

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 7898-2016 (O&M)
Date of decision: 19.02.2018

Dhan Kumar Kothari and another

.....Petitioners

versus

Sunil Jain

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Amit Jain, Advocate for the petitioners
Mr.Amit Jain, Advocate for the respondent

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 3.11.2016, passed by learned Civil Judge (Senior Division), Gurgaon, vide which, an application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') filed by the petitioners/ defendants was dismissed.

I have heard learned counsel for both the parties and have also carefully gone through the file.

Perusal of the plaint (Annexure P1) shows that the plaintiff has filed a suit for recovery of Rs.1,92,19,501.25. In addition to this, plaintiff has also sought rendition of accounts of the firm M/s Automobile Carriers. There was a dispute between the partners of the said firm . The matter was settled. As per as per MOU dated 09.10.2013 (Annexure P7), defendants were to pay Rs.1,33,00,000/- to the plaintiff on or before 31.03.2014. The retirement deed dated 30.9.2013 was signed on 12.10.2013. The said amount was to be paid with interest @ 12% per annum as stipulated. The

defendants has not paid the said amount. Hence, the suit for recovery. Plaintiff has also claimed that defendants are not rendering the accounts of the firm. Hence, the prayer is also made for rendition of accounts of the firm.

The defendants filed an application under Section 8 of the Act, for referring the dispute to the Arbitrator in terms of the retirement deed dated 30.9.2013/12.10.2013. The said application was dismissed by the trial Court. The perusal of the family settlement dated 9.10.2013 (Annexure P7) shows that a sum of Rs.1,33,00,000/- was agreed to be paid to the plaintiff in lieu of the plaintiff retiring from the firm as per clause 7 of the MOU. If the 1st party and 3rd party fails to pay the 2nd party Rs.1,33,00,000/- on or before 31.3.2014, the 4th party shall become owner of the property as detailed at serial no.iv.

Retirement deed dated 30.9.2013 (Annexure P5), which is sought to be enforced by way of the present application, contained the following clause Nos. 6 and 13:-

6. That the sums standing to the credit of retiring partner in the books of accounts of the firm as on the date of retirement mentioned above together with profit/ losses as on the date of retirement shall be treated as loan to be repaid by the continuing partners without any interest thereon or before 31.3.2014 and if they fail to clear the loan liability, they will be liable to pay interest @ 12% (twelve percent) per annum on the outstanding balance amount till the dues are cleared.

13. That all the disputes touching the subject matter of this deed of retirement between the parties hereto their legal

representatives, if cannot be settled mutually, the same shall be governed by the provision of Arbitration Act and rules & regulations framed thereunder from time to time.”

Perusal of deed of retirement (Annexure P5) containing arbitration clause goes to show that regarding amount settled between the parties, there was no dispute. It was treated as loan and in case of non clearing the loan liability, interest @ 12% per annum was payable. Therefore, the plaintiff could maintain the suit to recover the said amount which is to be now treated as loan. Regarding rendition of accounts, it comes out that there was no specific clause in the deed of retirement. It was simply stated in clause 13 that all disputes touching subject matter of the deed of retirement, if cannot be settled mutually, same shall be governed by provisions of Arbitration Act and Rules. Therefore, the dispute regarding rendition of accounts is covered under the said clause 13 of the deed of retirement.

As such, the revision petition is partly allowed. The suit regarding recovery of amount shall continue. However, the trial Court shall not pass any judgment regarding rendition of accounts of the firm M/s Automobile Carriers and that part of the relief is stayed. The said matter is to be referred to the Arbitrator in terms of the deed of retirement (Annexure P5).

19.02.2018

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:	Yes
Whether Reportable:	No