

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

4

+

ARB.P. 152/2016

ANIL KUMAR JAIN & ANR

..... Petitioners

Through: Mr. Basant C. Agrawal, Advocate.

versus

SANJAY GOEL & ANR

..... Respondents

Through: Mr. Lalit Gupta with Mr. Dhananjaya
Sud, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

%

04.01.2017

1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 ('Act') filed by the Petitioners seeking reference of the disputes between the Petitioners, Mr. Anil Kumar Jain and Smt. Rachna Jain and the Respondents, Mr. Sanjay Goel and Mr. Sandeep Goel, arising out of the Partnership Deed dated 1st April, 2000 to arbitration.

2. A preliminary objection has been taken as regards the so-called claim of the Petitioners arising out of the said partnership deed as being barred by limitation.

3. In order to explain that the Petitioner's claim was not time barred, learned counsel for the Petitioners refers to the rejoinder filed by the Petitioners in which it is asserted that the statement of accounts of the partnership firm was sent by the Respondent on 22nd October, 2013 which, according to the

Petitioners, were fabricated and that soon thereafter on 28th November, 2013, a legal demand notice was sent to the Respondent by the Petitioners. A perusal of the aforementioned legal demand notice dated 28th November 2013 shows that it does not actually specify the precise amount of the claim. It only calls upon the Respondent to render the “correct and actual account of the said firm” or to pay the above stated amount as detailed in para 6 of the said notice along with interest.

4. In para 6, though the list of payments already received by the firm has been set out, there is no proof as regards any of those receipts. When asked about this, learned counsel for the Petitioners referred to a copy of email sent by the Respondents to their relatives attaching an “accounts sheet”. That sheet again showed an amount of Rs. 3,71,013 as “balance receivable on 31.07.2006”. In other words, the said sum represents what according to the Respondents are due to them and not vice versa.

5. Secondly, as pointed out by learned counsel for the Respondents, in the legal demand notice it has been stated by the Petitioners that on 31st August, 2006, “my clients requested you to give statement of account of the partnership firm as the A/c of the firm for last 3-4 years was not being provided to my clients by you.” He, accordingly, points out that the disputes between the parties relate back not just to 31st August, 2006 but at least three-four years prior thereto.

6. Learned counsel for the Respondents posed a query whether the Petitioners were in a position to produce any statement of account of the partnership firm which would show that it was operational beyond 31st

August, 2006. Secondly, he points out that possession of the premises is in fact with the Petitioners. The Respondents were ousted from the partnership firm way back in August, 2006.

7. The Court finds that the legal demand notice dated 28th November, 2003 sent by the Petitioner to the Respondents seeking reference of the dispute to arbitration is totally vague on the crucial aspect as to whether any dispute in fact arose between the parties. Secondly, no sufficient explanation is given as regards any transaction of the firm having taken place after 31st August, 2006. Indeed, if the firm is not operational, the Petitioners will not be able to show that there is any balance in the account of the partnership firm. In the circumstances little purpose will be served in referring such vague claims, that are not arbitrable, to arbitration.

8. Consequently, the petition is dismissed.

S.MURALIDHAR, J

JANUARY 04, 2017

Rm