

A VINOD KUMAR SACHDEVA (DEAD) THR LRS

v.

ASHOK KUMAR SACHDEVA & ORS

(Civil Appeal Nos. 4656-4657 of 2023)

B JULY 25, 2023

**[DR. DHANANJAYA Y CHANDRACHUD, CJI,
J B PARDIWALA AND MANOJ MISRA, JJ.]**

Arbitration and Conciliation Act 1996 – s.8 – Reference to arbitration – When erred – MoU was arrived at between brothers – the appellant and the first respondent wherein joint family properties were to be liquidated to repay the liabilities of the business – MoU contained an arbitration agreement – Suits instituted by the appellant, first respondent filed applications u/s.8 seeking reference to arbitration – Applications dismissed by Trial Court – Order set aside by High Court, disputes in both the suits were referred to arbitration u/s.8 – Held: The MoU was between the appellant and the first respondent – The appellant instituted two suits – On facts, there were several parties to the suit who were not parties to the arbitration agreement – Since, the MoU was executed exclusively between the appellant and the first respondent, the reference to arbitration u/s.8 was patently in error – The non-family shareholdings, in any event, cannot be bound by the terms of the MoU since they are not parties to the document – Impugned judgment set aside – Applications filed by the first respondent u/s.8 dismissed.

F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.4656-4657 of 2023.

From the Judgment and Order dated 01.08.2017 of the High Court of Punjab & Haryana at Chandigarh in CRN Nos.2819 and 2820 of 2017.

G Rajiv Talwar, Sanjay Sarin, Ms. Gagan Deep Kaur, Pushkar Karni Sinha, Dinkar Kalra, Advs. for the Appellants.

Vishal Mahajan, Abhishek Mahajan, Anil Kumar, Reena Devi, Vinod Sharma, Gunjan Kumar, Rajeev Maheshwaranand Roy, P. Srinivasan, Advs. for the Respondents.

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The Judgment of the Court was delivered by

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DR. DHANANJAYA Y CHANDRACHUD, CJI

1. Leave granted.

2. The appeals arise from a judgment of a Single Judge of the High Court of Punjab and Haryana dated 1 August 2017 in CR Nos 2819 and 2820 of 2017. Both the petitions involving the jurisdiction under Article 227 of the Constitution arose from the orders passed by the Civil Judge (Junior Division), Amritsar allowing applications under Section 8 of the Arbitration and Conciliation Act 1996¹ in two suits instituted by the first respondent, namely, Case No 64/2438/2014 and Civil Suit No 28/53/2015.

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3. The appellant and the first respondent are brothers and were conducting business in the name and style of Sachdeva and Sons in partnership. The partnership is alleged to have purchased a number of properties in the name of the appellant and his deceased father. It has also been alleged that subsequently the ownership of the property was transferred to a concern by the name of Sachdeva and Sons. A private limited company has since been incorporated.

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4. On 14 September 2010, a Memorandum of Understanding² was arrived at between the appellant and the first respondent in terms of which it was decided that the joint family properties should be liquidated to repay the liabilities of the business which had arisen over a period of time. The MoU contained an arbitration agreement in Clause 15 in the following terms:

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“15. That in case of any clarification needed or dispute arising, the same shall be referred for settlement and arbitration to Revered Maa Deva Ji and/ or Sh.Surinder Kumar alias Chhindi Ji of Ghaziabad and/ or if required, to any other person to be mutually appointed and decision of the arbitrator(s) shall be binding on both the parties. The arbitration shall however, always be in accordance with the Arbitration and Conciliation Act, 1996 as amended from time to time.”

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5. The appellant instituted a suit before the Civil Judge (Junior Division), Amritsar, numbered as Case No 64/2438/2014 against the first

¹ “1996 Act”

² “MoU”

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- A respondent and Sachdeva and Sons Industries Private Limited seeking a permanent injunction in the following terms:

B “Under the circumstances, above referred, it is most respectfully prayed that a decree for permanent injunction restraining the defendants themselves, through their officials, agents, privies and representatives from selling or alienating in any manner land having an area of 10 ½ qillas with Khasra Nos. 29/12(8-0), 11/2/1/2(1-13), 11/2/2/2 (1-17), 8/2/1(5-8), 19/1 (5-1), 21/2(5-1), 22/1(6-4), 8/1/1(1-18), 23(8-0), 9/3/2/2(3-11), 24(5-8), 20/1(0-10), 29/13(8-0), 14(2-10), 17(3-18) and 18(8-4) as per jamabandi for the year 2006-07 situated at Village Gilwali, Chabba, Sangrana Sahib, Tarn Taran Road, Amritsar, with complete costs of the present suit, may kindly be passed in favour of the plaintiff and against the defendants.”

- D 6. A second suit, Suit No 28/53/2015, was instituted by the appellant. Besides the first respondent, the other parties to the suit were Sachdeva and Sons Industries Private Limited and Canara Bank. The reliefs which have been sought in the second suit were in the following terms:

E “Under the circumstances, above referred, it is most respectfully prayed that a decree for permanent injunction restraining the defendants No.3,4 and 5 from disbursing or releasing any kind of loan or any other finance facility to and in the names of defendants No. 1 and 2 as against the properties having an area of 10 ½ Qillas with Khasra Nos. 29/12(8-0), 11/2/1/2(1-13), 11/2/2/2 (1-17), 8/2/1(5-8), 19/1(5-1), 21/2(5-1), 22/1(6-4), 8/1/1(1-18), 23(8-0), 9/3/2/2(3-11), 24(5-8), 20/1(0-10), 29/13(8-0), 14(2-10), 17(3-18) and 18(8-4) as per jamabandi for the year 2011-2012 situated at village Gilwali, Chabba, Sangrana Sahib, Tarn Taran Road, Amritsar, and further for permanent injunction restraining the defendants No.3,4 and 5 from taking over any loan of any other bank as against the abovesaid properties pertaining to the loan accounts of defendants No.1 and 2 as well as the business concern of the relatives and kins and wards of defendants No.1 and 2, and further for giving directions to the defendants No.3,4 and 5 to recall back any finance or

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loan that has been so released by defendants No.3,4 and 5 to defendants No. 1 and 2 as against the above said property, with complete costs of the present suit, may kindly be passed in favour of the plaintiff and against the defendants. The plaintiff may also be awarded any other relief to which he shall be found entitled to under the law, equity and justice.”

7. Applications under Section 8 of the 1996 Act were moved by the first respondent seeking a reference to arbitration in both the suits. The trial court dismissed the applications by separate orders dated 27 March 2017. The first respondent challenged the orders of the trial court under Article 227 of the Constitution. The High Court, by the impugned order dated 1 August 2017, set aside the judgment of the trial court and directed that the disputes in both the suits be referred to arbitration under Section 8 of the 1996 Act. The dispute has travelled to this Court.

8. We have heard Mr Rajiv Talwar, counsel for the appellant, Mr Vishal Mahajan, counsel for the first and second respondents and Mr Gunjan Kumar, counsel for the third to fifth respondents.

9. The narration of facts indicates that the MoU dated 14 September 2010 is between the appellant and the first respondent. The appellant instituted two suits. In the first suit, the first respondent has been impleaded as the first defendant while Sachdeva and Sons Industries Private Limited is impleaded as the second respondent. Admittedly, Sachdeva and Sons Industries Private Limited is not a party to the MoU which is executed solely between the appellant and the first respondent. In the second suit, apart from the two defendants who are parties to the first suit, relief has been sought against Canara Bank. While the relief which has been sought in the first suit is in terms of an injunction simpliciter from the alienation of certain land, the relief which has been sought in the second suit is for a permanent injunction restraining Canara Bank from disbursing or releasing any loan or finance in the name of the first respondent and the second respondent in respect of the landed property. Certain consequential reliefs have been sought against Canara Bank. Hence, it is evident that there are several parties to the suit who are not parties to the arbitration agreement. The MoU which is executed between the parties indicates that the Sachdeva family comprising of both the appellant and the first respondent was carrying on business in several companies, partnership firms and proprietorship under the joint ownership of the Sachdeva family. The MoU contains a description of the respective

- A family units and their concerns. The MoU indicates that there are certain non-family shareholdings.

10. In this backdrop and since the MoU was executed exclusively between the appellant and the first respondent, the reference to arbitration under Section 8 of the trial Judge was patently in error. Neither Canara

- B Bank nor the company are parties to the arbitration agreement. The MoU has been executed between the appellant and the first respondent. The non-family shareholdings, in any event, cannot be bound by the terms of the MoU since they are not parties to the document.

- C 11. For the above reasons, we set aside the impugned judgment and order of the Single Judge of the High Court dated 1 August 2017. In consequence, the applications filed by the first respondent under Section 8 of the 1996 Act shall stand dismissed. The High Court, while allowing the applications under Section 8 of the 1996 Act had directed the Civil Judge (Junior Division) to pass consequential orders. As a consequence of the present judgment, the consequential order which has been passed
- D by the trial Judge shall no longer survive.

12. The appeals shall stand allowed in the above terms.

13. Pending application, if any, stands disposed of.

Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Appeals allowed.