
Before Viney Mittal, J

M/S AHLUWALIA & COMPANY AND OTHERS,—*Petitioners*

versus

SURINDER MOHAN & OTHERS,—*Respondents*

C.R. No. 1783 of 2003

29th January, 2004

Arbitration and Conciliation Act, 1996— S.8— Dispute between a partnership firm— Civil suit for dissolution of the firm and rendition of accounts filed— Cl. 22 of partnership deed provides that anything not specifically mentioned in this deed shall be settled by mutual discussion and in case the dispute remains unsolved, the same shall be referred to the arbitration— Cl. 17 provides that there was no fixed duration of partnership but anyone of the partners could retire from the partnership after giving three months notice in writing to remaining partners and on expiry of such period, partnership shall be terminated— Cl. 22 is not a general arbitration clause pertaining to all disputes arising between the parties— Only such matters not specifically mentioned in deed of partnership required to be referred to arbitration— Cl. 17 specifically deals with question of retirement of a partner on serving of requisite notice— Dispute between parties not covered under Cl. 22— Petition liable to be dismissed.

Held, that clause 22 of the partnership agreement is not a general arbitration clause pertaining to all disputes arising between the partners. The said clause is obviously qualified and provides for that matters “not specifically mentioned in the deed of partnership shall be referred to the Arbitration”. However, the retirement of a partner is squarely covered by clause 17 of the Partnership agreement. Thus, when clause 17 of the Partnership agreement deals with the question of retirement of a partner on serving of the requisite notice then the aforesaid dispute cannot be taken to be covered under clause 22 and, therefore, it cannot be suggested that the said dispute is also referable for adjudication to the Arbitrator.

(Para 13)

Sudeep Mahajan, Advocate, for the petitioners

S.C. Chhabra, Advocate, for the respondents.

JUDGMENT

VINEY MITTAL, J.

(1) Defendant No. 1 has approached this Court through the present revision petition. The challenge is to order dated January 17, 2003 passed by the learned trial Court. Vide the aforesaid impugned order, an application filed by defendant No. 1 under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act), has been dismissed.

(2) The plaintiff-respondents filed a suit for declaration that the firm M/s Ahluwalia and Company represented by defendant No. 1 and other defendants No. 2 to 7 stood dissolved after the expiry of three months notice dated April 9, 2001. A further claim was made for rendition of accounts of partnership business started,— *vide* partnership deed dated April 1, 1975. It was also claimed that the plaintiffs did not want to continue with the partnership and wanted to retire and recover their shares. Additionally, a prayer was also made for restraining the defendants from making any addition and alternation in the partnership business till the rendition of accounts and not to transfer any property of the partnership business in any manner, till the share of the plaintiffs was settled and recovered.

(3) On appearance before the learned trial Court, defendant No. 1 filed an application under Section 8 of the Act. It was claimed that in the partnership deed between the parties there is an arbitration agreement and it had been categorically provided that one Ramesh Kumar Dhiman would be the sole arbitrator of the parties and his decision would be final and binding upon them. On that basis, it was claimed that the matter was liable to be referred under the provision of the Act and the Civil Court had no jurisdiction to try the suit.

(4) This application was contested by the plaintiffs. They claimed that clause 22 of the partnership deed was not of general operation and merely pertained to such disputes which were not covered under the partnership deed. However, the dispute between the parties was covered under a specific clause under which one of the partners could retire and seek the rendition of accounts after the service of notice. Accordingly, it was claimed that the matter was not referable to the Arbitrator. On that basis, it was claimed that the Civil Court had jurisdiction to try the suit.

(5) The learned trial Court on the basis of the interpretation of Clause 17 and 22 of the partnership agreement held that the matter was not referable to the Arbitrator and as such declined the prayer of defendant No. 1 and accordingly, dismissed the application.

(6) Defendant No. 1 has accordingly approached this Court through the present revision petition.

(7) I have heard Shri Sudeep Mahajan, the learned counsel for the petitioners and Shri S.C. Chhabra, the learned counsel for the respondents and with their assistance have also gone through the record of the case.

(8) Shri Sudeep Mahajan, the learned counsel for the petitioners has argued that there was clause 22 in the partnership agreement which provided for reference of disputes between the partners to an Arbitrator. On that basis, it has been contended that since there was an arbitration agreement between the parties, therefore, it was mandatory for the Civil Court to refer the dispute to an Arbitrator and the Civil Court had no jurisdiction to deal with the matter.

(9) On the other hand, Shri S.C. Chhabra, the learned counsel for the respondents has argued that the arbitration clause in the partnership agreement was not a general clause of arbitration but was limited only to such disputes which were not covered under the deed of partnership. Shri Chhabra maintains that the claim made by the plaintiffs in the suit was not covered under the aforesaid clause in any manner, since the dissolution of partnership of one of the partners was covered under clause 17 of the partnership agreement which provided that any partner could retire from partnership after giving three months clear notice to the other partners in writing and on the expiry of such period, partnership shall be terminated and retiree would be entitled to his share in the capital.

(10) I have given my thoughtful consideration to the rival contentions raised by the learned counsel for the parties and have also perused the various clauses in the partnership agreement.

(11) At the outset, it may be relevant to notice the clause 22 and 17 as under :—

“22. That anything not specifically mentioned in this deed of partnership shall be settled by mutual discussion and in case the dispute remains unsolved, the same shall be referred to the arbitration of Shri Ramesh Kumar Dhiman son of Shri Lachhman Dass Dhiman of Dhiman Industries,

Nakodar whose decision shall be final and binding on all the partners. In case the arbitrator fails to reach the decision, the decision of the umpire appointed by the arbitrator shall be binding on all the parties to this deed.

17. That no duration of partnership has been fixed but any partner can retire from the partnership after giving to the others three months clear notice in writing and on the expiry of such period partnership shall be terminated and he will be entitled to his share in the capital as per para No. 5 of this deed. The retiring partner shall have no right to goodwill, name and style or any assets of society thereafter.”

(12) A perusal of the aforesaid clause 22 clearly shows that the parties had agreed that “anything not specifically mentioned in this deed of partnership shall be settled by mutual discussion and in case the dispute remains unsolved, the same shall be referred to the arbitration of Shri Ramesh Kumar Dhiman....”. A further perusal of clause 17 shows that it had been specifically agreed between the parties that there was no fixed duration of partnership but anyone of the partners could retire from the partnership after giving a three months clear notice in writing to the remaining partners and on expiry of such period, partnership shall be terminated and the retiree would be entitled to his share.

(13) Thus, it is apparent that clause 22 of the partnership agreement is not a general arbitration clause pertaining to all disputes arising between the partners. The said clause is obviously qualified and provides for that matters “not specifically mentioned in the deed of partnership shall be referred to the Arbitration of Shri Ramesh Kumar Dhiman....”. However, as noticed above, the retirement of a partner is squarely covered by clause 17 of the Partnership Agreement. Thus, when clause 17 of the Partnership Agreement deals with the question of retirement of a partner on serving of the requisite notice, then the aforesaid dispute cannot be taken to be covered under clause 22 and therefore it cannot be suggested that the said dispute is also referable for adjudication to the Arbitrator.

(14) Faced with the aforesaid difficulty, Shri Sudeep Mahajan, the learned counsel for the petitioner placed reliance upon a judgment of the Hon'ble Supreme Court of India in **Hindustan Petroleum Corpn. Ltd. versus Pinkcity Midway Petroleum (1)**, to contend

that if there is an agreement between the parties before the Civil Court and there is a clause for arbitration then it is mandatory for the civil court to refer the dispute to an arbitrator. On the basis of the aforesaid judgment, it has further been argued by the learned counsel that the question as to whether the arbitration clause covers the dispute between the parties or as to whether the arbitrator had a jurisdiction to determine the aforesaid controversy between the parties was required to be determined by the arbitrator himself under Section 16 of the Act.

(15) I have considered the aforesaid contention of the learned counsel for the petitioner as well. However, I find myself unable to agree with the same.

(16) The arbitration clause in **Hindustan Petroleum Corpn. Ltd's** case (supra) was a clause which was worded in widest terms providing that any dispute or difference of any nature whatsoever, any claim, cross-claim, counterclaim or set off regarding any right, liability, act omission or account of any of the parties arising out of or in relation to this agreement shall be referred to the sole arbitration of the Chairman. It was in such a situation that the Hon'ble Supreme Court of India had held that the question as to whether a dispute between the parties was covered under an arbitration clause or not, was to be determined by the arbitrator himself under Section 16 of the Act.

(17) However, in the present case, as noticed by me above, the arbitration clause No. 22 contained in the present partnership agreement is not clause with regard to reference of all disputes to arbitrator but only such matters are referable to arbitration which are not specifically mentioned in the deed of partnership. Since the retirement of a partner is specifically provided for under clause 17 of the Partnership Agreement, therefore, the aforesaid matter was apparently excluded from the ambit and scope of the arbitration clause. In my considered opinion, **Hindustan Petroleum Corpn. Ltd.'s** case (supra) relied upon by the learned counsel for the petitioner has no application to the facts and circumstances of the case.

(18) No other point has been urged.

(19) In view of the aforesaid discussion. I do, not find any infirmity in the order passed by the learned trial Court and accordingly the present revision petition is dismissed. No order as to costs.

R.N.R.