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SMT. PREM LATA AND ANR.

v.

M/S ISHAR DASS CHAMAN LAL AND ORS.

JANUARY 10, 1995

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[K. RAMASWAMY AND SUJATA V. MANOHAR, JJ.]

*Arbitration Act, 1940—Section 20—Reference to Arbitration provided for in partnership deed of an unregistered firm—Suit under S.20 maintainable.*

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*Partnership Act, 1939—Section 69(3)—Not an embargo to reference of disputes to arbitration, if such provision present in the partnership deed of an unregistered firm.*

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One ID and his two sons by a partnership deed dated 13.12.65 constituted an unregistered firm. With the death of the eldest son on 6.3.78 the partnership firm stood dissolved. The appellants, the widow and the alleged son of the deceased, called upon the erstwhile partners, the respondents herein, to render the accounts of the firm. The respondents did not render the accounts and the appellants invoked Clause 16 of the Partnership Deed and called upon them to refer the dispute to the named arbitrators. Since the respondents refused to refer the dispute the appellants invoked the jurisdiction of the civil court under Section 20 of the Arbitration Act, 1940.

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The Trial Court allowed the suit. In revision, the High Court held that S.69(1)&(3) of the Partnership Act, 1939 excluded the application of S.20 of the Arbitration Act and consequently the application under S.20 for reference to arbitration was not maintainable.

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In appeal to this Court, it was contended that S.69(3)(a) carved out an exception to S.69(1), (2) and main (3). As a result there was no prohibition for the appellants to invoke Clause 16 of the partnership deed to enforce their rights so their application/suit under S.20 of the Arbitration Act was maintainable.

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The respondents contended that 'to sue' as envisaged in S.69(1) and main (3) included an entitlement to enforce the right created under the partnership deed and since the partnership firm was unregistered, the

rights under the deed, namely reference to arbitration under Clause 16, was not available. The suit under s.20 of the Arbitration Act was therefore not maintainable. A

Allowing the appeal, this Court

HELD : The alternate resolution forum agreed by the parties i.e. reference to private arbitration, was a mode of enforcing the rights given under s.69(3)(a) of the Act and was an exception to sub-section (1) and (2) and main part of (3) of s.69. The enforcement included right of reference to arbitration in terms of Clause 16 of the partnership deed for disputes and difference arising between the parties. There was no embargo for filing an application under s.20 of the Arbitration Act, 1940. The trial court is directed to refer the dispute to the named arbitrator. [173-G] B C

*Jagdish Chander Gupta v. Kajaria Traders (India) Ltd.*, [1964] 8 SCR 50, relied on. D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5491 of 1985. D

From the Judgment and Order dated 7.5.85 of the Punjab & Haryana High Court in C.R. No. 660 of 1985.

Dhruv Mehta, S.K. Mehta, Aman Vachher and P.N. Puri for the Appellants. E

Satish Chandra, K.B. Rohtagi, S.K. Dhingra and Ms. Aparna Rohtagi for the Respondents.

The following Order of the Court was delivered : F

Application for substitution is allowed.

This appeal, by special leave, arises from the judgment of the learned Single Judge of the Punjab and Haryana High Court in Civil Revision No. 660/85, dated May 7, 1985. G

M/s. Ishar Das Chaman Lal - partnership firm consists of Ishar Das, the father, Chaman Lal and Om Prakash, his sons. By a deed of partnership dated 13.12.1965, the aforesaid partnership firm was constituted but the firm was not registered under s. 69 of the Indian Partnership Act. Chaman H

A Lal, the eldest son died on 6.3.1978, by obvious reasons of which the partnership stood dissolved. By the death of one of the members, it is no longer possible to adhere to the original contract. The appellants - the widow and alleged son of the deceased Chaman Lal - called upon the respondents to render the accounts of the firm. Since they did not do so, invoking Clause (16) of the partnership deed, the appellants had called upon the respondents to refer the dispute to M/s. Tara Chand and Hans Raj Jain, Income-tax practitioners, the named arbitrators in the contract, to resolve the dispute: Since the respondents had refused to refer the dispute, the appellants invoked the jurisdiction of the civil court under s.20 of the Arbitration Act, 1940, for short the Act. The respondents resisted the claim contending that since the partnership firm was an unregistered one, by operation of s.69 of the Partnership Act, the application under s.20 of the Act would not lie. The trial court negated the contention of the respondents. But, on appeal and in revision, ultimately, the High Court held that sub-s. (1) of s.69 and main part of sub-s. (3) of s.69 exclude the application of s.20 of the Act and consequently, the suit is not maintainable. Thus, this appeal, by special leave.

E Shri Dhruv Mehta, the learned counsel appearing for the appellants neatly contended that the appellants are only seeking to enforce the rights of the parties arising from the dissolution of the firm for rendition of accounts of the dissolved firm and to take the property or the rights therein as per the terms of the contract to which Chaman Lal was entitled to. Instead of filing a suit, they invoked the arbitration clause 16 for reference to resolve the dispute by an alternative resolution forum created by the parties. Since sub-s. 3(a) of s.69 of the Partnership Act carved out an exception to the main part of sub-ss. (1) and (2) of s.69, there is no prohibition for the appellants to invoke clause 16 of the partnership deed and that therefore, the suit filed under s.20 of the Act is maintainable.

G Shri Satish Chandra, the learned Senior counsel for the respondents contended that "to sue", as envisaged in sub-s. (1) and main part of sub-s. (3) of s.69, includes entitlement to enforce the right created under the contract. Since the partnership firm was an unregistered one, the rights arising under the contract, namely, reference to the arbitration under clause 16 of the contract itself is a right to sue under the contract and that therefore, the suit under s.20 of the Act is not maintainable.

The question, therefore, is whether the suit filed under s. 20 of the Act is maintainable to work out the rights given to the parties under clause (a) to sub-s.(3) of s.69 of the Partnership Act? Section 20 of the Arbitration Act provides that :

"20. Application to file in Court arbitration agreement. - (1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in court.

(2) x x x x x x

(3) x x x x x x

(4) x x x x x x, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court."

Clause 16 of the partnership deed provides that :

"16. That any dispute or question in connection with the partnership firm or this deed shall be referred to arbitration of Shri Tarachand and Shri Hansraj Jain, Income-tax Practitioner, and they shall be the arbitrators on behalf of the parties under the provision of the Indian Arbitration Act of 1940, or any statutory modification or re-enactment thereof for the time being in force."

The question, therefore, is whether s.69 prohibits the reference by the Court under s.20 of the Act? Section 69(3)(a) of the Partnership Act reads thus:

"69. Effect of non-registration. -

(1) x x x x

A (2) x x x x

(3) The provisions of sub-ss. (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect -

B (a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm; or x x x x x x."

C Undoubtedly, s.69(1) prohibits laying the suit to enforce a right arising from a contract or conferred by the Act or on behalf of a person suing as a partner in the firm against the firm or any person alleged to be or to have been a partner in the firm. This Court in *Jagdish Chander Gupta v. Kajaria Traders (India) Ltd.*, [1964] 8 SCR 50, considering the words 'other proceedings' in sub-s. (3) of s.69, held that the doctrine of *ejusdem generis* would not apply and the words 'other proceedings' include the right arising under an arbitration agreement between the parties is a right arising under the contract. The words 'other proceedings' in sub-s.(3) must receive their full meaning untrammelled by the words 'a claim of set off'. The latter words neither intend nor can be construed to cut down the generality of the words 'other proceedings'. In that case, since the parties sought to avail the remedy under s.8 of the Act, this Court held that the words 'other proceedings' include the proceedings under s.8 of the Act and that, therefore, the application would not lie. However, this Court had expressly laid thus :

F "In our judgment, the words 'other proceedings' in s.(3) must receive their full meaning untrammelled by the words 'a claim of set-off'. The latter words neither intend nor can be construed to cut down the generality of the words 'other proceedings'. The sub-section provides for the application of the provisions of sub-ss. (1) and (2) to claims of set-off and also to other proceedings of any kind which can properly be said to be for enforcement of any right arising from contract except those expressly mentioned as exceptions in sub-s. (3) and sub-s. (4)."

G Thus this Court also had given effect to the exceptions carved out by sub-ss. (3) and (4) of s.69 of the Partnership Act from the prohibition imposed by H sub-ss. (1) and (2) and main part of sub-s. (3) even though the firm was

not registered under s.69.

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It is seen that with the demise of the partners, *ipso facto*, the partnership stood dissolved. What the legal representatives of the deceased partner, is seeking to enforce is for accounts of a dissolved firm or any right or power to realise the property of the dissolved firm. The right 'to sue' for the dissolution of the firm must, of necessity, be interpreted to mean the right to enforce the arbitration clause for resolution of the disputes relating to dissolved firm or for rendition of accounts or any right or power to realise the property of the dissolved firm.

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Indisputably the first appellatant is the widow of Chaman Lal - one of the partners. Therefore, she steps into the shoes of the deceased partner who had a right in the dissolved partnership firm. Sub-s. (3)(a) carves out three exceptions to sub-ss. (1) and (2) of s. 69 and also to the main part of sub-s. (3) of s. 69, namely, (1) the enforcement of any right to sue for the dissolution of firm; (2) for accounts of the dissolved firm; and (3) any right or power to realise the property of the dissolved firm. Having excluded from the embargo created by the main part of sub-s. (3) of sub-ss.(1) and (2) of s.69, the right to sue would not again to be construed to engulf the exceptions carved out by sub-s. (3) or sub-s. (4) of s.69 of the Act. Any construction otherwise would render the exceptions, legislature advisedly has carved out in sub-ss. (3) and (4) of s.69, *otiose*. The object appears to be that the partnership having been dissolved or has come to a terminus, the rights of the parties are to be worked out in terms of the contract of the partnership entered by and between the partners and the rights engrafted therein. The exceptions carved out by sub-s.(3) are to enforce those rights including the rights to dissolution of the partnership despite the fact that the partnership firm was an unregistered one. Having kept that object in view, we are of the considered opinion that the alternative resolution forum agreed by the parties, namely, reference to a private arbitration is a mode of enforcing the rights given under clause (a) of sub.s(3) of s.69 of the Act and gets excluded from the main part of sub-s. (3) and sub-ss. (1) and (2) of s.69. The enforcement of the right to sue for dissolution includes a right for reference to an arbitration in terms of the agreement of the partnership by and between the parties. Therefore, there is no embargo for filing a suit under s.20 of the Act.

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It is fairly stated by Shri Satish Chandra that the party can enforce

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- A the right by a suit for rendering accounts and for realisation of the property of the dissolved firm pro-rata. When that is permissible by an exception carved out by sub-s.(3)(a) to s.69, we are of the view that there is no prohibition to invoke arbitration clause under the deed of partnership, agreed to by and between the parties to invoke s.20 of the Act. Thus considered, we are of the view that the suit under s.20 of the Act is maintainable. The High Court has, therefore, committed manifest error of law in holding otherwise.
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The appeal is allowed with costs of Rs. 5,000.

- C Since we have allowed the appeal, we direct the trial court to send the reference immediately to the named arbitrators and we do hope that the arbitrators would immediately enter upon the reference and decide the dispute as expeditiously as possible within a period of 6 months from the date of the receipt of this order as this is a matter pending for long time.
- D A.G. Appeal allowed.