

PATNA HIGH COURT

Mahendra Lal Kushiary

Vs

Gurdeyal Singh

Civil Revn. No. 694 of 1950

(Sarjoo Prosad and C.P. Sinha, JJ.)

07.12.1950

JUDGMENT

C.P. Sinha, J.

1. This is an application in revision on the following facts. There was a partnership business between one Mahendra Lal Kushiary, the present petitioner, and one Gobinda Chandra Chakravarty for the purpose of running a motor business in the name and style of Sarju Motor Company. Later on Gurdeyal Singh, opposite party, agreed to join the partnership business in place of Gobinda Chandra Chakravarty, and a deed of agreement dated 17-3-1948, was executed by the present opposite party. One of the conditions of the agreement was that in case of any dispute or difference between the parties the matter would be referred to arbitration. Subsequently, difference arose between the parties and the petitioner Mahendra Lal Kushiary sent a notice to the applicant on 17-1-1950 dissolving the partnership, and later on he also filed a title suit No. 44 of 1950 in the Court of the Munsif, Hazaribagh Gurdeyal Singh, the opposite party filed an application before the learned Subordinate Judge for referring the matter in dispute to arbitration under the provision of Section 8, Arbitration Act, and the learned Subordinate Judge allowed the application on hearing the parties, and decided to refer the matter to arbitration, and the parties were called upon to suggest names of arbitrators within a time fixed by the Court, and the suit pending before the learned Munsif was stayed.

2. The present petitioner having felt aggrieved by the order of the learned Subordinate Judge referring the matter in dispute to arbitration filed an application in revision in this Court (Civil Revision No. 496 of 1950), This application, however, was dismissed on 3-8-1950. Having failed in this Court, the petitioner filed an application under Section 151, Civil Procedure Code in the Court of the Subordinate Judge, Hazaribagh, for reviewing the order of 12-7-1950, sending the matter to arbitration. The ground of review made out in the application was that as the partnership consisting of the petitioner and the opposite party was not a registered partnership

under the provisions of the Indian Partnership Act (IX of 1932), Section 69 of that Act was a bar to the application for sending the matter in dispute to arbitration, and that, therefore, the order of 12-7-1950, passed by the Court below was without jurisdiction. This application in review has been dismissed by the Court below and hence this application in revision to this Court.

3. It has been argued, as was argued in the Court below, that Section 69 of the Partnership Act was a bar to the application of the opposite party for sending the matter in dispute to arbitration and the order sending the same to arbitration was without jurisdiction. The learned counsel appearing for the opposite party has argued, firstly, that in view of the order in Civil Revision No. 496 of 1950 of this Court no such application for review of the order of the Court below, dated 12-7-1910, lay in the Court below, and, secondly, that Section 69 of the Indian Partnership Act has no application to the facts of the present case.

4. It is true that the order, sending the matter in dispute between the parties having been affirmed by the order of this Court in the aforesaid Civil Revision No. 496 of 1950, the decision of the learned Court below dated 12-7-1950, was binding between the parties thereto as it became final when the application in revision against that order was dismissed by this Court, and in that view of the matter it was not open to the petitioner to re-open the matter again. But the matter in regard to the bar of Section 69 of the Partnership Act has been argued by both the parties, and I consider that to decide the case finally, it is necessary to give our opinion in regard to the application or non-application of Section 69, to the facts of the present case.

5. Section 69 (3) of the Partnership Act lays down:

"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 realize the property of a dissolved firm. . ."

The provisions contained in sub-sections (1) and (2) bar suits in certain circumstances as mentioned in those two sub-sections, but clauses (a) and (b) of sub-section (3) of Section 69, engraft an exception upon the provisions contained in sub-sections (1) and (2) of Section 69. The language of clause (a) of Section 69 (3) on the very face of it shows that there is no bar to enforce a right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of such a firm, and this view has been upheld in *Shibba Mal v. Gulab Rai*¹, That was a suit for dissolution of partnership and rendition of accounts. In that case the defendants to the suit, had taken the objection that the provisions of Section 69 are a bar to the maintainability of that suit, but their Lordships held that the right of a partner of an unregistered firm to obtain a decree for dissolution of the partnership and for accounts remained unaffected by the provisions of sub-sections (1) and (2) of Section 69, in view of the proviso contained in sub-section 3 (a) of Section 69 of the Partnership Act, and they rejected the plea of

the defendants in bar of the suit. While disposing of this point, their Lordships made the following observations: "In our judgment the intention of the legislature is plain. It intended that the rights of the partners of an unregistered firm in regard to dissolution of the partnership and accounting were to remain unaffected by the provisions of sub-sections (1) and (2) of Section 69 of the Partnership Act." It is thus clear on the authority of this Full Bench judgment that even a suit for dissolution of partnership and accounting is not barred under the provisions of Section 69, Partnership Act.' The present case, however, stands on a better footing inasmuch as no suit had been filed in this case but an application was made to the Court below under the provisions of Section 8, Indian Arbitration Act. In my opinion, therefore, Section 69 of the Act was no bar to the application for sending the matter in dispute to arbitration.

6. The learned counsel appearing on behalf of the petitioner has cited before us a decision in *Chhotelal Nanakram v. Gopaldas Gulabdas*², This judgment is a judgment by a single Judge of the Nagpur High Court and it is in regard to the application of Section 69 (1), Partnership Act, and his Lordship decided in that case that Section 69 (1) bars a suit by a partner of a firm although the firm may have been dissolved before the suit was filed. That case, however, has not been followed in a later decision and now it can be taken as established that persons who were the partners of a dissolved firm can bring a suit for dissolution of partnership and accounts, and that Section 69 (1) and (2) is no bar to such a suit.

7. Our attention has been drawn by the learned counsel appearing for the opposite party to a decision in *Damodhar Gulabrao v. Kushal Laxman*³, in which the case in *Chhotelal Nanakram v. Gopaldas Gulabdas*⁴, was distinguished, and his Lordship Vivian Bose J. said with reference to AIR (27) 1940 Nag. 78 that he need not consider whether the decision referred to in AIR (27) 1940 Nag. 78, required reconsideration. With very great respect to the learned Judge who decided the case in AIR (27) 1940 Nag. 78, I do not feel bound by the decision arrived at in that case. In my opinion, therefore, the provisions of Section 69, are no bar to the maintainability of the application made by the opposite party under Section 8 of the Arbitration Act, and that the same is covered by the provisions contained in the exception-section 69 (3) (a) of that Act.

8. In the result, the application is without merit and must be dismissed with costs, hearing fee two gold mohurs.

Sarjoo Prosad, J.

9. agree.

Revision dismissed.

Cases Referred.

¹I. L. R. (1940) ALL. 26

²AIR (27) 1940 Nag. 78

³AIR (30) 1943 Nag. 12

⁴AIR (27) 1940 Nag. 78