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PRABHU SHANKAR JAISWAL

v.

SRI SHEO NARAIN JAISWAL

OCTOBER 29, 1996

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[A.M. AHMADI, CJ. AND SUJATA V. MANOHAR, J.]

Indian Partnership Act, 1932: Section (69) sub-section (3) (a)—Partnership Firm—Unregistered—Right of partner to sue for dissolution and for accounts—Whether barred? Held: No, though a partnership firm may be unregistered, one partner could sue another partner for dissolution of firm and for accounts.

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Arbitration Act, 1940: Section (8)—Maintainability of suit for dissolution and for accounts—Held, application/petition under the Arbitration Act by a partner of an unregistered firm for the purpose of enforcing right to secure dissolution and accounts is maintainable.

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The appellant and respondents were partners in an unregistered partnership firm. A suit for dissolution of the firm and accounts was filed by respondent no.1 before Sub Judge. The appellant's application under Section 34 of the Arbitration Act for stay of the suit granted.

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High Court upheld the stay order. Appellant filed Misc. Case for appointment of Arbitrator. Respondent no.1 raised preliminary objections that partnership firm was unregistered and the petition under Arbitration Act was not maintainable. The sub-Judge held that the petition was maintainable. However, the High Court in Revision,

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held that by reason of Section 69 of Partnership Act, a petition under Section 8 of the Arbitration Act was not maintainable. Hence this appeal.

Allowing the appeal, this court

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HELD : 1.1. The bar under Section (69)(a) of Partnership Act 1932 will not affect the enforcement of any right to sue for the dissolution of a firm or for account or to realise the property of a dissolved firm. The partnership firm may be unregistered, yet one partner can sue the other partner for dissolution and accounts. [47-G]

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1.2. The words "to sue" in sub-section (3) (a) of S.69 of the Act

cannot be taken to refer only to suits for dissolution of partnership and accounts. It must be understood as applying to any proceedings for dissolution of partnership or for accounts or to realise the property of a dissolved firm. The proceedings may be either by way of suit or it can be through Arbitration. [47-H, 48-A] A

2. Where arbitration is sought under the arbitration clause in a partnership deed of an unregistered firm for the purpose of dissolution and accounts of the partnership firm, the partners can maintain all applications/petitions under the Arbitration Act for the purpose of enforcing their right to secure dissolution and accounts of the partnership firm through arbitration, In fact, in the present case the suit for dissolution and accounts of the partnership firm has been stayed under Section 34 of the Arbitration Act at the instance of respondent no.1. The petition of the appellant, therefore, under Section 8 of the Arbitration Act is maintainable. [48-E-F] B C

Prem Lata (Smt) and Anr. v. M/s. Ishar Dass Chaman Lal and Ors., [1995] 2 SCC 145, relied on. D

Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd., AIR (1964) SC 1883, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13362 of 1996. E

From the Judgment and Order dated 6.8.93 of the Patna High Court in C.R. No.190 of 1993 (R)

Vikas Singh for L.R. Singh for the Appellant. F

V.A. Mohta, A.K. Choudhary and M. Mukherjee for Manoj Prasad for the Respondents.

The Judgment of the Court was delivered by G

MRS. SUJATA V. MANOHAR, J. Leave granted.

The appellant and respondents 1 to 5 were partners in an unregistered partnership firm by the name of M/s. Lakshmi Narain and Sons which H

A was constituted under a deed of partnership dated 4/6.11.1967. The first respondent brought Title Suit No. 71 of 1991 against the appellant and respondents 2 to 5 for dissolution of the partnership firm and for accounts in the Court of the Sub-Judge, Ranchi. As the deed of partnership contained an arbitration clause, the appellant made an application before the Sub-Judge under Section 34 of the Arbitration Act for stay of the Title Suit No.71 of 1991. This application was granted. In appeal before the High Court being Misc. Appeal No. 13 of 1992, the High Court has ultimately by its order dated 16.12.1992 upheld the order of the Sub-Judge granting a stay under Section 34 of the Arbitration Act.

C The appellant filed Misc. Case No. 11 of 1992 before the Sub-Judge, Ranchi under Section 8 of the Arbitration Act for appointment of an arbitrator. The first respondent raised a preliminary objection contending that the partnership firm was unregistered, and by reason of Section 69 of the Indian Partnership Act, a petition under Section 8 of the Arbitration Act was not maintainable. The Sub-Judge, however, held that the petition was maintainable. In Civil Revision No. 190 of 1993 which was filed by D the first respondent against this order, the High Court, by its order dated 6.8.1993, has allowed the revision and held that by reason of Section 69 of the Indian Partnership Act, a petition under Section 8 of the Arbitration Act is not maintainable.

E The present appeal is from the order of the High Court dated 6.8.1993. The relevant provisions of Section 69 of the Indian Partnership Act are as follows:

“69. Effect of non-registration—

F (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless G the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

H (2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in

the firm.

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(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 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 realise the property of a dissolved firm, or

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(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realise the property of an insolvent partner.”

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Under Section 69(1), a suit, inter alia, to enforce a right arising from a contract cannot be filed by a person suing as a partner in a firm against the other partners of the firm unless the firm is registered. Under sub-section (3) any other proceeding to enforce a right arising from a contract by a person suing as a partner against the other partners of an unregistered firm is also barred. Since the right to resort to arbitration flows from the contract between the parties contained in the partnership deed, a suit or any other proceeding by a partner to enforce this term in the contract against the other partners would, therefore, normally be barred under the first part of sub-section (3) of Section 69. *Vide Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd.*, AIR, (1964) SC 1882 *Infra*. Sub-section (3), in its later part, however, carves out certain exceptions to the bar contained in sub-sections (1), (2) and the first part of sub-section (3).

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Under sub-section (3) (a) this bar will not affect the enforcement of any right to sue for the dissolutions of a firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm. Therefore, although the partnership firm may be unregistered, one partner can sue other partners for dissolution of the firm and for accounts. The words “to sue” used in sub-section (3) (a) cannot be construed narrowly to refer only to suits for dissolution of partnership and accounts. The exception contained in sub-section (3)(a) applies not merely to sub-sections (1) and (2) but also to the first part of sub-section (3) which deals with proceedings other than suits. Therefore, in order that sub-section (3)(a) would apply to all these provisions, the words “to sue” in sub-section (3)(a) must be

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- A understood as applying to any proceedings for dissolution of partnership or for accounts of a dissolved firm or to realise the property of a dissolved firm. This proceeding may be either by way of a suit or it can even be a proceeding under the Arbitration Act to secure these rights through arbitration. [Vide *Prem Lata (Smt.) and Anr. v. M/s. Ishar Dass Chaman Lal and Ors.*, [1995] 2 SCC 145, a judgement to which one of us was a party.]
- B Therefore, an arbitration clause in a partnership deed of an unregistered partnership can be enforced for the purpose of securing, inter alia, a dissolution and accounts of the partnership or for enforcing any right or power for obtaining the property of a dissolved firm.

- Our attention was drawn to the case of *Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd.*, AIR (1964) SC 1882 where this Court has held that the word "proceedings" in the first part of sub-section (3) must be widely construed to include proceedings in arbitration. The exception carved out under sub-section (3)(a) would equally apply to such proceedings. The dispute, however, in that case between the partners did not relate to dissolution or accounts of the partnership firm. Hence a resort to the exception under sub-section (3) (a) was not required. In fact, this aspect was neither argued nor considered by this Court in that case. This question directly arose in *Prem Lata's* case (supra). This Court has held that a suit under Section 20 of the Arbitration Act was maintainable under the exception carved out in sub-section (3)(a) of Section 69 of the Indian Partnership Act. Hence where arbitration is sought under the arbitration clause in a partnership deed of an unregistered firm for the purpose of dissolution and accounts of the partnership firm, the partners can maintain all applications/petitions under the Arbitration Act for the purpose of enforcing their right to secure dissolution and accounts of the partnership firm through arbitration. In fact, in the present case the suit for dissolution and accounts of the partnership firm has been stayed under Section 34 of the Arbitration Act at the instance of respondent No.1. The petition of the appellant, therefore, under Section 8 of the Arbitration Act is maintainable in the present case.

- G The judgement and order of the High Court dated 6.8.1993 is set aside. The appeal is allowed with costs.

S.V.K.I.

Appeal allowed.