

Supreme Court of India

Prabhu Shankar Jaiswal vs Sri Sheo Narain Jaiswal & Ors on 29 October, 1996

Author: M S V.Manohar.J.

Bench: A.M. Ahmadi, Sujata V. Manohar

PETITIONER:

PRABHU SHANKAR JAISWAL

Vs.

RESPONDENT:

SRI SHEO NARAIN JAISWAL & ORS

DATE OF JUDGMENT: 29/10/1996

BENCH:

A.M. AHMADI, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

presents:

Hon'ble the chief Justice Hon'ble Mrs.Justice Sujata V.Manohar Vikas Singh, Adv, for L.R. Singh, Adv. for the appellant V.A.Mohta. Sr.Adv., A.K. Choudhary., Advs. for Manoj Prasad, Adv. with him for the Respondents.

**J U D G M E N T** The following Judgement of the court was delivered: 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 a Sons which 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 respondent 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 off 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. 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.19O of 1993 which was filed by the first respondent against his 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.

The present appeal is from the order of the High court dated 5.8.1993. The relevant provisions of Section 69 of the Indian Partnership Act are as follows:

"69 Effect of non-registration- (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 the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(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.

(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

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

Under Section 69(1), a suit, inter alia to enforce 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 firms 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 parnters 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).

Under sub-section (3)(a) this bar will not affect 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. 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" section (3)(a) must be 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)] & Anr. v. M/s Ishar Dass Chaman & Ors. (1995 2 SCC 145), a judgment to which one of us was a party.] 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 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 edually 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 (33(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 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 aribitration. 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.

The Judgment and order of the High Court dated 6.8.1993 is set aside. The appeal is allowed with cost.