

CASE NO.:  
Appeal (civil) 814 of 2007

PETITIONER:  
Vipin Kumar Gadhok

RESPONDENT:  
Ravinder Nath Khanna & Ors

DATE OF JUDGMENT: 19/02/2007

BENCH:  
Tarun Chatterjee & R V Raveendran

JUDGMENT:  
J U D G M E N T  
(Arising out of SLP (C) No.3692 of 2006)

RAVEENDRAN, J.

Leave granted.

This appeal by special leave is filed against the order dated 27.10.2005 passed by the Delhi High Court under section 11 of the Arbitration and Conciliation Act, 1996 ('Act' for short) in Arbitration Application No.200 of 2005 and the order dated 9.12.2005 rejecting the application for review.

2. The appellant and respondents 3 and 4, carrying on business in partnership under the name and style of 'Matchless Industries of India' (5th respondent herein), entered into a partnership with Respondents 1 and 2, as per deed of partnership dated 1.3.1995 to carry on the business under the name and style of M/s. Controls and Matchless Industries. Appellant, Respondent No. 3 and Respondent No. 4 as partners of 'Matchless Industries of India' were together shown as the first party to the partnership and Respondents 1 and 2 together were shown as the second party to the partnership. Clause (14) thereof provided for settlement of disputes among the partners by arbitration and the same is reproduced hereinbelow :

"Any dispute or difference which may arise between the partners or their representatives with regard to the construction, meaning and effect to this deed or any part thereof or respecting the accounts, profit or losses of the business or the rights and liabilities of the partners under this deed or the dissolution or winding up of the business of the partnership or any other matter relating to the firm shall be referred to arbitration of sole arbitrator in accordance with the provisions of the Indian Arbitration Act."

3. The said firm was dissolved as per deed dated 24.12.2001. It is stated that certain disputes arose between the parties in connection with certain claims by Respondents 1 and 2 on dissolution of the said firm of M/s Controls and Matchless Industries. Respondents 1 and 2 sent a communicated dated 22.8.2003 to the appellant and respondents 3 to 5 seeking 'accounts'. The fourth respondent sent a letter dated 17.12.2003 on the letterhead of 'Matchless Industries of India' stating that he would ensure that a sum of Rs.53,81,585/- is paid to respondents 1 and 2. Thereafter, respondents 1 and 2 sent a

notice dated 27.6.2005 to appellant and respondents 3 to 5, claiming that the amounts mentioned therein were due to them and sought concurrence for the appointment of Mr. Abhinav Vasisht, Advocate, as sole arbitrator, to decide the dispute. The appellant sent a reply dated 21.7.2005 contending that there cannot be any arbitration as the Dissolution Deed did not contain any arbitration clause.

4. Respondents 1 and 2, therefore, filed Arbitration Application No.200/2005 in the Delhi High Court under Section 11 of the Act for appointing the person suggested by them or any other person as the sole arbitrator for adjudicating the disputes between them and the respondents therein. The Appellant and Respondents 3 to 5 herein were arrayed as respondents 1 to 4 in the said Arbitration Application.

5. The said application was resisted on the ground that the firm of Matchless Industries of India (4th Respondent in the arbitration application) was not a party to the agreement for arbitration and therefore the application was not maintainable. The existence of arbitration clause in so far as Respondents 1 to 3 before the High Court and receipt of notices were not disputed. The said objection was raised only during arguments and no formal objections were filed. The High Court by order dated 27.10.2005 allowed the said application and appointed Justice C L Choudhary (Retd.) and sole Arbitrator, with an observation that the question whether the disputes were arbitrable or not could be raised before the arbitrator and can be decided under Section 16 of the Act.

6. Thereafter the appellant herein filed a review petition dated 7.12.2005 contending that having regard to the decision of this Court in S B P & Co. v. M/s. Patel Engineering Ltd. [2005 (9) SCALE 1], the High Court should decide the question whether any dispute involving 'Matchless industries of India' could be referred to arbitration. The High Court rejected the review application on 9.12.2005.

7. The only contention urged by the Appellant in this appeal is that the High Court ought to have decided the contention relating to non-arbitrability of disputes with reference to 'Matchless Industries of India', instead of leaving it to the Arbitrator for decision under section 16. It is submitted that section 16 will not apply where the Arbitrator is appointed by the court under section 11.

8. It is no necessary to examine the scope of section 16 of the Act. We find that the observation by the High Court that Arbitrator can decide whether the disputes arbitrable or not under section 16 of the Act was really redundant, as it had in fact considered the objection and decided the question as follows :

"It may be noticed that the agreement dated 1st March, 1995 entered into between the parties in various clauses of the agreement makes reference to the partnership concern. The name of M/s Matchless Industries of India has also been referred to in the recital of the agreement. Respondent No. 4 in fact, was a partnership concern constituting of the three persons who are signatories to this agreement. Clauses no. 10 to 13 do make a reference to his partnership.

In these circumstances, at this stage and at least prima facie, the objection raised on behalf of the respondents cannot hold the ground.

The arbitration clause is not disputed between respondents no. 1 to 3 who are partners of respondent no. 4 and the transaction related to the affairs of the said partnership concern."

The use of the words 'prima facie' in the order dated 27.10.2005 and the observation that Arbitrator can decide about arbitrability of the dispute in the order dated 9.12.2005 while rejecting the review application, have led to this appeal.

9. The appellant and respondents 3 and 4 as partners of 'Matchless Industries of India' entered into a partnership with respondents 1 and 2 to carry on the business under the name and style of 'Control & Matchless Industries' as per the Deed dated 1.3.1995 and the said Deed admittedly contains a provision for settlement of disputes by a sole arbitrator. The only grievance of the appellant before the High Court and this Court is that 'Matchless Industries of India' - 4th respondent before the High Court and fifth Respondent before this Court - not being a party to the said partnership deed dated 1.3.1995 containing the arbitration agreement, there could not be a reference to arbitration with reference to 'Matchless Industries of India'.

10 The Partnership Deed dated 1.3.1995 is entered between 'Mangat Rai Gadhok, Suman Kumar Gadhok and Vipin Kumar Gadhok, carrying on business in partnership under the name and style of Matchless Industries of India' as the first party and 'R. N. Khanna and Ashok Khanna' together as the second party. It is seen that even in the Dissolution Deed dated 24.12.2001, the first party is described as 'Mangat Rai Gadhok, Suman Kumar Gadhok, Vipin Kumar Gadhok, carrying on business in partnership under the name and style of Matchless Industries of India'. The firm of Matchless Industries of India was impleaded as fourth respondent in the arbitration application, as the first party under the deed dated 1.3.1995, was the three partners of Matchless Industries of India carrying on business under the name and style of Matchless Industries of India. Therefore when a disputes arose between the partners of 'M/s Controls and Matchless Industries', that is between 'R. N. Khanna and Ashok Khanna' who were the second party under the deed of partnership, with 'Mangat Rai Gadhok, Suman Kumar Gadhok, Vipin Kumar Gadhok carrying on business in partnership under the name and style of Matchless Industries of India', who were the first party under the said deed dated 1.3.1995, there is nothing wrong in arraying Mangat Rai Gadhok, Suman Kumar Gadhok, Vipin Kumar Gadhok and Matchless Industries of India as Respondents 1 to 4 in the arbitration application. The High Court has rightly allowed the application for appointment of sole Arbitrator, to decide the disputes between Applicants 1 and 2, and Respondents 1 to 4, before it.

11. There is, therefore, no question of Arbitrator examining whether the disputes are arbitrable or not with reference to Matchless Industries of India. With the said clarification, the appeal is dismissed.