

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

133

CR No.8063 of 2017 (O &M)
Date of Decision:13.12.2017

Krishna Kumari Kanwal

...Petitioner

Versus

Sneh Sierra and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Avnish Mittal, Advocate with
Ms. Aparna Singhal, Advocate
for the petitioner.

ANIL KSHETARPAL, J.(Oral)

Defendant-petitioner is in revision petition against the order dated 10.11.2017 passed by the learned Civil Judge (Junior Division), Amloh dismissing the application under Section 8 of the Arbitration and Conciliation Act, 1996 ('Act' – for short) refusing to relegate the parties to the Arbitration.

It is undisputed that deed of partnership between the parties contain following clause:

“13. That in case of any dispute the matter will, so far as possible, be referred to arbitration, subject, of course, to the provisions of the Reconciliation and Arbitration Act.”

Plaintiffs filed a suit for rendition of accounts and for partition of the assets and properties of the firm. Defendant before filing the written statement filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 requesting the Court to relegate the parties to the Arbitration.

Learned trial Court dismissed the application on the ground that

the partnership deed is no more subsisting as it has been dissolved on

30.08.2017. The Court has further observed that Clause 13 of the partnership deed uses the word 'so far as possible' and, therefore, it is not mandatory to refer the parties to the Arbitration. Court has further given certain other reasons, which are not necessary to be dilated upon.

I have heard learned counsel for the parties at length and with their able assistance gone through the documents filed with the revision petition.

A careful reading of Clause 13 would establish that the agreement between the parties provided for resolving the dispute through Arbitration. It was further provided that any dispute so far as possible be referred to the Arbitration.

It is by now well settled that all disputes can be resolved through Arbitration except the exceptions carved out in the judgment (2011) 5 SCC 532. Hon'ble Supreme Court carved out as many as 6 exceptions in Para 22 of the judgment, which reads as under:

“ Arbitral tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public for a constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of arbitral tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public fora as a matter of public policy. Certain other categories of cases,

through not expressly reserved for adjudication by a public fora (courts and Tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes. The well recognised examples of non-arbitrable disputes are : (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.”

Still further, the aforesaid judgment has been explained in the judgment passed by the Hon'ble Supreme Court (2016) 10 SCC 386, wherein the Hon'ble Supreme Court has further expanded the list of exceptions including fraud.

The present case is only for rendition of account and partition of the property of the firm. In the considered opinion of this Court, such dispute

Learned trial Court was wholly incorrect in recording a finding that since the partnership firm has been dissolved, therefore, even the Arbitration Clause has also come to an end.

In the considered opinion of this Court, the view was wholly erroneous.

Still further, learned Civil Judge further committed a material irregularity in observing that since the Arbitration Clause is couched in a language 'as far as possible', therefore, it is not necessary for the Court to refer the parties to the Arbitration. Once the parties choose to resolve their dispute through a private forum i.e. Arbitration, the parties thereafter cannot resile from the aforesaid agreement and choose to approach the Civil Court. The language of Section 8 of the Arbitration and Conciliation Act, 1996 is in a mandatory form. Once there is an arbitration agreement, the Court has no choice but to refer the parties to the Arbitration, subject to fulfillment of the condition specified in Section 8.

It is not in dispute that the requirements of Section 8 were fulfilled by the petitioner.

In view of the aforesaid discussion, the revision is allowed. The impugned order dated 10.11.2017 is set aside. Parties are relegated to the remedy of arbitration.

13.12.2017
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No