

ARB-48-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

228

ARB-48-2023 (O&M)
Date of Decision: 11.11.2024

GAGANDEEP KHURANA

... Petitioner

Vs

M/S SHAM JEWELS AND INFRA AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Anand Chhibbar, Senior Advocate with
Ms. Ateevraj Sandhu, Advocate
Mr. Vikarsh Khatana, Advocate for the petitioner.

Mr. Amitabh Tewari, Advocate
for respondents No. 1 and 6.

Mr. A.S. Narang, Advocate
Ms. Manpreet Kaur, Advocate
Ms. Ishita Kaur, Advocate
Mr. Satbir Singh, Advocate for respondents No.2 and 3.

Mr. Amit Jhanji, Senior Advocate with
Mr. Shashank Shekhar Sharma, Advocate
for respondents No.4 and 5.

Mr. Navraj S. Guron, Advocate for respondent No.7.

SUVIR SEHGAL, J. (ORAL)

CM-14684-CII-2024

Application is allowed, as prayed for.

Replies filed on behalf of respondents No. 2 and 3 are
taken on record.

**Main case.**

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') seeking appointment of an Arbitral Tribunal comprising of a sole Arbitrator to adjudicate the dispute between the parties.

2. Learned senior Advocate for the petitioner submits that the petitioner and respondents No.2 to 6 had entered into a partnership deed, dated 08.01.2021 and a firm by the name of M/s Sham Jewels and Infra, respondent No.1 was constituted. Vide partnership deed, dated 31.08.2021, Annexure P-1, respondent No.7 was inducted as a partner and the firm was re-constituted. He submits that some differences arose between the parties and the petitioner served a notice of retirement dated 30.08.2022, Annexure P-2 upon the other partners and by virtue of legal notice, dated 01.11.2022, Annexure P-3, petitioner invoked arbitration clause No.21 of the partnership deed, Annexure P-1. He submits that some respondents sent separate replies, Annexures P-4 and P-5 to the legal notice and have opposed the appointment of an arbitrator.

3. Upon notice by this Court, a common reply has been filed on behalf of respondents No.2 and 3 to the main petition as well as to the miscellaneous application. Except for respondents No.2 and 3, counsel representing the other respondents have stated that they do not have any objection, in case, an arbitrator is appointed. Counsel for the contesting respondents has opposed the petition on two grounds. First objection raised is that the partnership firm is unregistered and



by referring to the bar under Section 69(3) of the Indian Partnership Act, 1932, it has been contended that arbitral proceedings at the instance of an unregistered firm are not maintainable. Reliance upon the judgements of the Supreme Court in

(i) **Jagdish Chander Gupta Versus Kajaria Traders**

(India) Ltd., (1964) 8 SCR 50;

(ii) **Prabhu Shankar Jaiswal Versus Sheo Narayan**

Jaiswal and ors. (1996) 11 SCC 225; and

(iii) **U.P. State Sugar Corporation Ltd. Versus Jain**

Construction Co. and another (2004) 7 SCC 332.

4. Second objection raised by the contesting respondents is that by virtue of notice, Annexure P-3, petitioner has invoked arbitration clause in partnership deed, dated “26.08.2021”, however, no such agreement was ever entered into between the parties. To counter the respondents, counsel for the petitioner has relied upon the judgments of the Hon’ble Supreme Court and submits that the date “26.08.2021” in notice, Annexure P-3, is an inadvertent error and the reference is to the partnership deed, Annexure P-1 between the parties.

5. I have heard counsel for the parties and considered their respective submissions.

6. Both the objections raised by the respondents are being dealt with hereunder, one by one. The judgements relied upon by counsel for respondents No.2 and 3 pertain to the interpretation of Section 69 of the Indian Partnership Act, 1932 in relation to the



Arbitration Act, 1940, (hereinafter referred to as “the 1940 Act”). Supreme Court discussed the distinction between the 1940 Act and the 1996 Act in **Umesh Goel Versus Himachal Pradesh Co-operative Group Housing Society Ltd.** (2016)11 SCC 313 and held that arbitral proceedings do not come within the ambit of expression “other proceedings” used in Section 69(3) of the Partnership Act and bar under Section 69, *ibid*, can have no bearing on arbitral proceeding and award. The judgement in **Jagdish Chander’s** case has been noticed by the Supreme Court and it has been observed that it does not have any application to the proceedings, which have emanated under the 1996 Act. In particular, reference deserves to be made to paras 27 and 28 of the judgement in **Umesh Goel’s** case (*supra*), which are reproduced hereunder:-

“27. The scope and ambit of the power and jurisdiction of ‘court’ defined under [Section 2\(e\)](#) of the 1996 Act is circumscribed to certain specified extent as set out in [Sections 8, 9, 14, 27, 34, 36, 37, 39, 42, 43, 47, 48, 49, 50, 56, 58 and 59](#). A comparative consideration of the 1940 Act and 1996 Act disclose the extent of control and operation of a Court under the former Act was far more intensive and elaborate than the latter Act. The more significant distinction as between the 1940 Act and the 1996 Act is clear to the position that the former Act does not merely stop with the initiation and enforcement of an Arbitration and its award, but effectively provides for intervention at every stage of the Arbitral proceedings upto its final



consideration and enforcement as if it were a regular civil suit, whereas under the 1996 Act, the scope of intervention is not that of a Civil Court as it could do in the matter of a suit. Such clear distinction could be discerned from the reading of the various provisions of both the Acts. Therefore, in the light of such distinctive features that prevail in respect of an Arbitral proceeding which emanated under the 1940 Act, this Court held in [Jagdish Chander case](#) (supra) to the effect that an Arbitral proceedings governed by 1940 Act would squarely fall under the category of 'other proceedings' as specified in [Section 69\(3\)](#) of the Partnership Act. To be more precise, in [Jagdish Chander case](#) (supra), in as much the initiation of the proceedings were under [Section 8](#) of the 1940 Act before a Civil Court having jurisdiction to decide the question forming the subject matter of suit and the respondent therein being an unregistered Partnership Firm, the ingredients set out in [Section 69\(1\)](#) to (3) of the [Partnership Act](#) applied in all force and consequently held that the prohibition set out in the said Section squarely applied.

28. *We only wish to add that though in the said decision in [Jagdish Chander case](#), this Court did not specifically mention as to the requirement of pendency of a proceeding in the nature of a suit in a Civil Court as the basic ingredient to be satisfied as stipulated in sub-sections (1) & (2) of [Section 69](#) in order to extend the specific prohibition even to 'other proceedings' under sub- section (3), this Court*



was fully aware of the fulfillment of those mandatory requirement having regard to the nature of proceedings that existed under the provisions of the 1940 Act. Therefore, our conclusion based on the interpretation of [Section 69](#) on the whole as set out in paragraphs 10 to 18 are fully supported by [the above decision](#). We have therefore no hesitation to hold that the ratio laid down in [Jagdish Chander case](#) does not in any way conflict with the view which we have taken herein, having regard to the advent of the 1996 Act, under which the nature of Arbitration Proceedings underwent a sea change as compared to the 1940 Act, what is stated in [Jagdish Chander](#) case can have application in the special facts of that case and that it can have no application to a proceedings which emanated under the 1996 Act, for which the interpretation to be placed on [Section 69\(3\)](#) will have to be made independently with specific reference to the provisions of the 1996 Act, where the role of the Court is limited as noted earlier to the extent as specified in [Sections 8, 9](#) etc.”

7. In **Ananthesh Bhakta represented by Mother Usha A. Bhakta and others versus Nayana S Bhakta and others** (2017) 5 SCC 185, Apex Court observed that the bar in Section 69 of the Partnership Act is limited to the courts and civil suit and it is not attracted when the disputes amongst members are referred to an Arbitral Tribunal. It has been held that as long as the partnership deed contains a clause, which provides for reference of dispute *inter se* parties to Arbitration, non-registration of partnership firm is no



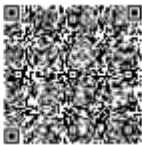
ground to reject the reference. The first argument raised by the respondents is, therefore, rejected.

8. Now, coming to the second argument raised by counsel for the contesting respondents, undoubtedly the notice invoking the arbitration clause refers to the date of partnership deed between the parties as “26.08.2021”, whereas the agreement, Annexure P-1 was entered into on 31.08.2021. It can at best be described as an inadvertent typographical error. The purpose of serving a notice invoking the arbitration clause, besides determining the date of commencement of the proceedings under the 1996 Act, is also to make it clear that one of the parties intends to refer the dispute to arbitration.

9. The fact that respondents No.2 and 3 have filed a detailed reply to the notice, Annexure P-3, rejecting the request for reference to an arbitrator shows that the respondents have understood the intention expressed by the petitioner. Furthermore, an examination of the partnership deed Annexure P-1, shows that respondent No.7 was inducted as a partner on 26.08.2021 and the formal partnership deed, Annexure P-1, was executed on 30.08.2021, therefore, the error in the date mentioned at some places in the notice, Annexure P-3 is *bona fide*. The second objection raised by the contesting respondents is also rejected.

10. For the foregoing reasons, this Court does not see any hindrance in referring the dispute to an Arbitrator.

11. Accordingly, petition is allowed. Mr. Justice (Retd.)



Virender Singh, former Chief Justice, Kothi No. 233, Sector 11-A, Chandigarh, Mobile No. 94311-15601 is nominated as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

12. Parties are directed to appear before the learned Arbitrator on date, time and place fixed by the Arbitrator at his convenience.

13. Needless to mention, parties will be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.

14. A request letter along with a copy of this order be sent to Mr. Justice (Retd.) Virender Singh.

11.11.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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