

PETITIONER:
M/S.KRISHNA MOTOR SERVICE BY ITS PARTNERS

Vs.

RESPONDENT:
H.B. VITTALA KAMATH

DATE OF JUDGMENT: 19/04/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (5) 162 1996 SCALE (4)412

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel on both sides.

These appeals by special leave arise from the order of a Division Bench of the Karnataka High Court made in M.F.A. No.324/86 on 3.1.1994 and in Civil Petition No.96/94 on 25.3.1994. It is not necessary to narrate in extenso the constitution, existence and continuance of the partnership firm prior to July 1, 1973. Suffice it to state that the respondent, who was working in the partnership firm as a Supervisor on salary basis, was taken as a partner on July 1, 1973, resulting a new partnership and it was agreed that he would be entitled to 10% of the profit and loss without contribution of any capital in the partnership. When disputes had arisen between the appellants and the respondent, the appellants- four partners- had a notice issued on 10.5.1984 dissolving the partnership. The respondent by his reply dated 17.5.1984 had agreed for dissolution. Subsequently, he filed an application under Section 20 of the Arbitration Act, 1940 (for short, the 'Act') on 8.6.1984, in the court of the Civil Judge at Shimoga for reference to the arbitrator in terms of the agreement. The trial Court rejected three out of 4 claims made by him and referred claim No.1 to the arbitration. The High Court on further consideration, in appeal, added two more items to the reference. Thus, these appeals by special leave.

Shri Javali, learned senior counsel for the appellants, contended that since admittedly the partnership firm was not registered as required under Section 69 of the Partnership Act, 1932, the respondent was not entitled to the reference under Section 20 of the Act to an arbitration. He also contended that even assuming that the court has such power of making reference, it would be only within the parameters of the provisions in sub-section (3) of Section 69 of the Partnership Act and no other claim is referable for

arbitration. He placed string reliance on Jagdish Chander Gupta vs. Kajaria Traders (India) Ltd. (1964) 8 SCR 50], in particular the last paragraph thereof, overruling the judgment of the Patna High Court in Mahender vs. Guru Dayal [AIR 1951 Patna 196]. The respondent resisted the contention and relied on Prem Lata vs. Ishar Dass Chaman Lal [(1995) 2 SCC 145]

The question, therefore, is: whether the respondent is entitled to a reference under Section 20 of the Act? Admittedly, the partnership firm was not registered as required under Section 69(1) of the Partnership Act. The partnership deed does contain a clause for reference to arbitrate the disputes that would arise under the contract. The question, therefore, is: whether the exceptions to sub-section (3) of Section 69 would apply to the facts of the case. Sub-section (3) of Section 69 envisages as under:

"69.(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 effect-

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts or 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 (3 of 1909), or the Provincial Insolvency 1920 (5 of 1920), to realise the property of an insolvent partner,"

(Emphasis supplied)

The contention of Shri Javali is that since the words "other proceedings to enforce a right arising from a contract" clearly envisage that when a party to the contract seeks to enforce the right arising from the contract, the main part of sub-section (3) stands attracted, the exceptions provided in the exclusionary clauses have no application. Therefore, the ratio in Jagdish Chandra Gupta's case, though related to reference under Section 8 would apply to the facts of the case and that the reference is not maintainable. We find no force in the contention. The words "but shall not affect" require to be given meaning and effect thereof in the operation of the main part of sub-section (3). But as seen the exceptions engrafted in sub-section (3) intend to exclude the embargo created by sub-section (3) and intended to effectuate the exceptions enumerated therein. It is seen that the proviso give an exception stating that the main part of sub-section (3) shall not affect (a) the enforcement of any right arisen from dissolved firm, of a firm or for account of a dissolved firm, or any right or power to realise the property of a dissolved firm, it confied interest to the partners, i.e., parties to the contract. Undoubtedly, Section 69 is mandatory in character and its effect is to render a suit by plaintiff in respect of a right vested in him or acquired under a contract which he entered into as a partner of a firm, whether existing or dissolved void. In other words, a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of the main part of Section 69(3)

of the Act. In Jagdish Chandra's case at 60 this Court interpreting main part of sub-section (3) had held that "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 proceedings'. 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 subs.(4)."

If the right to dissolve the firm itself is in dispute and is subject matter of the suit for dissolution of the partnership firm, if a party to the contract of partnership seeks a reference for arbitration to resolve that dispute, it would be a right from a contract arisen in the proceedings for enforcement of the right to dissolve the firm. In that event, necessarily, the main part of sub-section (3) stands attracted and no such reference is valid in law. But in a case where the parties have already agreed for dissolution of the partnership by mutual consent, the partnership stood dissolved. There is no dispute as regards the right arising from the contract of a firm. The dispute is only with regard to working out the rights flown from dissolution for settlement of accounts of the dissolved firm or any right or power to realise the property of the dissolved firm etc. That right would form part of the exception engrafted in sub-section (3) of Section 69. The object intended by the legislature appears to be that in spite of the defect of non-registration and the prohibition created in the main part of non-enforceability of the right arising from a contract, the parties having worked under that contract, to the limited extent of the enforcement of a right to realise the assets, settlement of the accounts of the dissolved firm or any right or power to realise the property of the dissolved firm are exceptions engrafted therein and gives right to the parties to enforce the same, independent of the right arising from the contract. Therefore, the parties are relieved from the prohibition created by operation of Section 69.

In Jagdish Chandra Gupta's case (supra), the facts were that right to dissolution of the partnership firm was itself in dispute and the suit was filed for that purpose. Therefore, when the application under Section 8(1) of the Act was filed, this Court had held that since the partnership firm was not registered as enjoined under sub-section (1) of Section 69, the main part of sub-section (3) excluded the application for enforcement of the right to reference in other proceedings including enforcement under Section 8 of the Act. In Prem Lata's case (supra), the facts were that by a deed of partnership was executed but the firm was not registered under Section 65 of the partnership Act, On the demise of one of the partners, the legal representatives called upon other partners to render accounts of the dissolved firm. It is settled law that on the demise of one of the members of the firm, the partnership stands dissolved. Therefore, the claim had arisen under the exception engrafted under Section 69(3). In the backdrop of those facts and considering the effect of the provisions in the light of the ratio in Jagdish Chandra Gupta's case, another Bench of this Court to which one of us (K.Ramaswamy, J.) was a member had held in Smt Prem Lata's case that Section 20 stands attracted to make an application for reference. Later, ratio clearly applies to the facts in

this case.

The question then is: what are the items that would be referable to the arbitration? The respondent sought reference of the items mentioned below;

"1) taking out the true and correct account of the profit and loss of erstwhile firm with the help of competent person and carve out the share of the petitioner as per the agreement of partnership deed dated 6.10.1973;

2) if the respondents are willing to continue the firm in the name and style of the erstwhile firm namely Sri Krishna Motor Service, without taking the petitioner as partner, the quantum of goodwill and compensation payable to the petitioner, as out going partner;

3) to decide in respect of the vehicle bearing No.MYS5676 and to deliver the vehicle to the petitioner, with reasonable compensation for the use of the said vehicle; and

4) to find out the changes made in the accounts and the transactions carried out in the name of the erstwhile firm after the dissolution of the firm by notice dated 10.5.1984 to determine the profit and loss of the petitioner or such other reliefs that the Court may deem fit in the circumstances of the case."

It would be seen that item (1) clearly falls within the exception provided in Section 69(3). In respect of items (2), though it is widely worded, the respondent would be entitled to the question of entitlement towards the goodwill only upto the date of dissolution of the firm but not thereafter. With regard to items (3) and (4), they arise from the contract and these items would not come under any exceptions engrafted under Section 69(3) of the Partnership Act. Under these circumstances, the High Court was not right in making the reference in item No.(4).

The appeals are accordingly allowed to the above extent, but, in the circumstances, without costs.