

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7533 of 2017

Reserved on 08.11.2017

Date of Decision : 02.02.2018

Manjeet Singh and another

... Petitioners

VERSUS

Harnek Singh and another

... Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Ashwani Bakshi, Advocate for the petitioners.

B.S.WALIA, J.,

1. Prayer in this petition under Article 227 of the Constitution of India is for setting aside order dated 23.08.2017-Annexure P-5, passed by the Learned Additional Civil Judge (Senior Division), Malout, dismissing the petitioners/defendants application u/s 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) for referring the parties to arbitration.

2. Brief facts of the case leading to the filing of the instant revision petition are that plaintiff/respondent No.1 filed a suit against the petitioners/defendant Nos. 2 and 3 as well as respondent No.2/defendant No.1 for recovery of Rs.87,35,185/- i.e. Rs.67,28,224.64/- as principle amount and Rs.20,06,960.36/- as interest @ 12% per annum besides future interest @ 12% per annum till realization of the amount on account of price of agricultural produce sold by plaintiff/respondent No.1 to Commission Agent Defendant No.1/respondent No.2.

3. That on receipt of notice in the suit, the petitioners/defendants appeared before the learned trial Court and filed application dated 07.10.2016 u/s 8 of the Act for referring the parties to the suit to arbitration in terms of Clause No. 15 in partnership deed dated 01.04.2005.

Clause 15 is reproduced as under:-

15. That in case of any dispute, doubt or difference arising between the partners or their legal representatives or either of the relating to interpretation of the terms and conditions of this deed or any matter concerning the said business, before or after the termination of this firm, the same shall be referred to an arbitrator to be appointed by the parties by mutual agreement whose decision shall be final, binding and conclusive on the said partners”.

4. Respondent No.1/plaintiff filed reply denying applicability of the arbitration clause on the ground that he had not filed the suit in his capacity as a partner but only as a farmer maintaining an account with the firm as such. Therefore, the dispute being one between a farmer and commission agent was not covered under the arbitration clause relied upon by the petitioners. After considering the pleadings and submissions of the parties, the learned trial Court vide order dated 23.08.2017 i.e. Annexure P-5 dismissed the application filed by the petitioners.

5. Order dated 23.08.2017 i.e. Annexure P-5 has been challenged on the ground that the learned trial court failed to take into account that respondent No.1/plaintiff was a working partner of the firm in question along with his brother Balwinder Singh and had created the alleged liability in the firm in connivance with his brother by manipulating the record of the firm, that the dispute raised in the suit was essentially a dispute arising out of the business of the partnership firm, therefore, the dispute being one concerning the business of the firm, was liable to be referred to arbitration being covered

under arbitration clause in the partnership deed.

6. The Learned Addl. Civil Judge (Senior Division), dismissed the application in view of the stand of the plaintiff/respondent No.1 that he had filed the suit for recovery in his individual capacity as an agriculturist (and not on the basis of partnership between the parties) for the price of crops sold by him to the defendant commission agent against J-forms issued by the defendant commission agent but had not been given money due to him despite repeated requests. The learned trial Court also took into account that in terms of Section 13 of the Partnership Act, a firm was liable to indemnify the partner in respect of payments made and liability incurred by him. Moreover, genuineness of J-Forms alleged to have been issued by the defendants to the plaintiff as relied upon by the plaintiff in the suit was a matter of evidence and could not be gone into at that point of time. On the basis of the aforesaid reasoning, the learned Trial Court held that the arbitration clause in partnership deed did not have any bearing on the personal rights of the plaintiff/respondent No. 1 against the firm, accordingly, dismissed the application.

7. I have considered the submissions of learned counsel for the petitioner and have gone over the record. The application u/s 8 of the Act has been dismissed primarily on the ground that the suit had been filed by the plaintiff/respondent No.1 in his individual capacity as an agriculturist who used to sell his agricultural produce to the defendant firm and not as a partner of the partnership firm, that on account of said sale by the plaintiff to the defendant commission Agent firm the defendant Commission Agent Firm had given J-forms to him and since the defendants had not paid money

to him for the sale made by him to the firm, therefore, left with no other option, he had filed a suit in his individual capacity against the firm and not as a partner of the firm.

8. A perusal of the plaint which is attached in connected case i.e. CR No.7560 of 2017, reveals that the suit was filed by respondent No.1/plaintiff while mentioning therein that he was a partner of the firm but that defendant Nos.2 and 3 i.e. petitioners herein were holding control of the firm and that apart from having an account as partner in the firm, he i.e. plaintiff had an agriculture account also in the firm, in which, the firm used to make entries regarding the sale of crop by the plaintiff/respondent No.1 and that he had been selling his agricultural produce through defendant No.1 i.e. respondent No.2 herein and that on 31.03.2013, a sum of Rs.35,58,314.92/- was due from the defendant commission Agent Firm to him. Respondent No.1/plaintiff has also averred that he was issued J-forms by the defendants and despite having agreed to make him payment for the paddy and wheat crop sold by him to the defendants as and when he would demand payment, payment had not been made to him by the petitioners-defendants despite repeated requests, therefore left with no other option, he had filed the suit in question.

9. Once it is the categoric stand of respondent No.1/plaintiff in the plaint that the suit had been filed by him in his individual capacity for recovery of price of agriculture produce sold by him in his individual capacity to the defendant Commission Agent firm, no fault can be found in the impugned order, particularly since respondent No.1/plaintiff had a agriculture account with the defendant Commission Agent in which the defendant Commission

Agent Firm used to make entries regarding sale of crop by respondent No.1/plaintiff to the firm. In view of the stand of respondent No.1/plaintiff in the plaint that the amount claimed by him is as a farmer for recovery of the price of crops sold by him to the defendant Commission Agent Firm, arbitration clause contained in partnership agreement dated 01.04.2005, will not apply as the dispute cannot be said to be one amongst partners but one raised by respondent No.1/plaintiff in his capacity as an agriculturist i.e. other than as a partner of the firm.

10. Accordingly, the revision petition is dismissed. However, nothing said in the order shall be deemed to be an expression on the merits of the case.

(B.S.WALIA)
JUDGE

02.02.2018

ps

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

