

Asandas Mitharam Narsinghani and Others

Vs

Tekchand Mitharam Sevakramani and Others

Civil Appeal No. 5847 of 1994

(B. N. Kirpal, S. R. Babu JJ)

21.01.1999

ORDER

1. The parties in these proceedings were partners of a partnership firm which was carrying on some business. In the year 1982, Respondent 1 filed a suit for dissolution of the partnership firm and for taking accounts. With the agreement of the parties, the Court referred the dispute to a named arbitrator.
2. The arbitrator made his award on 20-6-1984. Respondent 1 filed objections to the said award. The main objection was that the award of the arbitrator was not in accordance with the provisions of Section 48 of the Partnership Act, 1932 (for short "the Act")
3. The Joint Judge accepted the objection and by this judgment dated 20-12-1986 set aside the award. He came to the conclusion that the arbitrator had not followed Section 48 of the Act.
4. The appeal filed by the appellant was dismissed by the High Court and this has given rise to this appeal by special leave.
5. It is not in dispute that the award in question is a non-speaking award. The only contention which was raised on behalf of the objectors and which found favour with the trial court as well as with the High Court was that the award was not in conformity with Section 48 of the Act.
6. Section 48 of the Act prescribed the mode of settlement of accounts between the parties. The section, however, states that the mode prescribed therein is "subject to agreement by the parties", in other words, the parties may agree that the mode prescribed by Section 48 need not be followed with regard to settlement of accounts between the partners.
7. Learned counsel for the appellants has taken us through the award of the arbitrator. On going through the said award, we do not find that the same is not in conformity with the mode prescribed by the said section. Without going into the question as to whether there was an agreement between the partners not to adhere to the mode prescribed by Section 48, as was sought to be contended by Mr. Ramachandran, learned Senior Counsel, we find that the award has dealt with all the aspects referred to in Section 48. After going through the accounts, the arbitrator has not determined any loss of partnership. As far as the assets of the firm are concerned, it has made provisions with regard to the payment of debts of the firm to the third party. It has then provided for the manner in which each partner has to be paid from the assets of the firm and how the division of the firm's property is to take place. The award of the arbitrator is very detailed and elaborate, even though it is not a speaking award. We therefore, are unable to agree with the conclusion of the trial court as well as

the High Court that the provisions of Section 48 had been complied with. We also note that neither the trial court nor the High Court have pointed out as to how the provisions of Section 48 have not been complied with. The said court have, in a way, assumed non-compliance of Section 48 of the Act. On going through the award we do not find any warrant for such an assumption. We, therefore, hold that the award is not in conflict with the provisions of Section 48.

8. Mr. Kapur, learned Senior Counsel for the respondents sought to raise a contention that as the award purported to create rights in immovable properties, the same had to be registered and it could not have been made the rule of the court. We find that this contention had neither been raised before the trial court nor before the High Court. It has now been raised at this stage of the arguments for the first time. Without going into the merits of this contention we do not permit the learned counsel to make such a submission. No other objection to the award having been raised the trial court or before the High Court, we for the aforesaid reasons, set aside the judgments of the trial court and the High Court, dismiss the objections filed by the respondents and direct that the award be made the rule of the court and a decree in terms thereof be passed. The appeal is, thus disposed of. There is no order as to costs.