

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

Civil Revision No. 3846 of 2014

DATE OF DECISION : November 15 , 2019

Dr. Ved Parkash Aggarwal and others

..... PETITIONER(S)

VERSUS

Yog Sadhna Trust International (Regd.) and others

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Sanjiv Gupta, Advocate, for the petitioners.
Mr. R.S. Budhwar, Advocate, for respondents No.2 and 4.
Mr. Rajeshwar Singh Thakur, Advocate, for respondents
No.3, 7, 16 to 19 and 23 to 26.

...

Sanjay Kumar, J.

The petitioners in this Civil Revision, under Article 227 of the Constitution, are the plaintiffs in Civil Suit No.4440 of 2013 of 23.07.2013/06.09.2013 on the file of the learned District Judge, Kurukshetra (hereinafter, 'the trial Court'). The said suit was filed by them seeking a declaration to the effect that the Supplementary Trust Deed No.508 dated 14.11.2008 and the subsequent Supplementary Trust Deed No.272 dated 10.07.2012, apart from the Resolutions dated 18.11.1997, 21.08.2008, 12.03.2012, 09.06.2012 and 18.08.2012, were illegal, null, void and not binding upon them. They sought a further declaration that their removal from trusteeship and induction of defendants No.16 to 23 as trustees, by way of the Supplementary Trust Deeds,

was also illegal, null and void. Further, they sought a declaration that they were the Managing Trustees of the Trust, i.e., Yog Sadhna Trust International (Registration No.250 vide Trust Deed dated 31.05.1997 registered on 12.06.1997). In addition to the aforesaid declaratory reliefs, they also sought a permanent injunction restraining the defendants in the suit from alienating the suit property or changing the nature thereof. Alternatively, they sought a decree for possession of the suit property in favour of the Trust, if the trial Court came to the conclusion that the Trust or its Trustees were not in possession of the suit property.

While so, defendants No.23 to 26 in the suit filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter, 'the Act of 1996'), seeking reference of the suit disputes to the named Arbitrator, as per the original Trust Deed dated 31.05.1997 as well as the Supplementary Trust Deed dated 14.11.2008. By order dated 23.04.2014, the trial Court accepted their plea and referred the matter to the named Arbitrator, Swami Gurudev Muni Ji, Founder. He was directed to pass an Award in respect of the suit claims after hearing both the parties. Aggrieved thereby, the plaintiffs in the suit filed the present.

As no stay order was passed in this revision, it appears that the named Arbitrator pronounced the Award. However, when this aspect was brought to the notice of this Court on 14.09.2016, the learned counsel for the petitioners/ plaintiffs contended that as the very appointment of the Arbitrator by the trial Court, vide the order under revision, is under challenge, the passing of the Award in the meanwhile would have no significance, in the event this Court ultimately holds in favour of the plaintiffs on the issue of appointment of the Arbitrator.

It may be noted that the subject application under Section 8 of the Act of 1996 was filed before the trial Court by respondents/defendants No.23 to 26 only. They are, therefore, the contesting parties in this revision.

Parties shall hereinafter be referred to as arrayed in the suit.

Various contentions were pressed into service by Shri Sanjiv Gupta, learned counsel, including the locus of defendants No.23 to 26 to file the subject application after their defence was struck off and their attempt to seek recall of the said order was also rejected. He would also contend that the application was filed without the original/certified copy of the Trust Deed dated 31.05.1997 and was therefore liable to be rejected at the threshold, in terms of Section 8(2) of the Act of 1996. This Court is however of the opinion that the matter is amenable to disposal on issues which are of greater relevance than mere technicalities. Therefore, the technical grounds urged by Shri Sanjiv Gupta, learned counsel, are eschewed from consideration.

As already noticed *supra*, the trial Court referred the suit disputes to Swami Gurudev Muni Ji, Founder President of the first defendant-Trust, in terms of the original Trust Deed dated 31.05.1997. Significantly, the named Arbitrator was none other than the third defendant in the suit. Whether a party to the suit could himself be an Arbitrator to resolve the suit disputes is one aspect of the matter, but more significantly, the crucial issue is whether there was an arbitration clause at all in the said Trust Deed, warranting invocation of Section 8 of the Act of 1996.

Section 2(b) of the Act of 1996 defines ‘arbitration agreement’ to mean an agreement referred to in Section 7. In turn, Section 7 states that ‘arbitration agreement’ means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise

between them in respect of a defined legal relationship, whether contractual or not. The provision goes on to state that such an arbitration agreement must be in writing or may be in the form of an arbitration clause in a contract or in the form of a separate agreement. In essence, to constitute an arbitration agreement, the parties concerned must be at consensus *ad idem* to submit to arbitration all or certain disputes which have arisen or which may arise between them in relation to a defined legal relationship.

The original Trust deed dated 31.05.1997 was admittedly signed by all the parties concerned. The clause in the Trust Deed, pressed into service by defendants No.23 to 26 and accepted by the trial Court, reads as under:-

“FOUNDER TRUSTEE / FOUNDER PRESIDENT

He shall supervise the whole affairs of the trust and issue necessary instructions and guideline/guidance to the board of trustees from time to time. He shall be final authority in all matters concerning the functioning of the trust / all disputes of any kind concerning members / trustees.

(a) Swami Gurudev Muni Ji being author shall be founder president of the trust for life. In his discretion he may nominate any trustee. To succeed him as president of the trust or he may leave it to the board of the trustees to elect the president from among the trustees”

Notably, as per the aforestated clause, the disputes that the parties chose to refer to the Founder Trustee/President, Swami Gurudev Muni Ji, in a manner of speaking, by making him the final authority, only concern the members/trustees. However, the declaratory reliefs sought by the plaintiffs related to the Supplementary Trust Deeds dated 14.11.2008 and 27.11.2012, apart from various resolutions passed in 1997, 2008 and 2012.

They also sought nullification of certain registered sale deeds executed in

2012. By no stretch of imagination could these suit claims be categorized as disputes concerning just the members/trustees of the Trust constituted under the original Trust Deed dated 31.05.1997. Significantly, the plaintiffs were not signatories to the Supplementary Trust Deed dated 14.11.2008, which was under attack in the suit. Therefore, even if there was any arbitration clause contained in the said Supplementary Trust Deed, it would have no application to the plaintiffs. This crucial aspect was completely overlooked by the trial Court while relying upon this Supplementary Trust Deed.

Viewed thus, this Court is of the opinion that the trial Court erred in treating the clause contained in the original Trust deed dated 31.05.1997 as an arbitration agreement which would have application to the suit claims of the plaintiffs, whereby Section 8 of the Act of 1996 could have been invoked by the other side.

That apart, the trial Court completely lost sight of the fact that the named Arbitrator, in terms of the so-called arbitration clause in the Trust Deed dated 31.05.1997, was none other than a party to the suit. In terms of the plaint averments, the named Arbitrator was himself one of the authors of the Supplementary Trust Deeds under attack in the suit and was also party to the resolutions and sale deeds under challenge. Therefore, he could not be treated as an independent person who would be free of bias to undertake resolution of the suit disputes by way of arbitration. Reference in this regard may be made to the decision of a learned Judge of this Court in **Ramesh Sharma V/s Mool Chand and others (CR-1101-2008 dated 25.04.2008)**. The issue raised in the said case was on similar lines as challenge was made therein to an order passed by the Court under Section 8 of the Act of 1996 refusing to refer the suit disputes to arbitration by the Board of Trustees,

when 2/3rd members of the Board were shown as defendants in the suit. Dealing with this issue, the learned Judge observed that the ‘rule against bias’ would apply not only to judicial but also to administrative fora and ultimately held that reference of the disputes to the Board in terms of the Trust Deed, if allowed, would lead to an adjudication whereby the Board would become the Judge of its own cause. This decision was confirmed by the Supreme Court, as Special Leave to Appeal (Civil) No.20182 of 2008 was dismissed at the threshold, vide order dated 25.08.2008. The ratio laid down in the aforesaid decision would apply on all fours to the case on hand and defendant No.3 in the suit could not be the Judge of his own cause in relation to execution of the Supplementary Trust Deeds, resolutions and sale deeds, which were under challenge in the suit.

Thus on counts more than one, this Court finds that the trial Court erred in applying the provisions of Section 8 of the Act of 1996 and referring the suit disputes to the third defendant therein for resolution by way of arbitration.

The Civil Revision is therefore allowed. The order dated 23.04.2014 passed by the learned District Judge, Kurukshetra, and the consequential arbitration proceedings that ensued on the basis of the said order are accordingly set aside.

There shall be no order as to costs.

November 15, 2019
Kang

(Sanjay Kumar)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes