

Narinder Singh Randhawa and anr. Vs. Hardial Singh Dhillon and ors.

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Court : Punjab and Haryana

Decided On : Aug-07-1984

Reported in : AIR1985P& H41

Judge : Gokal Chand Mital, J.

Acts : Arbitration Act - Sections 34; Partnership Act - Sections 43 and 44

Appeal No. : F.A.F.O. No. 353 of 1976

Appellant : Narinder Singh Randhawa and anr.

Respondent : Hardial Singh Dhillon and ors.

Judgement :

1. Narinder Singh and Smt. Harprit Randhawa filed a suit for dissolution of partnership and rendition of accounts of Messrs Janta Rice Mills, Mehta, Distirct Amritsar. On receipt of the notice of the suit, Hardial Singh Dhillon filed an application under S. 34 of the Arbitration Act for staying the suit on the pleas that the firm had already been dissolved and in the partnership deed it was agreed between the parties that they would get their disputes settled through arbitrators and hence, the dispute in the present suit should be referred to the arbitrators and the suit be stayed. The plaintiffs contested the suit. The trial Court framed the following issues:--

- (1) Whether there is valid and subsisting agreement between the parties relating to the subject matter of the dispute? OPA
- (2) If issue No. 1 is proved whether the proceedings in the suit are liable to be stayed OPD
- (3) Relief.

After evidence was led, the trial Court by judgment dt. 29-5-1976, allowed the application of the defendant and stayed the suit after giving findings on all the issues in favour of the defendant. This is plaintiff's appeal.

2. After hearing the learned counsel for the parties I am of the view that this appeal deserves to succeed. In the plaint, the plaintiffs have clearly prayed that the facts of the case are such which render it just and equitable that the partnership should be dissolved. In this respect s. 44(g) of the Partnership Act is clearly attracted. The learned counsel for the plaintiffs has urged that whenever dissolution of partnership is sought under S. 44(g), then it is for the Court to decide, whether it would be just and equitable to dissolve the partnership or not and such a matter cannot be left to

be gone into and decided by the arbitrator in pursuance of the arbitration clause contained in the partnership deed. In support of his argument, reliance is placed on Dwarka Nath Kapur v. Rameshwar Nath (1966) 68 Pun LR (Delhi) 91 and Nitya Kumar Chatterjee v. Sukhendu Chandra, AIR 1977 Cal. 130. On going through the aforesaid decisions, I am of the view that they fully support the contention of the learned counsel for the plaintiffs. Before this matter is finally decided in favour of the plaintiffs, it will have to be seen, whether the partnership stood dissolved by filing the suit as held by the Court below, because in case the partnership stood dissolved by filing the suit, the question, whether it would be just and equitable to dissolve the partnership, would not survive for consideration.

3. The Court below relied on certain observations in Manohar Lal v. Moti Lal, 1974 Cur LJ 423 by R. S. Narula, J., in coming to the conclusion that the moment a suit is filed for dissolution of partnership, a partnership at will stands dissolved merely by filing of the suit. Since the instant partnership was a partnership at will, the trial Court followed the observations in the aforesaid judgment and held that by filing of the suit, the partnership stood dissolved and, therefore, S. 44(g) of the Partnership Act could not be relied upon by the plaintiffs to seek dissolution of partnership through Court on just and equitable grounds. Firstly, the learned counsel for the plaintiffs urged that the facts of the aforesaid decision were distinguishable and secondly, he argued that it was not a correct decision in view of the judgment of the Supreme Court in Banarsi Das v. Kanshi Ram, AIR 1963 SC 1165 and Khushi Ram Beharilal & Co. v. State of Punjab, 1971 Rev LR 253. In Banarsi Das's case (supra) it was ruled by the Supreme Court as follows:

'Now, it will be clear that this provision contemplates the mentioning of a date from which the firm would stand dissolved. Mentioning of such a date would be entirely foreign to a plaint in a suit for dissolution of partnership and therefore such a plaint cannot fall within the expression 'notice' used in the sub-section. It would follow therefore that the date of service of a summons accompanied by a copy of a plaint in the suit for dissolution of partnership cannot be regarded as the date of dissolution of partnership and S. 43 is of no assistance '..... ..

'In a partnership will, if one of the partners seeks its dissolution, what he wants is that the firm should be wound up, that he should be given his individual share in the assets of the firm..... and that the firm should no longer exist. He can call for the dissolution of the firm by giving a notice as provided in sub-section (1) of S. 43 i.e. without the intervention of the Court, but if he does not choose to do that and wants to go to the Court for effecting the dissolution of the firm, he will, no doubt, be bound by the procedure laid down in O. 20, R. 15 of the Civil P. C..... This rule makes the position clear. No doubt, this rule is of general application, that is, to partnerships at will as well as those other than at will; but there are no limitations in this provision confining its operation only to partnerships other than those at will'.

The aforesaid passages were relied upon by a Division Bench of this Court in Khushi Ram Behari Lal & Co.'s case (supra) and it was ruled that dissolution of partnership would take place under O. 20, R. 15 of the Civil P. C. even if it is at will and form a date fixed in the preliminary decree, unless the partnership is dissolved under S. 43 of the Partnership Act. Admittedly, in the present case partnership was not dissolved under S. 43 of the Partnership Act and the plaintiffs straightway filed a suit for dissolution of partnership. Therefore, it is clear that some observations contained in the judgment of R. S. Narula, J. go counter to the observations of the Supreme Court

and in the Division Bench decision of this Court. I am bound by the judgments of the Supreme Court and the Division Bench and following the same, I hold that merely by filing a civil suit for dissolution of partnership at will, the partnership does not stand dissolved and it will stand dissolved from a date which may be fixed in the preliminary decree passed by the Court unless it is found in the suit on merits that the partnership had already stood dissolved as pleaded by Hardial Singh Dhillon defendant. Hence, for the present, it is to be treated on the face of the plaint that the plaintiffs are seeking dissolution of partnership and accordingly S. 44(g) of the Partnership Act would be attracted. Since the dissolution is sought on the basis of justice and equity, this matter can only be gone into by a Civil Court and not by the arbitrators. The decision to the contrary is hereby reversed.

4. The Court below was also wrong in coming to the conclusion that even if the partnership stood dissolved, the suit for rendition of accounts on the facts of the present case could only be decided by the arbitrators. R. S. Narula, J. had held in the same judgment that since the partnership stood dissolved, the arbitration clause was not helpful for dissolution of partnership and, therefore, it was the Civil Court which had to decide about the rendition of accounts. That part of the decision was wrongly distinguished by the Court below. The wording of the arbitration clause in the two cases is almost identical. Even if the partnership had stood dissolved, the question of rendition of accounts could not be gone into by the arbitration after the dissolution of partnership and had to be decided by the Civil Court. This part of the judgment of the Court below is also reversed.

5. For the reasons recorded above, this appeal is allowed, the judgment of the Court below is hereby set aside and the application of Hardial Singh Dhillon defendant filed under S. 34 of the Arbitration Act is hereby dismissed. However, the parties are left to bear their own costs.

6. The parties through their counsel, who are represented before me, are directed to appear before the trial Court on the 27th day of August, 1984 for proceeding with the suit.

7. Appeal allowed.