

Tarun Dhameja
v.
Sunil Dhameja & Anr.

(Civil Appeal No. 14005 of 2024)

06 December 2024

[Sanjiv Khanna,* CJI and Sanjay Kumar, J.]

Issue for Consideration

Whether the arbitration clause between the parties is non-existent or requires agreement of all the parties to the dispute to refer the dispute to arbitration?

Interpretation and construction of arbitration clause discussed.

Headnotes[†]

Arbitration and Conciliation Act, 1996 – Arbitration clause in a partnership deed invoked by Appellant who is the legal representative of a deceased partner – Arbitration clause reads as: “That if at any time either during the continuance of the partnership or after the retirement of any partner, any dispute or difference shall arise between the partners or their respective heirs or any one claiming through or under them, the same shall be referred to arbitration. Arbitration shall be optional & the arbitrator will be appointed by partners with their mutual consent. In any case of dispute arise then the Jurisdiction of Indore Civil Court shall be applicable & acceptable by the partners” – Appellant filed a petition U/s.11(6) of the Arbitration and Conciliation Act, 1996 that was dismissed by the impugned order.

Held: Cannot be said that arbitration clause is optional in the sense that the arbitration clause is non-existent or that the matter would be referred to arbitration only if all the parties to the dispute agree – First portion of the arbitration clause is clear – Legal representatives or anyone claiming through a partner is entitled to invoke the arbitration clause – Reliance placed on second portion not to be read in isolation but in context of earlier portion of the

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arbitration clause – The arbitration clause can be invoked by an aggrieved party who wants to take recourse to arbitration and mutual agreement exists to this extent – Absence of mutual consent by parties to appoint arbitrator does not obliterate or write off the arbitration clause – In terms of the Arbitration and Conciliation Act, 1996 where parties cannot agree upon a common name as to who will act as an arbitrator, the court can appoint the arbitral tribunal.

Reliance placed on *Vidya Drolia v. Durga Trading Corp.*, which in turn refers to the judgments in *Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd.* and *Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd.* on the issue of interpretation and construction of an arbitration clause – Arbitration clauses to be read in a pragmatic manner.

Case Law Cited

Vidya Drolia v. Durga Trading Corp. [2020] 11 SCR 1001 : [2021] 2 SCC 1; *Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd* [2018] 4 SCR 826 : [2018] 6 SCC 534 – relied on.

Wellington Associates Ltd. v. Mr. Kirit Mehta [2000] 4 SCC 272; *Jagdish Chander v. Ramesh Chander & Ors.*, [2007] 5 SCR 720 : [2007] 5 SCC 719 – distinguished

Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd., 2007 UKHL 40 – referred to.

List of Acts

Arbitration and Conciliation Act, 1996

List of Keywords

Arbitration and Conciliation Act, 1996: Interpretation of arbitration clause; Pragmatic construction; Existence of arbitration clause; Mutual consent; Appointment of arbitrator; Appointment of arbitral tribunal.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 14005 of 2024

From the Judgment and Order dated 31.05.2024 of the High Court of Madhya Pradesh at Indore in ARBC No. 19 of 2024

Tarun Dhameja v. Sunil Dhameja & Anr.**Appearances for Parties**

Ravindra Singh Chhabra, Sr. Adv., Mudit Maheshwari, Aman Arora, Ms. Praneesha Nayyar, Sahil Monga, Advs. for the Appellant.

Puneet Jain, Sr. Adv., Soumitra Chatterjee, Mrs. Sriparna Chatterjee, Anant Kumar Vatsya, Ms. Christi Jain, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Order**

Leave granted.

In the present case, the arbitration clause in the Deed of Partnership dated 16.07.2016 reads as under:-

“23. Arbitration

That if at any time either during the continuance of the partnership or after the retirement of any partner, any dispute or difference shall arise between the partners or their respective heirs or any one claiming through or under them, the same shall be referred to arbitration. Arbitration shall be optional & the arbitrator will be appointed by partners with their mutual consent. In any case of dispute arise then the Jurisdiction of Indore Civil Court shall be applicable & acceptable by the partners.”

In our opinion, it cannot be said that the arbitration clause is optional in the sense that the arbitration clause is non-existent or that the matter would be referred to arbitration only if all the parties to the dispute agree to refer the dispute to arbitration.

In *Vidya Drolia v. Durga Trading Corpn.*,¹ this Court delineated the issue of interpretation and construction of an arbitration clause and referred to the following observations in *Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd.*²:

“6. In approaching the question of construction, it is therefore necessary to inquire into the purpose of the

1 [2020] 11 SCR 1001 : (2021) 2 SCC 1

2 2007 UKHL 40

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arbitration clause. As to this, I think there can be no doubt. The parties have entered into a relationship, an agreement or what is alleged to be an agreement or what appears on its face to be an agreement, which may give rise to disputes. They want those disputes decided by a tribunal which they have chosen, commonly on the grounds of such matters as its neutrality, expertise and privacy, the availability of legal services at the seat of the arbitration and the unobtrusive efficiency of its supervisory law. Particularly in the case of international contracts, they want a quick and efficient adjudication and do not want to take the risks of delay and, in too many cases, partiality, in proceedings before a national jurisdiction.”

Vidya Drolia (supra) further referred to the judgment in *Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd.*³ to hold:

“150. In *Narbheram Power & Steel (P) Ltd. [Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd. (2018) 6 SCC 534]*, this Court while dealing with the arbitration clause in the insurance agreement, has held that the arbitration clause should be strictly construed, relying on the principles of strict interpretation that apply to insurance contracts. These observations have been repeated in other cases.

151. What is true and applicable for men of commerce and business may not be equally true and apply in case of laymen and to those who are not fully aware of the effect of an arbitration clause or had little option but to sign on the standard form contract. Broad or narrow interpretations of an arbitration agreement can, to a great extent, effect coverage of a retroactive arbitration agreement. Pro-arbitration broad interpretation, normally applied to international instruments, and commercial transactions is based upon the approach that the arbitration clause should be considered as per the true contractual language and what it says, but in case of doubt as to whether related or close disputes in the course of parties’ business

³ [2018] 4 SCR 826 : (2018) 6 SCC 534

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relationship is covered by the clause, the assumption is that such disputes are encompassed by the agreement. The restrictive interpretation approach on the other hand states that in case of doubt the disputes shall not be treated as covered by the clause. Narrow approach is based on the reason that the arbitration should be viewed as an exception to the court or judicial system. The third approach is to avoid either broad or restrictive interpretation and instead the intention of the parties as to scope of the clause is understood by considering the strict language and circumstance of the case in hand. Terms like "all", "any", "in respect of", "arising out of", etc. can expand the scope and ambit of the arbitration clause. Connected and incidental matters, unless the arbitration clause suggests to the contrary, would normally be covered.

152. Which approach as to interpretation of an arbitration agreement should be adopted in a particular case would depend upon various factors including the language, the parties, nature of relationship, the factual background in which the arbitration agreement was entered, etc. In case of pure commercial disputes, more appropriate principle of interpretation would be the one of liberal construction as there is a presumption in favour of one-stop adjudication."

The first portion of the arbitration clause is clear and states that, at any time during the continuance of the partnership or after the retirement of any partner, if any dispute or difference arises between the partners or their respective heirs or anyone claiming from them, the same shall be referred to arbitration. Therefore, the legal representatives or anyone claiming through a partner is entitled to invoke the arbitration clause. In the present case, the legal representative of the deceased partner, Yeshwant Boolani, invoked the arbitration clause.

Reliance placed on the second portion of the arbitration clause, which states that if any dispute arises, the arbitration shall be optional and the Arbitrator will be appointed by the partners with their mutual consent, is not to be read in isolation but in the context of the earlier portion of the arbitration clause. This means that the arbitration clause can be invoked by an aggrieved party who wants to take recourse to arbitration. To this extent there is mutual agreement. Thereupon, the arbitrator can be appointed

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by mutual consent of all parties. This does not obliterate or write off the arbitration clause. In terms of the Arbitration and Conciliation Act, 1996,⁴ where parties cannot agree upon a common name as to who will act as an arbitrator, the court can appoint the arbitral tribunal. The arbitration clauses have to be read in a pragmatic manner. The intent of the parties while executing the arbitration clause in the Partnership Deed is clear.

The learned counsel for the respondents relied upon two judgments of this Court in Wellington Associates Ltd. v. Mr. Kirit Mehta⁵ and Jagdish Chander v. Ramesh Chander & Ors.⁶ In our opinion, the facts of these cases are entirely different and the arbitration clauses relied upon were differently worded. In Wellington Associates Ltd. (supra), the proceedings were under the Arbitration Act, 1940.

In view of the above discussion, the impugned judgment is set aside and the appeal is allowed. The petition under Section 11(6) of the A&C Act, filed by the present appellant, Tarun Dhameja, the legal representative of the deceased partner, Yeshwant Boolani, will be treated as allowed.

The Coordinator/Chairman of the Madhya Pradesh Arbitration Centre or the Arbitration Centre attached to the High Court of Madhya Pradesh at Indore, as the case may be, will appoint an Arbitrator to adjudicate the disputes *inter-se* the parties. The learned Arbitrator will file his/her declaration under Section 12 of the A&C Act within 15 days from the date of appointment. The fees of the learned Arbitrator will be fixed by the said Centre or will be paid as per the Fourth Schedule to the A&C Act, as may be applicable.

We clarify that we have not made any comments on the merits of the claims and contentions raised by the parties.

Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

⁴Headnotes prepared by: Aandrita Deb, Hony. Associate Editor
(Verified by: Shadan Farasat, Sr. Adv.)

4 For short, "the A&C Act."

5 (2000) 4 SCC 272

6 [2007] 5 SCR 720 : (2007) 5 SCC 719