not spell out

either the dispute between the parties or the properties involved in the dispute or their value or the parties who are the owners of the properties.

A translated copy of the award has been placed on the file as Annexure A-1 dated 04.09.1987. Apart from other things, the alleged arbitration award deals with the property in the following manner:-

“(7) The agricultural land has been distributed as follows. The land which is in the villages would be shared equally by the parties, irrespective of the fact that it is name of any member of the parties. The parties would have half share each in the lands. Its detail is as under:-

(Oora) 55 Bighas and about 2 Acres in Mirapur.

(Aera) About 66 Bighas land in village Julkan.

(Irri) About 15 Bighas land in Village Main.

(Sasa) About 66 Bighas land in Village Dhindsan.

(8) Residential houses and kothies would remain with whosoever is in possession thereof at present.

(9) A plot situated in DLF colony which is in the name of Smt. Rajpal Kaur would remain with S. Harbhajan Singh.

(10) One Plot which is with Sarvan Sain would remain with S. Karnail Singh.

(11) A brick kiln which is in village Chalelan is given to S. Harbhajan Singh. It has a pucca chimney. It is being run by Mast Sahib.

(11A) One brick kiln Bhabhar Maan- would remain with S. Harbhajan Singh. He would be responsible for its dues and management.

(11B) One brick kiln Kaller Bhaini having a puca chimney and which is being run by S. Karnail Singh is hereby given to him. He would be responsible for its dues and he would pay Rs.55,000/- (Rupees fifty five thousands) for its goodwill to S. Harbhajan Singh Mast.

(11C) Brick-kiln-Khera:- Its lease has expired its entire accounts and management would be the responsibility of S. Karnail Singh.

Note:- The party to whom the brick kilns have been allotted in (11) (11A) (11B) (11C) would be responsible for its dues (accounts and for its management.

(12) Mast Service Station

The value of the goodwill and “Bardana” of Mast Service Station has been assessed as Rs.8,00,000/- (Rupees eight lacs). Earlier it belongs to S. Harbhajan Singh. He will be responsible for its dues (account) etc. Besides, S. Harbhajan Singh Mast would pay Rs.1,27,000/- to Iqbal Singh who is a partner in this firm to the extent of 1/10 share. This amount includes its goodwill, capital as per his share. He would also pay Rs.5,25,000/- (Rupees five lacs and twenty five thousand) to S. Karnail Singh and this amount includes capital, goodwill and profits and the amounts contributed by their relatives would stand written off. He would have no claim in this petrol pump.

(12A) The petrol pump which is to be acquired in the name of “Mast” Ji would be given to S. Karnail Singh. He would pay Rs.6,50,000/- (Rupees Six lacs and fifty thousands) to S. Harbhajan Singh Mast. This amount includes the capital, goodwill and profits etc. and the deposits of the relatives would be considered to have come to an end. S. Karnail Singh would pay Rs.1,20,000/- (Rupees one lac and twenty thousands) to S. Iqbal Singh and his capital goodwill, profits etc. are included in that amount. He (Karnail Singh) would also pay Rs.31,000/- out of the old accounts to him and (Iqbal Singh) his accounts would come to an end.

(12B) the party taking the petrol pump would pay Rs.45378.28 (Rupees Forty five thousands three hundred and seventy eight and paise twenty eight) to S. Balbir Singh.

(12C) The party purchasing a petrol pump would manage its dues, including the FD.”

On a reading of the aforesaid clauses of the alleged arbitration award, it is clear that the Arbitrators had distributed the properties owned by various members of the family in presenti. The rights were being created through the arbitration award for the first time. In such circumstances, the arbitration award was required to be registered under Section 17 of the Indian Registration Act, 1908. It is also not in dispute that the alleged agreement of referring the dispute to the arbitration is not signed by other members of the family. The petitioners before the Court are Karnail Singh and his wife Harpal Kaur, whereas respondents before the Court are Harbhajan Singh, his wife and three sons of Harbhajan Singh and Renuki wife of Gurpreet Singh.

On a careful reading of the alleged arbitration award, it is clear that not only the properties between the two families were ordered to be distributed but even the rights were created in the immovable properties. Such award cannot be said to be only giving directions as argued by the learned counsel for the petitioners.

Even in the case of a deed of the family settlement dealing with the immovable properties, if a deed of the family settlement is reduced into writing and it is dealing with the properties in presenti, the same is required to be registered.

No doubt, the learned counsel for the petitioners has referred to some part of the evidence to stress upon that the parties had exchanged the trucks owned by the family, however, that itself would not prove that the

alleged arbitration award has been acted upon. In any case, once the arbitration award was required to be registered and there was no valid reference to the Arbitrators which is a sine qua non for allowing the Arbitrators to enter upon the reference, the Court cannot make the arbitration award a Rule of Code as required under Sections 14 and 17 of the Act of 1940.

For the reasons recorded above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Hence, the present revision petition is dismissed.

05.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No