

Jagdish Chander Gupta

Vs

Kajaria Traders (India) Ltd

Civil Appeal No. 791 of 1962

(K. N. Wanchoo, M. Hidayatullah, K. C. Das Gupta, N. Rajgopala Ayyangar JJ)

29.04.1964

JUDGMENT

HIDAYATULLAH J. –

This appeal by special leave is directed against an order of the High Court of Bombay dated March 22, 1960 in its ordinary original civil jurisdiction. The facts are simple. By a letter dated July 30, 1955, Messrs. Kajaria Traders (India) Ltd., who is the respondent here and Messrs. Foreign Import and Export Association (sole proprietary firm owned by the appellant Jagdish C. Gupta) entered into a partnership to export between January and June 1956, 10,000 tons of manganese ore to Phillips Brothers (India) Ltd., New York. Each partner was to supply a certain quantity of manganese ore. We are not concerned with the terms of the agreement but with one of its clauses which provided :

"That in case of dispute the matter will be referred for arbitration in accordance with the Indian Arbitration Act."

The company alleged that Jagdish Chander Gupta failed to carry out his part of the partnership agreement. After some correspondence, the company wrote to Jagdish Chander Gupta on February 28, 1959 that they had appointed Mr. R. J. Kolah (Advocate O.S.) as their arbitrator and asked Jagdish Chander Gupta either to agree to Mr. Kolah's appointment as sole arbitrator or to appoint his own arbitrator. Jagdish Chander Gupta put off consideration and on March 17, 1959 the company informed Jagdish Chander Gupta that as he failed to appoint an arbitrator within 15 clear days they were appointing Mr. Kolah as sole arbitrator. Jagdish Chander Gupta disputed this and the company filed on March 28, 1959 an application under s. 8(2) of the Indian Arbitration Act, 1940 for the appointment of Mr. Kolah or any other person as arbitrator.

Jagdish Chander Gupta appeared and objected inter alia to the institution of the petition. Two grounds were urged (i) that s. 8(2) of the Indian Arbitration Act was not applicable as it was not expressly provided in the arbitration clause quoted above that the arbitrators were to be by consent of the parties and (ii) that s. 69(3) of the Indian Partnership Act, 1932 afforded a bar to the petition because the partnership was not registered. The petition was referred by the Chief Justice to a Divisional Bench consisting of Mr. Justice Mudholkar (as he then was) and Mr. Justice Naik. The two learned Judges agreed that in the circumstances of the case an application under s. 8 of the Indian Arbitration Act was competent and that the court had power to appoint an arbitrator. They disagreed on the second point : Mr. Justice Mudholkar was of the opinion that s. 69(3) of the Indian Partnership Act barred the application while Mr. Justice Naik held otherwise. The case was then referred to Mr. Justice K. T. Desai (as he then was) and he agreed with Mr. Justice Naik with the

result that the application was held to be competent.

In this appeal it was not contended that the conclusions of the learned Judges in regard to s. 8(2) were erroneous. The decision was challenged only on the ground that s. 69(3) was wrongly interpreted and the bar afforded by it was wrongly disallowed. Section 69 of the Indian Partnership Act may be reproduced here :

"69. (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (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 -

(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

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realise the property of an insolvent partner.

(4) This section shall not apply -

(a) to firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882, or outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

The section, speaking generally, bars certain suits and proceedings as a consequence of non-registration of firms. Sub-s. (1) prohibits the institution of a suit between partners inter se or between partners and the firm for the purpose of enforcing a right arising from a contract or conferred by the Partnership Act unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. Sub-s. (2) similarly prohibits a suit by or on behalf of the firm against a third party for the purpose of enforcing rights arising from a contract unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. In the third sub-section a claim of set-off which is in the nature of a counter claim is also similarly barred. Then that sub-section bars "other proceedings". The only doubt that

has arisen in this case is regarding the meaning to be given to the expression "other proceeding". One way to look at the matter is to give these words their full and natural meaning and the other way is to cut down that meaning in the light of the words that precede them. The next question is whether the application under s. 8(2) of the Arbitration Act can be regarded as a proceeding "to enforce a right arising from a contract", and therefore, within the bar of section 69 of the Indian Partnership Act.

Mr. Justice Mudholkar in reaching his conclusion did not interpret the expression "other proceeding" ejusdem generis with the words "a claim of set-off". He held further that the application was to enforce a right arising from the contract of the parties. Mr. Justice Naik pointed out that the words used were not "any proceeding" nor "any other proceedings" but "other proceeding" and that as these words were juxtaposed with 'a claim of set off' they indicated a proceeding of the nature of a claim in defence. On the second point Mr. Justice Naik held that this was not a proceeding to enforce a right arising from a contract but was a claim for damages and such a claim could be entertained because it was based on something which was independent of the contract to supply ore. He held that the right which was being enforced was a right arising from the Arbitration Act and not from the contract of the parties. Mr. Justice K. T. Desai agreed with most of these conclusions and suggested that the words proceeding "other proceeding", namely, "a claim of set-off" had 'demonstrative and limiting effect'. He seems to have ascertained the meaning of the expression "other proceeding" by reference to the meaning of the words "a claim of set off", which he considered were associated with it.

The first question to decide is whether the present proceeding is one to enforce a right arising from the contract of the parties. The proceeding under the eighth section of the Arbitration Act has its genesis in the arbitration clause, because without an agreement to refer the matter to arbitration that section cannot possibly be invoked. Since the arbitration clause is a part of the agreement constituting the partnership it is obvious that the proceeding which is before the court is to enforce a right which arises from a contract. Whether we view the contract between the parties as a whole or view only the clause about arbitration, it is impossible to think that the right to proceed to arbitration is not one of the rights which are founded on the agreement of the parties. The words of s. 69(3) "a right arising from a contract" are in either sense sufficient to cover the present matter.

It remains, however, to consider whether by reason of the fact that the words "other proceeding" stand opposed to the words "a claim of set-off" any limitation in their meaning was contemplated. It is on this aspect of the case that the learned Judges have seriously differed. When in a statute particular classes are mentioned by name and then are followed by general words, the general words are sometimes construed ejusdem generis, i.e., limited to the same category or genus comprehended by the particular words. But it is not necessary that this rule must always apply. The nature of the special words and the general words must be considered before the rule is applied. In *Allen v. Emerson* [[1944] 1 K.B. 362.], Asquith J. gave interesting examples of particular words followed by general words where the principle of ejusdem generis might or might not apply. We think that the following illustration will clear any difficulty. In the expression "books, pamphlets, newspapers and other documents" private letters may not be held included if 'other documents' be interpreted ejusdem generis with what goes before. But in a provision which reads "newspapers or other document likely to convey secrets to the enemy", the words 'other documents' would include document of any kind and would not take their color from 'newspapers'. It follows, therefore, that interpretation ejusdem generis or noscitur a sociis need not always be made when words showing particular classes are followed by general words. Before the general words can be so interpreted there must be a genus constituted or a category disclosed with reference to which the general words

can and are intended to be restricted. Here the expression "claim of set-off" does not disclose a category or a genus. Set-offs are of two kinds - legal and equitable - and both are already comprehended and it is difficult to think of any right "arising from a contract" which is of the same nature as a claim of set-off and can be raised by a defendant in a suit. Mr. B. C. Misra, whom we invited to give us examples, admitted frankly that it was impossible for him to think of any proceeding of the nature of a claim of set off other than a claim of set-off which could be raised in a suit such as is described in the second sub-section. In respect of the first sub-section he could give only two examples. They are (i) a claim by a pledger of goods with an unregistered firm whose goods are attached and who has to make an objection under O. 21 r. 58 of the Code of Civil Procedure and (ii) proving a debt before a liquidator. The latter is not raised as a defence and cannot belong to the same genus as a "claim of set-off". The former can be made of fit but by a stretch of some considerable imagination. It is difficult for us to accept that the Legislature was thinking of such far-fetched things when it spoke of "other proceeding" ejusdem generis with a claim of set-off.

Mr. Justice Naik asked the question that if all proceedings were to be excluded why was it not considered sufficient to speak of proceedings along with suits in sub-ss. (1) and (2) instead of framing a separate sub-section about proceedings and coupling 'other proceeding' with 'a claim of set-off' ? The question is a proper one to ask but the search for the answer in the scheme of the section itself gives the clue. The section thinks in terms of (a) suits and (b) claims of set-off which are in a sense of the nature of suits and (c) of other proceedings. The section first provides for exclusion of suits in sub-ss. (1) and (2). Then it says that the same ban applies to a claim of set-off and other proceeding to enforce a right arising from a contract. Next it excludes the ban in respect of the right to sue (a) for the dissolution of a firm, (b) for accounts of a dissolved firm and (c) for the realisation of the property of a dissolved firm. The emphasis in each case is on dissolution of the firm. Then follows a general exclusion of the section. The fourth sub-section says that the section as a whole, is not to apply to firms or to partners and firms which have no place of business in the territories of India or whose places of business are situated in the territories of India but in areas to which Chapter VII is not to apply and to suits or claims of set off not exceeding Rs. 100 in value. Here there is no insistence on the dissolution of the firm. It is significant that in the latter part of clause (b) of that section the words are "or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim" and this clearly shows that the word "proceeding" is not limited to a proceeding in the nature of a suit or a claim of set-off. Sub-section (4) combines suits and a claim of set-off and then speaks of "any proceeding in execution" and "other proceeding incidental to or arising from any such suit or claim" as being outside the ban of the main section. It would hardly have been necessary to be so explicit if the words 'other proceeding' in the main section had a meaning as restricted as is suggested by the respondent. It is possible that the draftsman wishing to make exceptions of different kinds in respect of suits, claims of set-off and other proceedings grouped suits in sub-ss. (1) and (2), set-off and other proceedings in sub-s. (3) made some special exceptions in respect of them in sub-s. (3) in respect of dissolved firms and then viewed them all together in sub-s. (4) providing for a complete exclusion of the section in respect of suits of particular classes. For convenience of drafting this scheme was probably followed and nothing can be spelled out from the manner in which the section is sub-divided.

Some cases noticed by the High Court were cited to us but none of them appears to be really in point. In *Hafiz Qamar Din v. Nur Din* [A.I.R. 1936 Lah. 136.] and *Babulal Dhandhanian v. Messrs. Gauttam and Co.* [A.I.R. 1950 Cal. 391.] proceedings were started on an award, in one to make it a rule to the Court and in the other to get it set aside. These cases are distinguishable because they deal with awards and it is not necessary to decide whether after an award the proceeding is one to enforce a right arising from a contract. We do not refer to them. In *Kottamasu*

Sreemannarayanamuthy and another v. Chakka Arjanadu [A.I.R. 1939 Mad. 145.] a petition for adjudication of a partner as insolvent was held to be a right arising not from a contract but from statute. Here the right that is being enforced through the medium of the Arbitration Act arises from the contract between the parties and is a part of it. In Jamal v. Firm Umar Haji Karim [I.L.R. 1943 Nag. 540.] the bar of s. 69(3) was claimed during the execution of a consent decree and was disallowed. Grille C.J. observed that the expression 'other proceeding' indicated something which was 'sui generis of a claim of set-off'. If the partners of an unregistered firm go to court without either asking for a dissolution of the firm or dissolving it themselves and enter into an agreement and compose their differences it is possible to say that the enforcement of the consent decree is no more than the enforcement of a right arising from a contract and is within the ban. It is, however, not necessary to decide this point here. In Ram Lal Harnam Das v. Bal Krishan and others [A.I.R. 1937 Punjab 159.] it was expressly pointed out that the expression 'other proceeding' in the third sub-section applied to proceedings of the nature of a claim of set-off and nothing else. This case cannot be said to interpret the sub-section correctly. Similarly, Mahendra v. Gurdeyal [I.L.R. 30 Pat. 109.], which lays down that s. 69 does not bar a partner of an unregistered partnership firm from applying to the court under s. 8 of the Arbitration Act for referring the dispute between partners to arbitrator as provided in the condition of their agreement, cannot be accepted as sound. The reason given by the Divisional Bench that as s. 69 allows dissolution and accounts of unregistered partnership it cannot bar such an application appears to us to be not quite in point.

In our judgment, the words 'other proceeding' 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 proceeding'. 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).

The appeal is, therefore, allowed. The decision of the High Court will be set aside and the application under s. 8(2) of the Arbitration Act shall stand dismissed with costs throughout on the applicant in the High Court.

Appeal allowed.

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