

Supreme Court of India

Delhi Development Authority vs Kochhar Construction Work And ... on 18 January, 1996

Equivalent citations: (1998) 8 SCC 559

Bench: A Ahmadi, S V Manohar

ORDER

1. Special leave granted.

2. This appeal raises a short question regarding the interpretation of Sections 69(2) and (3) of the Indian Partnership Act, 1932 read with Section 20 of the Arbitration Act, 1940. The factual matrix in which this question arises may be briefly stated as under: Respondent 1, an unregistered firm, filed proceedings under Section 20 of the Arbitration Act, 1940 in the High Court of Delhi. The Delhi Development Authority entered a counter and contested the proceedings on various grounds including the ground of limitation. The learned Single Judge allowed the suit and directed the appointment of an arbitrator. Against that order a first appeal was filed before a Division Bench of the High Court by the respondent. That appeal was dismissed holding that the subsequent registration of the firm cured the initial defect since that was within the period of limitation. Hence this appeal by special leave.

3. Section 69(1) provides that no suit to enforce a right arising from a contract 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 the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. This sub-section begins with the words: "No suit... shall be instituted in any court ... ", which prima facie bar the institution of the suit by a firm which is unregistered. Sub-section (2) next provides that 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. This sub-section also begins with the words: "No suit ... shall be instituted in any court...", which clearly bar the institution of a suit by a firm which is not registered. The provisions of Sub-sections (1) and (2) have been made applicable to other proceedings to enforce a right arising from a contract by virtue of Sub-section (3) of Section 69. It would thus seem on a plain reading of Section 69(2) that a suit instituted in any court by or on behalf of a firm against any third party shall not be valid unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners of the firm. Plainly, the institution of the suit itself is barred both by Sub-section (1) and Sub-section (2) of Section 69 of the Partnership Act. Section 20 of the Arbitration Act provides that where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II (Chapter II refers to arbitration without intervention of a court) may apply to a court having jurisdiction in the matter to which the agreement relates, (hat the agreement be filed in court. Such an application, says Sub-section (2) thereof, shall be in writing and shall be numbered and registered as a suit. Therefore, an application filed by an unregistered firm under Section 20 would also be treated as a suit and would be hit by Section 69(2) if the firm filing the application is not registered with the Registrar of Firms. This appears to be the position in law

which emerges on a plain reading of Section 69 of the Partnership Act and Section 20 of the Arbitration Act. This is the view which this Court took in the case of *Shreeram Finance Corpn. v. Yasin Khan*, (paras 5 and 6). The fact that it is an application to be registered and numbered as a suit would not make any difference for the obvious reason that though Sub-sections (1) and (2) of Section 69 of the Partnership Act refer to a suit, Sub-section (3) thereof makes those sub-sections applicable even "to other proceedings which would include an application registered and numbered as a suit under Section 20 of the Arbitration Act". [See *Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd.*, ]

4. Counsel for the respondents, however, invited our attention to two decisions which take a view that subsequent registration of the firm can cure the initial defect provided the registration is before the period of limitation has run out. Our attention was drawn to *M.S.A. Subramania Mudaliar v. East Asiatic Co. Ltd*, AIR 1936 Mad 991 : 1936 MWN 1144 and *Atmuri Mahalakshmi v. Jagadeesh Traders*, . However, the High Court of Patna in *Laduram Sagarmal v. Jamuna Prasad Chaudhuri*, AIR 1939 Pat 239 : ILR 18 Pat 114 and the High Court of Madras in *T. Savariraj Pillai v. R.S.S. Vastrad & Co.*, take a contrary view and hold that the suit is incompetent ab initio. We have considered these decisions, but in the light of the plain language of Section 69 of the Partnership Act read with Section 20 of the Arbitration Act and in view of the decision of this Court reported in *Shreeram Finance Corporation*, , we are clearly of the opinion that proceedings under Section 20 of the Arbitration Act were ab initio defective since the firm was not registered and the subsequent registration of the firm cannot cure that defect.

5. In view of the above, we allow this appeal, set aside the order of the High Court and hold that the proceedings were ab initio defective as they could not have been instituted since the firm in whose name the proceedings were instituted was not registered at the date of the institution of the proceedings. We, however, make no order as to costs.