

CASE NO.:  
Appeal (civil) 4610 of 2006

PETITIONER:  
Sandeep Kumar & Ors.

RESPONDENT:  
Master Ritesh & Ors.

DATE OF JUDGMENT: 31/10/2006

BENCH:  
S.B. Sinha & Dalveer Bhandari

JUDGMENT:  
J U D G M E N T  
[Arising out of S.L.P. (Civil) No.19125-33 of 2003]

S.B. SINHA, J :

Leave granted.

Dev Papers (P) Ltd., Meham, is a company incorporated under the Companies Act, 1956. Appellants herein as also Respondent Nos.2 to 7 were its shareholders. One R.P. Gupta was representing the appellants whereas Satyadev Gupta was representing the defendants-respondents in the Board of Directors. Disputes and differences having arisen between the parties, a suit came to be filed by Appellants. Admittedly, an arbitration agreement had been entered into by and between Plaintiffs-Appellants and some of the Defendants. However, some of the Defendants were not parties to the said agreement. In view of the existence of the said arbitration agreement, an order was passed by the learned trial Judge in terms of the Arbitration Act 1940. The matter came up to this Court on an earlier occasion. Plaintiffs-Appellants herein made a representation before this Court that they would amend the plaint by deleting the names of Respondents who were parties to the arbitration agreement and continue with the suit as against those who were not parties thereto. The said statements were recorded in the order of this Court in the following terms :

"Mr. K.N. Balgopal, learned counsel representing the respondents in these 9 SLPs, states that the plaintiff(s) in each of the 9 suits which have been ordered, shall confine his/their suit against the principal debtor in each case and shall drop him from the array of defendants all such defendants other than principal defendant. Prima facie, on such stance being adopted by the petitioners' learned counsel, the grievance of the special leave petitioners, apparently, vanishes. Learned counsel for the parties need and are granted time to check up on this aspect of the matter."

By an order dated 04.04.1997, the said special leave petition was disposed of. The matter in regard to the stay of the suit thereafter again came up for hearing. By reason of a judgment and order dated 13.08.1999, it was, inter alia, held :

"\005The legal proceedings in this case have been started after the agreement by persons claiming under parties to the agreements. The plaintiffs in all the nine cases are claiming under Rajender Parshad Gupta and the defendant is claiming through Satyadev Gupta, both of whom are signatories/executants of the arbitration

agreement. Moreover, the plaintiffs in their plaints have admitted that they were bound by the agreement dated 6.8.88, so that they cannot now contend that they were not signatories of the agreement. The third contention is that the proceeding must be with respect of the matter agreed to be referred to arbitration. This condition has already been dealt within the preceding paragraphs and need not be reproduced. Further, the application for stay has been made by the defendant, who is party to the legal proceeding and was filed before filing the written statement or taking any step in the proceedings. I have already held that the applicant is ready and willing to do all things necessary for the proper conduct of arbitration. The conditions set out in the authorities cited above, have been fulfilled and the suits are liable to be stayed."

In terms of the said findings the suit was again directed to be stayed. The appeals preferred thereagainst by Appellants herein were also dismissed. The High Court by reason of its impugned judgment passed in C.R. No. 3045 of 2000 upheld the said findings.

Mr. K.N. Balgopal, the learned counsel appearing on behalf of Appellants, would submit that the courts below committed a serious error in passing the impugned judgment insofar as it failed to take into consideration the effect of deleting the names of those defendants by amending the plaint. According to the learned counsel although there might exist an arbitration agreement between Appellants and some of the Defendants, but in view of the fact that the amendments had been carried out in the plaint the arbitration agreement could not have been enforced as against Respondents who were not parties thereto.

Mr. Balbir Singh, the learned counsel appearing on behalf of Respondents, on the other hand, would submit that the matter being governed by the provisions of Section 8 of the Arbitration and Conciliation Act, 1996, the parties could raise the question of jurisdiction of the arbitral tribunal in terms of section 16 thereof.

It appears that the counter affidavit has been filed by one Shri Ramesh Kumar Gupta. He had been representing a group in the suit. His name had been deleted from the array of the parties by amending the plaint. In his counter affidavit he does not state that he has any authority to represent other Respondents or any authority to file a counter affidavit on their behalf. Paragraph 7 of the plaint whereupon reliance has been placed reads as under:-

"7. That the plaintiff as well as defendant No. 2 to 7 including defendant No. 5 are bound by the agreement dated 6.8.88 and that defendant No. 2 to 4 have repaid Rs.26,51,000/- and have to repay Rs. 2.95 lac including amount of the plaintiff for which the plaintiff is filing the suit against defendant No. 5 as well as defendant No. 2 to 4. Defendant No.1 and defendants No. 6 to 7 have been joined as proforma defendants."

It may be true that Plaintiffs-Appellants had been representing a group, but admittedly all the parties to the suit were not parties to the arbitration agreement. If some of the Defendants were not parties to the arbitration agreement, the question of invoking the arbitration clause as against those Defendants would not arise. As noticed hereinbefore, in the earlier round of litigation, Appellants categorically stated that the suit would be confined only as against those who were not parties to the arbitration agreement.

There were three parties to the said arbitration agreement. Party No. 1 was represented by (1) Satya Dev Gupta; (2) Ramesh Kumar Gupta; and (3) Jai Dev Gupta. Party No.2 was represented by (1) Rajender Parshad Gupta; (2) Sham Lal Gupta; and (3) Sushil Gupta. The third party to the said agreement was the company itself. If the names of those who were in the Party No. 1 and Party No.2 in the said agreement had been deleted from the array of Defendants-Appellants and the claims against them have been given up, we fail to see as to how the arbitration agreement can still be invoked under Section 34 of the Arbitration Act, 1940 or Section 8 of the Arbitration and Conciliation Act, 1996.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The Appeal is allowed. No costs.