

SUPREME COURT OF INDIA

Shri Chander Nath Ojha, Jaipur

Vs.

Shri Suresh Jhalani

C.A.No.2637 of 1991

(D.P.Wadhwa and M.B.Shah JJ.)

05.10.1999

ORDER

D.P. WADHWA, J.

1. This appeal is directed against the judgment dated February 26, 1991 of a learned single Judge of the Rajasthan High Court dismissing the appeal of the appellant filed under Section 39 of the Arbitration Act, 1940 (for short the 'Act'). District Judge Jaipur, by his judgment on a petition filed by the first respondent against the appellant herein and respondents 2 and 3, under Section 20 of the Act, had directed that disputes arising out of the sale agreement dated February 28, 1992, which contained an arbitration clause, be referred to arbitration. Appellant had opposed the petition saying that he was not a party to the sale agreement and as such he was not a party to the sale agreement and as such he could not have been entered into any arbitration agreement to submit any dispute under the sale agreement to arbitration. His contention was not accepted by the District Judge. High Court by the impugned judgment also refused to interfere. Aggrieved the appellant has come to this Court.

2. To understand the controversy between the parties it is necessary to refer to a few facts.

3. An agreement to sell certain property was entered into between the first respondent as purchaser and respondents 2 and 3 as vendOrs. In the agreement it was mentioned that the property to be sold is a property belonging to a Hindu Undivided Family consisting of the second respondent as Karta and the appellant and the third respondent being the two sons of the second respondent, in all three constituting the Hindu Undivided Family. It is not necessary for us to refer to various terms of the agreement of sale which is dated February 28, 1982 except to note that it was signed by the second and third respondents only. The agreement ends with paragraph 25 which we quote hereunder:-

"25. That all payments made by the purchaser to the Vendors under this Agreement shall be entered on a separate sheet to be retained by the purchaser and each such payment which may be received by any one of the aforesaid Vendors shall be entered in the said sheet and signed by the said Receiver of payment. However, the said payment made by the purchaser to anyone of the aforesaid vendors shall be deemed to have been paid to all the Vendors jointly though such receipt of payment had been signed by only one Vendor. It is further clarified that signatures on behalf of all the vendors have been made for having the authority of all the VendOrs. No Vendor shall be entitled to raise any objection for the receipt of such payments on the ground that the same has been signed by

one Vendor only. This is with Chandranath's consent who is not here to-day.

(Reference to Chandranath's to the appellant)

Clause 24 of the agreement contained the arbitration clause, which is as under:-

24. That in case if any dispute may arise between the parties to this document or anybody coming through them the same shall be referred to the arbitration of Justice D.M. Bhandari or in his absence Shri Devi Shanker Tiwari whose decision shall be final and binding on both the parties.

4. When disputes arose under the agreement to sell the first respondent being the purchaser filed petition under Section 20 of the Arbitration Act impleading even the appellant as a respondent. It was the case of the respondent that since there was no arbitration agreement as far as he is concerned petition under Section 20 of the Act was not maintainable against him. Arbitration agreement is defined in Clause (a) of Section 2 of the Act which means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. Appellant says that immediately he came to know about the agreement to sell had been entered into between the first respondent and his father and brother respectively respondents 2 and 3, he wrote a letter to the first respondent informing him that he was not a party to the agreement to sell and further that the property, subject-matter of the agreement to sell, was not a Hindu Undivided Family. A partition had been effected as far back on March 31, 1965, which was reduced to writing on December 25, 1972. Thus according to the appellant his father as Karta has no right to enter into any agreement to sell styling himself as Karta and in any case there was no necessity for him to sell the property even if the property belongs to Hindu Undivided Family.

5. The question that arose for consideration is: If the appellant could be said to have entered into an arbitration agreement in these circumstances?

6. During the pendency of this appeal second respondent died and his legal representatives being his two sons (the appellant and the third respondent) and two daughters have been brought on record.

7. The learned District Judge in his judgment noted the contentions of the appellant but did not consider it proper to examine the legality of the existence of the arbitration agreement with the appellant. He said that the contentions raised by the appellant were of fact which would be decided by the arbitrator and he observed that it appeared that the parties had entered into a written agreement and that disputes have arisen. High Court in its impugned judgment though referred to various documents of the appellant informing the first respondent that he was not a party to any agreement to sell and thus to the arbitration agreement but held that the agreement to sell was executed by the first respondent as Karta and all pages of the agreement to sell have been signed by the respondents 2 and 3 and that the agreement itself recorded that it was executed with the consent of the appellant. High Court held that merely because the agreement did not bear the signatures of the appellant, it could not be said that he was not party to the agreement. Then High Court said that clause contained in the arbitration agreement was quite clear and that the dispute was that the first respondent wanted specific performance of the agreement to sell and that "all other matters shall be looked into by the arbitrator himself." Then it concluded as under:-

Proceedings under Section 20 of the Arbitration Act are of summary nature and it is not expected from a court to try it as a regular suit by framing issues or affording the parties to lead evidence in support of the issues framed. The parties have filed affidavits and produced evidence in support of their contention and it is not the case of the appellants that they were not given any opportunity or they were prohibited from filing any evidence in support of their contention. The defence of the non petitioners that the property has been partitioned can also be looked into by the Arbitrator and all objections that they want to take with regard to the agreement can be looked into by the Arbitrator.

8. To constitute an arbitration agreement, it is not necessary that it should bear the signatures of the parties. Requirement of law is that it should be in writing. In the present case, a particular clause in the agreement to sell, which is in writing, constitutes the arbitration agreement. After examining the rival contentions, both the District Judge and the High Court came to the conclusion that parties did enter into an arbitration agreement which is in writing and that disputes have arisen. With these findings that there was an arbitration agreement between the parties it is not possible for us to examine the facts all over again and take a different view.

9. For petition under Section 20 of the Act, two requirements are: (1) that there is an arbitration agreement and (2) the arbitration agreement applies to the differences which have arisen between the parties. After these requirements are met, then the Court proceeds to file the arbitration agreement and direct the disputes to be referred to arbitration.

10. Now, second respondent, father of the appellant and third respondent has died. Under Section 6 of the Act, an arbitration agreement shall not be discharged by the death of any party thereof. Appellant and the third respondent and their two sisters are the legal representatives of the deceased second respondent. They will necessarily step into the shoes of their father, the second respondent. It is not the case of any respondent that on the death of the second respondent any right of action under the agreement to sell is extinguished. Reference to arbitration therefore, remains valid.

11. The disputes which would arise for the arbitrator would be as follows:

1. Whether the property in question was Hindu Undivided Family property as on February 28, 1982 of which the second respondent was the Karta?

2. If the above issue is held in affirmative, whether the second respondent as Karta entered into the agreement to sell for legal necessity so as to bind all the coparceners of the Hindu Undivided Family ?

3. If the above issues are held in negative whether the appellant was party to the agreement to sell dated February 28, 1982 along with the deceased father, the second respondent and brother, the third respondent?

4. Again if the issues 1 and 2 or issue 3 are answered in affirmative whether the first respondent is not entitled to the specific performance of the aforesaid agreement to sell?

5. If answer to issue 3 is in negative, to what extent is the first respondent entitled to specific performance of the agreement to sell?

12. The arbitrator will certainly be free to frame any other issue arising out of the disputes between the parties under the agreement to sell. It may, however, be ultimately that the appellant in his personal capacity may not be bound by the award in case of some of the issues held in his favour but then he would certainly be participating in the arbitration proceedings even though as a legal representative of his deceased father.

13. With these observations, the appeal is dismissed and the judgment of the High Court is affirmed. There will be no order as to costs.