REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7019 OF 2009
[Arising out of SLP©No.5994 of 2007]

N. Radhakrishnan -------Appellant

Versus

M/s. Maestro Engineers & Ors. -----Respondents

J U D G M E N T

TARUN CHATTERJEE,J.

1. Leave granted.

2. This appeal is directed against the final judgment and order dated, 8th of January, 2007, of the High court of Judicature at Madras in CRP No 1246 of 2006, whereby the High Court had dismissed the Civil Revision Petition filed by the appellant against the order dated 7th of June, 2006 passed in I.A. No. 494 of 2006 (in O.S. No. 526 of 2006) by the 1st Addl. District Munsif at Coimbatore, wherein the appellant had prayed for appointment of an Arbitrator.

3. The facts leading to the filing of this appeal which could be derived from the case made out by the appellants are summarized in a nutshell for the better understanding of the dispute at hand:

The appellant had entered into a partnership with the respondents on 7th of April, 2003 to constitute a partnership firm for the purpose of carrying on the business of Engineering Works under the name and style of "Maestro Engineers". The abovementioned firm had initially commenced its functioning from the premises situated at 41, KPR Lay Out 5th Street, Nanda Nagar Singanallur, Coimbatore-5, (in short the "suit premises"), which belonged to the father of the appellant. The appellant took active part in setting up the firm and was instrumental for the construction of the same.

Differences started creeping up between the appellant and the respondents and the appellant sent a notice dated 3rd of November, 2005, to the respondents, being dissatisfied with their conduct. The appellant had asserted in the notice that the firm was set up by a partnership deed dated 7th of April, 2003 and that he and the respondent no 3 had initially invested a sum of Rs.2,70,000/-, each for the capital investment of the firm but in the partnership deed it was only mentioned as Rs.1,00,000/- against the name of the appellant.

He had further asserted malpractices happening inside the firm, which were supported by the respondents. There were also allegations of collusion amongst the respondents for driving out the clients of the appellant and forging the accounts of the firm. The appellant also offered his retirement from the firm and asked for his share of the salary and the profits incurred by the firm.

In response to the notice sent by the appellant, the respondents sent a reply dated 11th of November, 2003, wherein they admitted the factum of the partnership entered into by them with the appellant but allegedly denied the claim of the appellant that he had invested a sum of Rs.2,70,000/- towards the establishment of the firm.

In response to the reply sent by the respondents, the appellant sent a notice dated 1st of December, 2005, wherein he again reiterated his stand that he had invested a sum of Rs.2,70,000/- for the establishment of the firm and not an amount of Rs.2,50,000/- as was alleged by the respondents in their reply.

The appellant, thereafter, sent another notice dated 24th of February, 2006, to the respondents stating that the respondents were responsible for the problems created by the parties and it was their responsibility to resolve the disputes amicably between them. It was

alleged that the respondents had colluded themselves in order to siphon of the money of the partnership firm for their personal gain. In the notice dated 3rd of November, 2005, the appellant had reiterated that he was ready to retire from the firm if the share of profits and arrears of salary due to him and the interest thereon was given to him. He had further called upon the respondents to settle the arrears of amount within 15 days and to make arrangements for his retirement failing which he had put them on notice to refer the matter to arbitration.

The respondents subsequently filed a suit being O.S. No. 526 of 2006, under Order 7 Rule 1 of CPC before the Court of the District Munsif of Coimbatore for a declaration that the appellant is not a partner of the Respondent No 1 (the firm herein) after 18th of November, 2005, and to prevent him from causing any disturbance to the respondent no 1 for its peaceful running by way of a permanent injunction.

The appellant thereafter filed an application under Section 8 of the Arbitration Act 1996, (hereinafter referred to as the "Act") being I.A.No.494 of 2006 in the Court of the District Munsif at Coimbatore on 12th of March 2006, which was rejected by his order dated 7th of

June, 2006. Feeling aggrieved by the aforesaid order, the appellant filed a civil revision case being CRP(PD) No. 1246 of 2006 along with a petition for stay being M.P. No. 1 of 2006 in the High Court of Judicature at Madras. The High Court by its order dated 8th Of January, 2007, affirmed the aforesaid order of the District Munsif at Coimbatore and dismissed the civil revision petition and also the petition for stay filed by the appellant. It is against this order of the High Court in respect of which the instant special leave petition was filed by the appellant, which on grant of leave was heard by us in the presence of the learned counsel for the parties.

4. We have heard the learned counsel appearing for the parties and perused the materials on record. The learned counsel appearing for the appellant at the first instance contended that the dispute was relatable to the factum of retirement of the appellant from the partnership firm and its reconstitution after the respondents had created a new partnership deed to that effect without the appellant being a part of it, was unfair and not proper. It was his contention that the appellant had only made a conditional offer to retire from the firm provided his dues were settled and the respondents had

grossly made a willful error in considering his offer as a final one and, therefore, committed a grave error by reconstituting the partnership firm after taking the appellant to have retired from the same. The learned counsel appearing for the respondents on the other hand contended that the offer of the appellant to retire from the firm was an unequivocal one and the same was accepted by the respondents after a meeting amongst themselves, thus under the provisions of the Indian Contract Act, this was a binding contract amongst the parties and the respondent could not deny the same. Moreover, the learned counsel for the respondents argued that they had sent a notice to the effect to the appellant stating that his offer to retire from the firm was accepted by them and his dues would be settled accordingly within 15 days from the receipt of the notice dated 3rd of March, 2005 sent by the appellant intimating about his retirement. Therefore, the appellant had prior knowledge of the fact that the respondents had accepted his notice offering to retire and they were acting upon the same. The appellant on the other hand contended that the respondents had only claimed to act which in reality they did not, and no cooperation was provided to the appellant when he had

approached the Auditor of the respondents to inspect his accounts. We are not in a position to determine the veracity of the statements of either parties. The main issues which need to be determined is whether the case falls within the jurisdiction of the Arbitrator, and if it does, whether the procedural requirements under Section 8 (2) of the Act had been complied with to the satisfaction of the court.

5. The learned counsel for the respondents further argued that the subject matter of the suit being OS No. 526 of 2006 was a different one and it was not within the ambit of the arbitration clause of the partnership deed dated 7th of April, 2003 and that the partnership deed had ceased to exist after the firm was reconstituted due to the alleged retirement of the appellant. Therefore, the trial court was justified in not referring the matter to the Arbitrator. The appellant had on the other hand contended that the subject matter of the suit was within the ambit of the arbitration clause since according to him the dispute related to his retirement and the settlement of his dues after he was deemed to have retired according to the respondents. Further, it was his contention that

the partnership deed dated 6th of December, 2005 was not a valid one as it was not framed in compliance with the requirements under the Partnership Act. Therefore, the argument of the respondents that the subject matter of the suit did not fall within the ambit of the arbitration clause of the original partnership deed dated 7th of April, 2003, cannot be sustained. We are in agreement with the contention of the appellant to this effect. It is clear from a perusal of the documents that there was a clear dispute regarding the reconstitution of the partnership firm and the subsequent deed framed to that effect. The dispute was relating to the continuation of the appellant as a partner of the firm, and especially when the respondents prayed for a declaration to the effect that the appellant had ceased to be a partner of the firm after his retirement, there is no doubt in our mind that the dispute squarely fell within the purview of the arbitration clause of the partnership deed dated 7th of April, 2003. Therefore, the Arbitrator was competent to decide the matter relating to the existence of the original deed and its validity to that effect. Thus the contention that the subject matter of the suit before the 1st Addl. District Munsif Court at Coimbatore was beyond the purview of the arbitration

clause, cannot be accepted. Having found that the subject matter of the suit was within the jurisdiction of the Arbitrator, we now proceed to decide whether the Arbitrator was competent to deal with the dispute raised by the parties. The learned counsel for the appellant contended that the High Court was wrong in its interpretation of the clause "difference of opinion" and held that it did not mean dispute under the Act. This, in our view, cannot be sustained. Difference of opinion leads to dispute, and it is very difficult to imagine that difference of opinion and disputes are an altogether different thing in the circumstances leading to this case.

6. The appellant had cited a catena of judicial pronouncements to contend that when there is an express provision to that effect, the civil courts are bound to refer the matter to an Arbitrator in case of any disputes arising between the parties. The appellant had raised various issues relating to misappropriation of funds and malpractices on the part of the respondents and the allegations to that effect have been made in the notice sent to the respondents and subsequently in its written statement filed before the civil court. The learned counsel for the respondents on the other hand argued that when a case

involves substantial questions relating to facts where detailed material evidence (both documentary and oral) needed to be produced by either parties, and serious allegations pertaining to fraud and malpractices were raised, then the matter must be tried in court and the Arbitrator could not be competent to deal with such matters which involved an elaborate production of evidence to establish the claims relating to fraud and criminal misappropriation.

7. In our opinion, the contention of the respondents relating to the jurisdiction of the Arbitrator to decide a dispute pertaining to a matter of this proportion should be upheld, in view of the facts and circumstances of the case. The High Court in its impugned judgment has rightly held that since the case relates to allegations of fraud and serious malpractices on the part of the respondents, such a situation can only be settled in court through furtherance of detailed evidence by either parties and such a situation can not be properly gone into by the Arbitrator.

8. Reliance was placed by the learned counsel for the appellant on a decision of this Court in the case of ***Hindustan Petroleum***

***Corpn. Ltd. vs. Pinkcity Midway Petroleums [*2003 (6) SCC 503],** wherein this Court in Para 14 observed:

> *"If in an agreement between the parties before the civil court, there is a clause for arbitration, it is mandatory for the civil court to refer the dispute to an arbitrator. In the instant case the existence of an arbitral clause in the Agreement is accepted by both the parties as also by the courts below. Therefore, in view of the mandatory language of section 8 of the Act, the courts below ought to have referred the dispute to arbitration."*

9. The learned counsel for the appellant relying on the above-mentioned observations of this Court in the aforesaid judgment submitted that the High Court was wrong in ignoring the ratio of the case and should have accordingly allowed the petition of the appellant for setting aside the order of the trial court.

10. The learned counsel appearing on behalf of the respondents on the other hand contended that the appellant had made serious allegations against the respondent alleging that they had manipulated the accounts and defrauded the appellant by cheating the appellant of his dues, thereby warning the respondents with serious criminal action against them for the alleged commission of criminal offences. In this connection, reliance was placed in a decision of this Court in

the case of ***Abdul Kadir Shamsuddin Bubere vs. Madhav Prabhakar Oak and Another,[*** **AIR 1962 SC 406] in which** this court under para 17 held as under**:**

> ***"****There is no doubt that where serious allegations of fraud are made against a party and the party who is charged with fraud desires that the matter should be tried in open court, that would be a sufficient cause for the court not to order an arbitration agreement to be filed and not to make the reference……."*

11. In our view and relying on the aforesaid observations of this Court in the aforesaid decision and going by the ratio of the above mentioned case, the facts of the present case does not warrant the matter to be tried and decided by the Arbitrator, rather for the furtherance of justice, it should be tried in a court of law which would be more competent and have the means to decide such a complicated matter involving various questions and issues raised in the present dispute. This view has been further enunciated and affirmed by this Court in the decision of ***Haryana Telecom Ltd. vs. Sterlite Industries (India) Ltd.[*** **AIR 1999 SC 2354],** wherein this court under para 4 observed :

> *"Sub-section (1) of section 8 provides that where the judicial authority before whom an action is brought in a matter, will refer the parties to*

arbitration the said matter in accordance with the arbitration agreement. This, however, postulates, in our opinion, that what can be referred to the Arbitrator is only that dispute or matter which the Arbitrator is competent or empowered to decide."

12. The learned counsel for the respondent further elaborated his contention citing the decision of the High Court of Judicature at Madras in the case of ***Oomor Sait HG Vs. Asiam Sait,*** **2001 (3) CTC 269,** wherein it was held:

"*……Power of civil court to refuse to stay of suit in view of arbitration clause on existence of certain grounds available under 1940 Act continues to be available under 1996 Act as well and the civil court is not prevented from proceeding with the suit despite an arbitration clause if dispute involves serious questions of law or complicated questions of fact adjudication of which would depend upon detailed oral and documentary evidence.*

..Civil Court can refuse to refer matter to arbitration if complicated question of fact or law is involved or where allegation of fraud is made.

….Allegations regarding clandestine operation of business under some other name, issue of bogus bills, ***manipulation of accounts, carrying*** *on similar business without consent of other partner are serious allegations of fraud, misrepresentations etc.,* ***and therefore application for reference to Arbitrator is liable to be rejected.***"

13. We are in consonance with the above-referred decision made by the High Court in the concerned matter. In the present dispute faced by us, the appellant had made serious allegations against the respondents alleging him to commit malpractices in the account books and manipulate the finances of the partnership firm, which, in our opinion, cannot be properly dealt with by the Arbitrator. As such, the High Court was justified in dismissing the petition of the appellant to refer the matter to an Arbitrator. In this connection, it is relevant to refer the observation made by the High Court in its impugned judgment :

> *"The above decision squarely applies to the facts of the present case. In the present case as well there is allegation of running rival firm, interference with the smooth administration of the firm. As already stated since the suit has been filed for declaration to declare that the revision petitioner is not a partner with effect from 18.11.2005, and for consequential injunction restraining the petitioner from disturbing the smooth functioning of the first respondent firm, the issue relates to the causes which compelled the respondents to expel the revision petitioner from the partnership firm and the necessity to reconstitute the firm by entering into a fresh partnership deed. Therefore such issues involve detailed evidence which could be done only by a civil court……"*

14. Arguments were favoured by either parties relating to the ambit of Section 8 (2) of the Act wherein the scope of the mandatory requirement to file the original copy of the partnership deed dated 7th of April, 2003 was elaborately discussed. It is to be noted that since we have already decided that there is no requirement to appoint an Arbitrator in view of the matter that the issues involved in the case involved detailed investigations into the same and production of elaborate evidence to prove the allegations or refute the same, there is no need to dwell into this matter. Even assuming that a dispute subsists and an Arbitrator is appointed, still the appellant cannot absolve himself from the mandatory requirement of filing an original copy of the deed. The learned counsel for the appellant, however, argued that since the notarized copy of the deed was already filed by the respondents before the 1st Addl. District Munsif Court at Coimbatore, there was no need for the appellant to produce the same. Learned counsel for the appellant cited various decisions to substantiate his claim. But from a careful perusal of the order of the 1st Addl. District Munsif Court at Coimbatore, in I.A. No. 494 of 2006 (in O.S. No. 526 of 2006) it would be evident that the learned Munsif had noted

that the appellant had filed a Xerox copy of the partnership deed dated 7th of April 2003 and had not filed the original copy thereof. Further, Ex-P23 is the notarized copy of the Partnership deed dated 6th of December, 2005, which was the reconstituted deed formed after the alleged retirement of the appellant from the firm. The learned counsel for the appellant pointed out to this deed and argued that since the original copy of this deed was filed by the respondents, there was no need for him to file the original copy thereof under section 8 (2) of the Act. But it is to be noted herein that the claim of the appellant regarding the dispute was under the arbitration clause mentioned under the original partnership deed and not on the subsequent one. Since the original deed was not filed within the requirement of Section 8(2) of the Act, it must be held that the mandatory requirement under the Act had not been complied with. Accordingly, even if we accept the factum of a dispute relating to the retirement of the appellant under the original deed dated 7th of April, 2003, still the Court would not be empowered to refer the matter to an Arbitrator due to the non compliance of the provisions mentioned under Section 8(2) of the Act. For the above-mentioned reasons and in view of our

discussions made hereinabove, we, therefore, do not find any merit in this appeal and we direct the 1st Addl. District Munsif at Coimbatore to dispose of the suit being O.S.No.526 of 2006 filed by the respondents for a declaration that the appellant was not a partner of the Respondent No 1 (the firm herein) after 18th of November, 2005 and to prevent him from causing any disturbance to the respondent no 1 for its peaceful running by way of a permanent injunction within a period of six months from the date of receipt of a copy of this judgment.

15. It will be open to the parties to adduce evidence (both documentary and oral) to prove their respective claims relating to the contentions of fraud and the retirement of the appellant in consonance with the original partnership agreement.

16. The appeal is thus dismissed. There will be no order as to costs.

……J.
[Tarun Chatterjee]

New Delhi;
October 22, 2009.

……..J.
[V.S.Sirpurkar]