

SUPREME COURT OF INDIA

Devinder Singh Puri

Vs.

Daljeet Puri

C.A.No.5248 of 2002

(R.V.Raveendran and Dr. Mukundakam Sharma JJ.)

14.10.2008

ORDER

1. The appellant is the son of the deceased first respondent. The first respondent claiming to be the sole proprietor of M/s. B.S. Puri & Co., filed a petition under sections 14(2) and 17 of the *Arbitration Act, 1940* ('Act' for short) praying for the award dated 29.12.1993 passed by the sole arbitrator (third respondent herein) in regard to disputes between M/s. B.S. Puri & Co. and the second respondent, be made a rule of the court. In the said petition, the petitioner was described thus : "Birinder Singh Puri, 225/18-A, Chandigarh, Proprietor M/s. B.S.Puri & Co.".

2. In the said proceedings, the appellant herein made an application under Order 1 Rule 10(2) of Civil Procedure Code for being impleaded as a party. The appellant alleged that 'M/s. B.S.Puri & Co.' was a partnership firm of which his father, himself and his brother were the partners, and that his father had filed the petition under section 14(2) and section 17 of the Act by misleading the Court that 'M/s. B.S.Puri & Co.' -- the claimant under the Arbitration Award was a proprietary concern. He alleged that instead of showing the claimant as a partnership firm, his father had tampered and fabricated records to show that M/s. B.S.Puri & Co. was a proprietary concern. He contended that as a partner of the firm of M/s. B.S.Puri & Co. he was entitled to be heard in the matter and therefore he should be impleaded as a party.

3. The said application was resisted by the first respondent. The trial court dismissed the said application by order dated 23.12.2000. In the course of its order, the trial court referred to the fact that the appellant had earlier filed an application for impleadment and that application had been rejected; that a review petition filed by him was also rejected; and that the revision petition filed by him against the said order had also been disposed of. The trial court also noted that the appellant had also filed a suit for dissolution of the partnership firm of M/s. B.S.Puri & Co. and rendition of accounts. The trial court held that as first respondent had been recorded as the sole proprietor of claimant in the Arbitration Award and the claim of the appellant as to status as partner had not been adjudicated or declared by any court, he was neither a necessary party nor a proper party to the proceedings.

4. Feeling aggrieved the appellant filed Civil Revision Petition No.243/2001 before the Punjab and Haryana High Court. The High Court by its order dated 1.5.2001 dismissed the application. It held that the second application under Order 1 Rule 10 CPC was an abuse of process of law. It confirmed the finding that he was neither a necessary nor a proper party. The said order is challenged in this appeal by special leave.

5. The contention of the appellant is that he is a partner of M/s. B.S.Puri & Co. and therefore he was entitled to be impleaded as a party in the petition filed by his father under sections 14(2) and 17 of the Act. He also contends that he has filed a separate petition under sections 30, 33 and 16 of the Act for setting aside the award on the ground that the Arbitrator had misconducted the proceedings by not acceding to his request for impleading him as a party. The question that arises for consideration is whether in a petition filed by a claimant in an Arbitration proceedings, for making a decree in terms of the Arbitration award under sections 14(2) and 17 of the Act, a person who was not a party in the arbitration proceedings could be impleaded the ground that he claimed to be a partner of the claimant.

6. The only issue in a proceeding under section 14(2) and 17 of the Act is whether the award should be made a rule of the court or not. The question whether the award should be set aside or not, would arise in a petition under sections 30, 33 and 16 of the Act and not in the petition under sections 14(2) and 17 of the Act. In fact the appellant has claimed that he has filed a separate petition for that relief. Having regard to the limited scope of the proceedings, the Court which is considering a petition under sections 14(2) and 17 of the Act can not embark upon an inquiry as to whether the petitioner before it was a partnership firm or a proprietary concern and whether an applicant for impleading was a partner thereof. Be that as it may. The question as to whether the appellant should be impleaded as a party, has become academic in view of subsequent events.

7. During the pendency of this appeal, the first respondent (the petitioner in the Arbitration Case No.96/25.1.1994 under Sections 14(2) and 17 of the Act) died. By order dated 15.7.2008, this Court has permitted his widow, two sons (including the appellant herein) and two daughters to be brought on record as the LR's. of the deceased.

8. In view of the fact that the first respondent who was the petitioner in the Arbitration Case No.96/25.1.1994 has died, the aforesaid five persons will also have to be brought on record as his LR's. in the said case, if they are not already brought on record. If and when they are brought on record, the appellant in his capacity as one of the LR's of the deceased petitioner in the said proceedings, can certainly urge all his contentions in support of the petition praying that a decree be made in terms of the award. No other question would arise in the said proceedings. If the appellant wants to challenge the award, then he has to pursue the petition said to have been filed by him for that purpose. As the grievance of the appellant that he should be heard in Arbitration Case No.96/25.1.1994 does no longer subsist as he, in his capacity as one of the LR's of the deceased, will be a party and will be heard. In fact learned counsel for the other LR's of the deceased first respondent submitted that they have no objection for the appellant herein coming on record as an LR of the deceased petitioner in Arbitration Case No.96/25.1.1994 and making his submissions in support of the petition. In

so far his other grievances are concerned they cannot be gone into in the proceedings with a limited scope under sections 14(2) and 17 of the Act, and it is open to the appellant to pursue his remedies in accordance with law, in his suit for dissolution or his petition for setting aside the award.

9. The appellant submitted that there was some interference by his brother-in-law, who had occupied a position of importance in the Punjab & Haryana High Court.

If he has any such pending grievance he is at liberty to give a representation to the High Court so that it can be looked into. That is not the subject matter of this appeal.

10. As the dispute relating to dissolution of partnership and various other issues are pending for long, the parties, if are so advised can get it settled by getting it referred to Mediation. The appellant and the other LRs. of the deceased first respondent agreed to explore the possibility of negotiated settlement by mediation without prejudice to their rights/contentions. They agreed that they will appear without further notice before Delhi Mediation Centre, Tis Hazari Courts, Delhi on 5.11.2008 at 4 p.m. for this purpose.

In view of the foregoing, the appeal is disposed of as no longer surviving for consideration.