

Supreme Court of India

Virendra Swarup vs Krishna Swarup on 17 May, 1994

Equivalent citations: 1994 SCC, Supl. (2) 337 JT 1994 (4) 146

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

VIRENDRA SWARUP

Vs.

RESPONDENT:

KRISHNA SWARUP

DATE OF JUDGMENT 17/05/1994

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

VENKATACHALLIAH, M.N. (CJ)

SAHAI, R.M. (J)

CITATION:

1994 SCC Supl. (2) 337 JT 1994 (4) 146

1994 SCALE (2) 1101

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- Leave granted.

2. The matter arises under the Arbitration Act of 1940 (hereinafter referred to as 'the Act').

3. The parties herein are shareholders of M/s Emery (India) Pvt. Ltd. (hereinafter referred to as 'the Company').

4. Appellant 1 is the husband of Appellant 2 Smt Pushpa Swarup. Respondent 1 Krishna Swarup is the father of Appellant 1 Virendra Swarup and Respondent 2 Girish Kumar Swarup is the brother of Appellant 1 Virendra Swarup.

5. Messrs Emery (India) Private Ltd. is a private limited company incorporated under the

Companies Act, 1956 on or about 17-9-1963 at Bombay. The registered office and factory of the said company is at present situated at Krishna Kunj, Bedeshwar, Jamnagar, Gujarat.

6. The objects for which the Company was established are inter alia as follows-

(i) To manufacture, refine, produce, buy, sell, import, export and to deal in synthetic Emery, abrasive stones, abrasive powder, coated abrasives, bonded abrasives and other abrasive products.

(ii) To carry on the business of manufacturers of and dealers in all types and kinds of abrasive grains used for grinding wheels which may be known as abrasive grains or otherwise and inclusive of Aluminium Oxide, Silicon Carbide, Quartz, Flint, Pumice, Crocus and all other types of abrasive grains or otherwise. And all other objects set forth in the Memorandum of Association of the Company.

At all material times the parties hereto were the Directors and shareholders of the said Company.

7. The authorised share capital of the said company is Rs 5,00,000 divided into 500 equity shares of the face value of Rs 1000 each. The issued and paid-up share capital of the said Company comprises of 300 shares of Rs 1000 each fully paid-up.

8. The shares of the said Company were recorded in the name of the following persons as owners thereof in the following manner.

1. Krishna Swarup, Respondent 1 61 shares

2. Smt Shyam Moni Swarup (since deceased) wife of Krishna Swarup, Respondent 1 and the mother of Appellant 1 and Respondent 2 206 shares

3. Girish Kumar Swarup, Respondent 2 5 shares

4. Smt Prabha Swarup, wife of Respondent 2 10 shares

5. Sanjay Swarup the children of

6. Smt Monica Swarup, Respondent 2 3 shares

7. Smt Ritu Swarup }

8. Girish Kumar Swarup, Hindu Undivided 1 share Family

9. Virendra Swarup, Appellant 1 5 shares

10. Smt Pushpa Swarup, Appellant 2 5 shares

11. Virendra Swarup Children HUF 4 shares Total 300 shares

9. Smt Shyam Moni Swarup, the wife of Respondent 1 who was a promoter of the said Company and was the largest shareholder died intestate on the 18th day of February 1979 leaving her surviving the respondents and Appellant 1, being her husband and two sons as her heirs and legal representatives and on her death the shares held by Smt Shyam Moni Swarup devolved upon the respondents and Appellant 1 in equal shares.

10. The said Company was nurtured from its inception by Krishna Swarup Respondent 1 who was also a promoter of the Company. In fact the said Company was a concern of Swarup family.

11. Appellant 1 and Respondent 2 grew up. They also started looking after the business of the said Company under the guidance of their father Respondent I having been appointed as the Directors thereof. But unfortunately disputes and differences arose between Appellant 1 and Respondent 2 with regard to running and administration of the business and affairs of the said Company.

12. After the death of Smt Shyam Moni Swarup and also in view of his old age Respondent 1 expressed his desire to retire from the business in or about July 1979 and at that point of time difference of views and disputes cropped up as to who amongst Appellant 1 and Respondent 2 should be left with the management of the business of the said Company since Appellant 1 and the respondent failed to see eye to eye with each other. In view of difference of opinion amongst two brothers it was felt that smooth and efficient running of the said Company in future jointly by two brothers with equal power and authority would be extremely difficult. But since the parties also disliked the idea to sell or dispose of their shares in the said Company to outsiders the parties hereto made an honest attempt 'for reconciliation and coming to a final family settlement through the cooperation and assistance of members related to the family.

13. Appellants state that Mahabir Prasad, the father of Appellant 2 and the father-in-law of Appellant 1 is a family friend and well-wisher of the family since a long time and all parties had and has fullest confidence, belief and faith in his integrity, honesty, wisdom and judgment.

14. The parties amongst themselves decided to approach the said Mahabir Prasad to find out an amicable settlement of disputes between themselves with regard to affairs of the said Company, including their shareholding therein and the amounts advanced to or deposited with the said Company by the parties and their friends, nominees, benamidars, associates and outsiders. At the material time the said Mahabir Prasad after meeting with an accident was lying bedridden at his residence at No. 3-B, Little Russel Street, Calcutta, within the jurisdiction aforesaid and the parties hereto came down to Calcutta in early February 1980 to arrive at a settlement amongst themselves with regard to all outstanding disputes between them relating to affairs of the said Company.

15. After several discussions extended to several days in Calcutta between the parties on the 14-2-1980 a family settlement was finally entered into and arrived between the parties.

16. Clause 11 of the agreement contains an arbitration clause which reads as under:

" (11) Arbitration clause.- In case of any dispute or misunderstanding between Party No. refrained from going to the court, and the arbitration of disputes will be done by Shri Mahabir Prasad as sole arbitrator and his award shall be binding on both parties absolutely. Appointment of Shri Mahabir Prasad as arbitrator as mentioned above is irrevocable."

Further agreement was entered into on 3-2-1981 placing on record as to certain disputes and differences which had arisen in the implementation of the family settlement dated 14-2-1980 above referred to. Pursuant to the said agreement dated 14-2-1980 the appellants paid a total sum of Rs 7 lakhs to the respondents towards part payment of the liability.

17. The respondents contended that the appellants were liable to pay interest at the agreed rate for delayed payment by 15 days. There were also some other disputes. All these disputes were referred to Mahabir Prasad, the father of Appellant 2. After discussion a final agreement was arrived at between the parties as is evident by the letter dated 3-2-1981.

18. Certain other differences arose. In the first week of September 1982 though an attempt was made to settle this dispute through arbitration that could not be proceeded with. Nothing substantial could be done. On 12-10-1982 D.P. Geria wrote a letter to Mahabir Prasad, the Arbitrator, alleging that they had lost faith and confidence in the Arbitrator. The letter of appointment of Arbitrator was terminated with immediate effect. By his reply dated 29-11- 1982 Mahabir Prasad denied the allegation. It was under these circumstances, the High Court of Calcutta was moved under Sections 31, 32 and 33 read with Section 41 of the Act. The High Court by its order dated 28-4-1983 held thus:

"... the said respondents never disputed the validity of the arbitration agreement or the reference and all that the said respondents did was to allege that the Arbitrator had become biased and as such lost faith in him, And it appeared that in the body of the said petition there is no allegation that anybody has ever challenged the validity of the arbitration agreement or the reference and in that view of the matter this application is misconceived."

19. In this view, it dismissed the application. Thereafter, the respondents moved the court of Jamnagar for removal of Arbitrator. On 7-5-1983 an order was passed staying the arbitration proceedings. On 19-5-1983 the respondents filed a suit for a decree for a sum of Rs 7,35,978. On that very date an order was passed directing interim attachment of the company's properties. That had come to be attached on 20-5-1983. This is the factual sequence leading up to this civil appeal.

20. Before us, the correctness of the order of the Calcutta High Court is canvassed contending that the High Court went wrong in its conclusion. Again, resort to civil court of Jamnagar was not permissible. We do not think we need go into the merits of the rival contentions in view of the order we propose to make.

21. This Court passed the following order on 7-3-1994:

"We are informed by Mr Prashant Bhushan, learned counsel for the petitioners and Mr A.K. Ganguli, learned Senior Counsel for the respondents that till today the following order dated July 16, 1984 has not been carried out. It passes our comprehension as to why the Civil Judge, Jamnagar, should be so indifferent to this order:

The order dated July 16, 1984 'We directed by our order dated 27-4-1984 that the Court at Jamnagar should dispose of the petition under the Arbitration Act for setting aside the appointment of Mahabir Prasad not later than the expiration of two months from the date of that order. We are surprised to know that our order has not so far been carried out and the matter has not been disposed of yet. We, therefore, again ask the Court of Jamnagar to take up the said petition for hearing from day to day and dispose of the same on or before 31-8-1984. Special Leave Petition is adjourned to 10-9-1984.' We direct the learned Civil Judge, Senior Division, Jamnagar to furnish an explanation to the Registrar General of this Court within three weeks from today. He is also required to show cause as to why he should not be proceeded against for contempt of this order.

In any event, the matter shall be disposed of on or before April 15, 1994. Copy of the final disposal order shall be sent to this Court forthwith.

Call on April 21, 1994."

22. Pursuant to our directions dated 7-3-1994 (quoted above) the Jamnagar Court has held as under:

"The cumulative effect of above discussion on the point of law only as I have considered the facts in details because to my mind this decision could be resolved without going into the details of the facts. One thing is very clear that Section 31 is applicable in this case. No doubt, about it. Secondly, the order was passed by the Hon'ble Calcutta High Court upon which appeal is preferred before the Hon'ble Supreme Court of India, so as Civil Judge, (SD) I am bound by the earlier proceedings and hence the arguments of Mr Solanki that this court has jurisdiction in view of the judgment of the Hon'ble Supreme Court reported in 1990 GLH, Part II, p. 218 I am left with no alternative but to hold that this court at Jamnagar has no jurisdiction. Hence, issue framed by my learned predecessor is decided that this court has no jurisdiction. In view of my findings, it is not necessary to give any finding on issue 1, therefore it is kept reserved."

The parties, as could be seen from the above, in our opinion, are close relations, being members of the same family. Therefore, it is not at all desirable that the dispute should continue.

23. Under these circumstances, we think the interest of justice would be met by passing a decree for a sum of Rs 5 lakhs in favour of the respondents. The amount shall carry interest at the rate of 9 per cent per annum from the date of the claim i.e. 19-5-1983 until realisation.

24. The civil appeal is disposed of in the above terms.