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COMMENT: M/S UMESH GOEL V. HIMACHAL PRADESH COOPERATIVE GROUP HOUSING SOCIETY LTD.

AUTHORED BY - SHREYA PANKAJ

Introduction

The Indian Partnership Act, 1932¹ is the primary legislation that regulates partnerships in India. Partnership refers to the relationship between persons who have entered into a contract to share profits from a business.² The partners of the firm can opt to register their partnership and the firm with the registrar of firms.³ In India, the registration of a partnership is not mandated; thus, the partners can register the partnership firm at any time since the inception of the partnership firm.

However, registered partnership firms enjoy certain benefits, including the power to enforce rights arising out of a contract. The benefits that a partnership firm enjoys are:

- A partner can sue the firm or another partner of the firm to enforce rights arising out of the contract.
- A partner can sue a third party to enforce rights arising out of the contract if the firm is registered.
- If the firm is registered, it can claim set-off or other proceedings to enforce a right arising from a contract. An unregistered firm cannot claim set off in any proceedings against it.⁴

In the case of *M/S Umesh Goel v. Himachal Pradesh Cooperative Group Housing Society Ltd*⁵, the question arose as to whether arbitration and arbitral proceedings are included under the umbrella term “*other proceedings*” mentioned in section 69(3).⁶

¹ Indian Partnership Act 1932 (Act 9 of 1932)..

² Indian Partnership Act 1932, s 4.

³ Indian Partnership Act 1932, s 58.

⁴ Indian Partnership Act 1932, s 69.

⁵ *M/S UMESH GOEL V. HIMACHAL PRADESH COOPERATIVE GROUP HOUSING SOCIETY LTD.*, (2016) 11 SCC 313

⁶ Indian Partnership Act, 1932, s 69.

This section states that:

“69. Effect of non-registration⁷. –

(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 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.”

Through this paper, we seek to analyse the judgement delivered by the Supreme Court in the 2016 case and discuss the exclusion of arbitral proceedings under the term “other proceedings” of section 69(3)⁸.

Facts of the case

The facts of this case deal with the Himachal Pradesh Cooperative Group Housing Society, the respondents, who issued a call for tenders for the construction of 102 dwelling units with a basement at Plot No. 21, Sector 5, Dwarka, New Delhi in May 1998. In response, the appellant, who was an unregistered firm, submitted a bid and won the contract and the estimated cost was quoted at Rs. 9.8 crores.

The formal agreement of the project between the appellant and the respondent was executed on 2nd February 1999. There were some delays in terms of getting the plan sanctioned. However, the appellant claimed he was not responsible for the delay. The dispute that arose between the appellant and the respondent forced the parties to approach the Delhi High Court under section 9 of the Arbitration and Conciliation Act, 1996.⁹

On 22 May 2005, the appellant sought an injunction to restrain the respondent from dispossessing the appellant from the worksite till the work that had already been done was measured by a commissioner appointed by the Delhi High Court. On 29th January 2003, the

⁷ Indian Partnership Act, 1932, s 69.

⁸ Indian Partnership Act, 1932, s 69.

⁹ Arbitration And Conciliation Act 1996, s 9.

appellant filed an application under section 9 of the 1996 Act¹⁰ to stop the respondent from operating its bank accounts and dispossessing the appellant.

On 17th March 2003, Smt. Sangeeta Tomar was appointed as an arbitrator by the respondent to adjudicate between their dispute. The appellant had earlier moved to the High Court by way of an Arbitration Application on 9th July 2003 under Section 11(5) of the 1996 Act¹¹ for the appointment of an independent arbitrator however, the appellant had soon withdrawn this application. The appellant participated in the arbitration process and submitted claims and counter-claims, post which, on 5th May 2005, the arbitrator passed an award wherein, the claim of the appellant was allowed to the extent of Rs. 1,36,24,886.08 along with interest at the rate of 12% from 1st June 2002 till the date of the award and further interest from the date of award till its payment at the rate of 18% per annum.

The award of the Arbitrator was challenged by the Respondent under Section 34 of the 1996 Act¹². The Single Judge of the High Court also found no merit in the said contention and upheld the award of the counterclaim. The claim was dismissed by the Judge by an order dated 1st September 2005.

The respondent had filed a Review Application, which was also dismissed by the learned Single Judge by an order dated 3rd October 2005.

An interim order was passed on 21st July 2006, directing the respondent to deposit 50% of the said amount within six weeks and by subsequent order dated 18th August 2006, the time was extended by another four weeks. By the order dated 20th November 2007, the Division Bench allowed the appeal¹³ filed by the respondent.

The Division Bench was of the contrary view and held that the counterclaim in arbitral proceedings is covered by the expression "other proceedings" contained in Section 69(3)¹⁴ of the Indian Partnership Act, 1932 and since, the Appellant was an unregistered firm at the given point of time, the award of counterclaim in the award reversed as not justiciable by virtue of

¹⁰ *ibid.*

¹¹ Arbitration And Conciliation Act 1996, s 11.

¹² Arbitration And Conciliation Act 1996, s 34.

¹³ Himachal Pradesh Cooperative Group Housing Society Ltd. vs Umesh Goel And Anr., 2007(4)ARBLR353(DELHI)

¹⁴ Indian Partnership Act, 1932, s 69.

Section 69¹⁵ of the Indian Partnership Act, 1932.¹⁶

Issue involved

Whether the expression ‘other proceedings’ contained in Section 69(3)¹⁷ of the Indian Partnership Act, 1932 includes Arbitral proceedings and can be equated to suits filed in Court and thereby ban imposed against unregistered firms can operate in a matter of arbitral proceedings.

Judgement

In the judgement delivered by Justice F.M. Ibrahim Kalifulla, the interpretation of Section 69(3) of the Indian Partnership Act with reference to its applicability to Arbitral proceedings has been dealt with in great detail. The Apex Court found merit in the arguments raised by the counsel for the appellant, Senior Advocate Mr. Dhruv Mehta. The court observed that Section 69(3) of the Indian Partnership Act, 1932 cannot be read in isolation and must be read along with Section 69(1) and Section 69(2) of the Indian Partnership Act.

The court held that the prohibition set out in Section 69(3) does not extend to arbitration proceedings and also took into consideration the distinct features of the 1996 Act¹⁸ which governs arbitration.

Analysis of the issue

The primary argument by the counsel for the appellant dealt with the issue of isolating Section 69(3) from Section 69(1) and Section 69(2). The counsel contended that the term “*other proceedings*” mentioned in section 69 (3) should be read in reference to other proceedings connected with a suit in a court of law. The very essence of Section 69(3) lies in Section 69(1) and 69(2) and the provisions of these sections have been impliedly incorporated in Section 69(3). The fact that the opening expression of section 69(3) clearly states “*The provisions of sub-sections (1) and (2) shall apply...*”¹⁹ points towards the intrinsically woven connection between the three sections and section 69(3) must not be read in isolation. Thus, the court was

¹⁵ *ibid.*

¹⁶ Ashok KM, *Arbitration proceedings not barred under Section 69(3) of the Partnership Act: SC*, LIVELAW, (June 17, 2024, 12:56 PM)

<https://www.livelaw.in/arbitration-proceedings-not-barred-section-693-partnership-act-sc/>

¹⁷ Indian Partnership Act, 1932, s 69.

¹⁸ Arbitration And Conciliation Act 1996 (Act 26 of 1996).

¹⁹ Indian Partnership Act, 1932, s 69.

of the opinion that the ingredients of section 69(1) and section 69(2) must apply to section 69(3) as well. In order to invoke Sub-section (3) of Section 69 and for the ban to operate, either the firm should be an unregistered one, or the person who wants to sue should be a partner of an unregistered firm.²⁰ If an individual wishes to initiate legal proceedings in court, particularly in cases involving a set-off claim or other legal matters connected to a contract or rights conferred by the Partnership Act, and they intend to enforce these rights through a lawsuit, then the Sub-section will apply in such circumstances.

The counsel also pointed an arbitrator cannot be considered a court since even though an arbitrator possesses some judicial power, an arbitrator derives power from a contract and not from the state. Furthermore, although Section 36 of the 1996 Act²¹ holds an arbitral award at the same status as a decree, we must not ignore the fact that this comparison and equation has only been done for the purpose of enforcement of the arbitral award and this meaning cannot be extended to the point of putting an arbitrator at the same level as a court.

The Apex Court also agreed with the three conditions that Mr. Dhruv Mehta contended should be mandatorily fulfilled when invoking Section 69 (3).

- There should be a suit, and the other proceedings should be intrinsically connected to that existing suit,
- Such suit should have been laid to enforce a right arising out of a contract, and,
- Such a suit should have been filed in a court of law.

However, multiple other legislations have equated arbitral proceedings to civil court proceedings. The first evidence for the above-stated argument can be found in the Limitation Act.²² The question raised in this case primarily seeks to answer if the term “other proceedings” includes arbitral proceedings. The section 14 of the Limitation Act²³ can be interpreted in such a way as to treat arbitral proceedings at par with civil proceedings. However, the court pointed out the golden principle that a judgment can be a binding precedent on a question of law, which was canvassed before it and decided. As previously stated, Section 69(3) does not include any interpretation wherein, arbitral proceedings can be equated to civil proceedings. Therefore, any interpretation made under the Limitation Act while construing Section 14²⁴ to treat Arbitral

²⁰ Indian Partnership Act, 1932, s 9.

²¹ Arbitration And Conciliation Act 1996, s 36.

²² Limitations Act, 1963 (Act 36 of 1963)

²³ Limitations Act 1963, s 14.

²⁴ *ibid.*

proceedings on par with civil proceedings cannot be applied to the case on hand.

We must also take into consideration the definition delineated in the Interest Act.²⁵ The Section 2(a) of the Interest Act²⁶ states that

“2. Definitions

In this Act, unless the context otherwise requires,

(a) Court includes a tribunal and an arbitrator;²⁷”

Hence, by referring to this section, it comes off as a strong contention that an arbitrator should be given the same stature as a court of law, which in turn supports the case of the Respondents that “other proceedings” should include Arbitral proceedings. However, the court was of the opinion that it would be improper to import a definition from another act to the Indian Partnership Act and stated that if the Indian Partnership Act had included such a definition, there would have been no problem in accepting the argument of the respondent but in the absence of such definition, the definition of Court as stated in Interest Act cannot be incorporated into the Indian Partnership Act.

Additionally, the counsel for the respondent claimed that Section 35²⁸ and Section 36²⁹ of the 1996 Act also substantiates and strengthens the argument of the respondent, and they may be taken into consideration while determining the extent of the term “*other proceedings*.” The court did not agree with the said contention and pointed out that these sections serve the purpose of enforcement of arbitral awards. Section 36 merely serves as a statutory fiction for the purpose of enforcement. The court reiterated that a statutory provision can only be construed in its intended meaning and that it would be improper to add or subtract words so that the meaning fits into the desired argument. Therefore, going by Sections 35 and 36 it cannot be held that the entire Arbitral proceeding is a Civil Court proceeding for the purpose of applicability of Section 69(3) of the Indian Partnership Act.³⁰

Cases referred

There were two cases that were extensively discussed in M/S Umesh Goel v Himachal Pradesh Cooperative Group Housing Society Ltd. The first case referred to in the abovementioned case

²⁵ The Interest Act 1978 (Act 14 of 1978)

²⁶ The Interest Act 1978, s 2.

²⁷ *ibid.*

²⁸ Arbitration And Conciliation Act 1996, s 35.

²⁹ Arbitration And Conciliation Act 1996, s 36.

³⁰ ³⁰ Ashok KM, *Arbitration proceedings not barred under Section 69(3) of the Partnership Act: SC*, LIVELAW, (June 17, 2024, 12:56 PM)

was the *Jagdish Chander Gupta v. Kajaria Traders (India) Ltd.*³¹

In the judgement, it was laid down that 'other proceedings' would be referable to Arbitration as well. However, in this particular case, a major difference lay in the fact that the proceedings of this case were held under section 8 of the Arbitration Act of 1940³² and not under the 1996 Act.³³ The extent of control and operation of a Court under the 1940 Act was far more intensive and elaborate than the 1996 Act.

Thus, even though the Arbitral proceedings under the Jagdish Chander case would squarely fall under the term “*other proceedings*”, attributable to the fact that the arbitral proceedings were governed under the 1940 Act, the same cannot be said in the case of M/S Umesh Goel v Himachal Pradesh Cooperative Group Housing Society Ltd. Therefore, there was no hesitation to hold that the ratio laid down in the Jagdish Chander case does not in any way conflict with the view taken in the Umesh Goel Case.

The second case referred to in this case was the *Kamal Pushp Enterprises vs D.R. Construction Co.*³⁴ wherein it was categorically highlighted

“The prohibition contained in Section 69 is in respect of instituting a proceeding to enforce a right arising from a contract in any Court by an unregistered firm, and it had no application to the proceedings before an Arbitrator and that too when the reference to the Arbitrator was at the instance of the Appellant itself...

... The Award in this case cannot either rightly or legitimately said to be vitiated on account of the prohibition contained in Section 69 of the partnership Act, 1932 since the same has no application to proceedings before an Arbitrator.”

Thus, this case fully supported the present case at hand in so far as to highlight that post-award proceedings in no way come under the purview of “other proceedings.”

Conclusion

The primary question dealt with in the case of M/S Umesh Goel V Himachal Pradesh Cooperative Group Housing Society Ltd was if Arbitral Proceedings were included in the term

³¹ Jagdish Chander Gupta vs Kajaria Traders (India) Ltd, 1964 AIR 1882

³² The Arbitration Act 1940, s 8.

³³ Arbitration And Conciliation Act 1996 (Act 26 of 1996).

³⁴ Kamal Pushp Enterprises vs D.R. Construction Company, AIR 2000 SUPREME COURT 2676.

“*other proceedings*” in section 69(3) of the Indian Partnership Act. The judgement of this case was meticulously thought out, and multiple complex angles were taken into consideration. Firstly, the judgement highlighted that section 69(3) must not be read in isolation and ingredients of Section 69(1) and 69(2) should always be applied while reading Section 69(3). Secondly, the court had the right view while dealing with the issue of utilising definitions from other legislations wherein, the decision to, firstly, read the legislation in its intended meaning and secondly, the decision to not import meaning from different legislations helped the court to understand the meaning of Section 69(3) in the right way.

Furthermore, the in-depth analysis of the precedents along with the analysis of the difference in facts of the cases led to the Supreme Court crafting a crucial piece of judgement that conclusively proved that the expression ‘other proceedings’ contained in Section 69(3) of the Indian Partnership Act, 1932 will not include Arbitral proceedings and cannot be equated to suits filed in Court and thereby ban imposed against unregistered firms cannot operate in matters of arbitral proceedings.

