A

SANGANER DAL AND FLOUR MILL

v.

F.C.I. AND ORS.

OCTOBER 22, 1991

B

[K. RAMASWAMY AND YOGESHWAR DAYAL, JJ.]

Indian Partnership Act, 1932—Section 19(2)(a)—Application of—Contract by one partner—No objection by others—Arbitration clause of the contract binding on the firm and reference of dispute for arbitration u/s.20, Arbitration Act, 1940—Proper.

C

The appellant—a partnership firm consisted of nine partners. One Satya Narain was one of the partners. He submitted a tender to the respondents on July 25, 1973 on behalf of the firm offering to supply 1000 quintals of Gram Dal at the rate of Rs.185/- per bag. Tender was accepted by the respondents. The appellant committed breach of the contract and as a result, the respondents filed an application under sec. 20 of the Arbitration Act, 1940 before the District Court for making reference for arbitration in terms of the contract.

D

The application was allowed and the dispute was referred for arbitration.

E

Against the order of the Addl. District Judge, an appeal was filed before the High Court and the High Court confirmed the order of the Additional District Judge.

F

This appeal by special leave under Art. 136 of the Constitution is against the order of the High Court. The appellant contended that by operation of Sec.19(2)(a) of the Partnership Act, 1932, there was no implied authority given to one of the partners to refer the dispute relating to the business of the firm for arbitration and therefore the reference made by the court, pursuant to a contract entered into by one of its partner, Satya Narain on behalf of the firm, was without jurisdiction and that the original contract did not contain arbitration clause. In a separate letter with a rubber stamp (facsimile) of the firm, one of the partners agreed for reference to arbitration and therefore the reference did not bind the other partners.

G

H

Dismissing the appeal, this Court,

HELD: 1. The operation of Secs. 18 & 19(1) is subject to the exceptions engrafted in sub-sec. (2) of Sec. 19. Sec. 19(2)(a) provides that in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to submit a dispute relating to the business of the firm to arbitration. [545B-C]

2. None of the partners have entered into the witness box to deny the validity of the contract nor raised any objection that they had not authorised the partner (Satya Narain) to enter into the contract nor that they were bound by any acts done by him. When the partner signed the tender, at that time no other partners raised objection regarding the signing of the tender by the partner on behalf of the firm. In view of these facts it is clear that they ratified the contract. [544 E-F]

3. The firm had entered into a binding contract with the corporation and contract contained the arbitration clause which binds the partners. [544 G]

4. The contract engrafts an arbitration clause and in terms thereof the dispute is to be referred to the arbitration. Therefore, the reference made by the Addl. District Judge under Sec. 20 of the Arbitration Act is within the jurisdiction and in terms of the contract. [545 D]

Gopal Das v. *Baij Nath & Ors.*, AIR 1926 Allahabad 238; *Firm Radhakishan Chunnilal* v. *Firm Ashamal Ishardas,* AIR 1926 Lahore 92; *Rajendra Prasad* v. *Pannalal Champalal & Ors,* AIR 1932 Calcutta 343; *Mansabdar Khan* v. *M.T. Allah Devi & Ors.*, AIR 1934 Lahore 485; *Sohanlal* v. *Firm Madhoram Banwarilal,* AIR 1952 Punjab 240; and *M/s. Alazappa Cotton Mills* v. *Indo Burma Trading Corporation*, AIR 1976 Madras 79, **referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1677 of 1984.

From the Judgment and Order dated 7.7.1983 of the Rajasthan High Court in S.B. Civil Misc. Appeal No. 6 of 1983.

S.K. Jain, Mrs. Pratibha Jain and Sudhanshu Atreya for the Appellant.

C.K. Sucharita, Y. Prabhakara Rao (N.P.) and Ganpathi Iyer Gopalkrishnan for the Respondents.

A The following Order of the Court was delivered:

This appeal by special leave under Art. 136 of the Constitution is against the order of the High Court of Rajasthan dated July 7, 1983. The appellant a partnership firm consists of nine partners of which Satya Narain is one of the partners. On July 25, 1973 Satya Narain submitted a B tender to the respondents offering to supply 1000 quintals of Gram Dal at the rate of Rs. 185/- per bag. This was accepted by the respondents by letter dated August 28, 1973 followed by confirmation letter by the firm on August 31, 1973. It is the case of the respondents that the appellant committed breach of the contract and as a result, the respondents filed an application under sec. 20 of the Arbitration Act, 1940 (for short as the C 'Act') before the District Court for making reference for arbitration in terms of the contract. The Addl. District Judge after considering the evidence and the objections allowed the application and referred the dispute for arbitration. Against that order, the appeal was filed and the High Court confirmed the order of the Addl. District Judge.

D The contention raised by Sri Sushil Kumar Jain, learned counsel for the appellant is that by operation of Sec. 19(2)(a) of the Indian Partnership Act, 1932 (for short as the 'Partnership Act') there is no implied authority given to one of the partners to refer the dispute relating to the business of the firm for arbitration and therefore the reference made by the court, pursuant to a contract entered into by Satya Narain on behalf of the firm, is E without jurisdiction. The High Court found as a fact that none of the partners have entered into the witness box to deny the validity of the contract nor raised any objection that they had not authorised Satya Narain to enter into the contract nor that they were bound by any acts done by him. It is also found that Satya Narain signed the tender and at that time no other partners raised objection regarding the signing of the tender by Satya F Narain on behalf of the firm. In view of these facts it is clear that they ratified the contract. It is also further to be noted that in terms of the contract, the corporation had appropriated the security deposit made by the appellant-firm and that was not objected to at any time. This itself would fortify the conclusion that the firm had entered into a binding contract with the corporation and contract contained the arbitration clause G which binds the partners. The contention raised that the contract is void and that in terms of the contract, making a reference is without jurisdiction bears no substance.

The High Court found that Satya Narain has implied power to conH duct business on behalf of the partnership firm and the implied authority

binds all the partners. Sec. 18 of the Partnership Act postulates that "subject to the provisions of the Act a partner is the agent of the firm for the purposes of the business of the firm". Sec. 19(1) adumbrates that "subject to the provisions of Sec. 22 the act of the partners which is done to carry on in the usual way the business of the kind carried on by the firm, binds the firm". Thus, Satya Narain has implied authority to enter into the contract with the corporation to supply the Dal of 1000 quintals at the contracted rate which is the usual course of the business of the appellant. But it is settled law that the operation of Secs. 18 & 19(1) is subject to the exceptions engrafted in sub-sec. (2) of Sec. 19. Sec. 19(2)(a) provides that in the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to submit a dispute relating to the business of the firm to arbitration. Satya Narain has power to do business on behalf of the firm and in exercise thereof he entered into the contract with the corporation during the usual control of business to supply the Dal. Then crucial question is whether a valid contract which was not repudiated as per law, binds the other partners? Our answer is yes. It is not in dispute that the contract engrafts an arbitration clause and in terms thereof the dispute is to be referred to the arbitration. Therefore, the reference made by the Addl. District Judge under Sec. 20 of the Arbitration Act is perfectly within the jurisdiction and in terms of the contract. It is not the case of the partners that the firm is not carrying on the business of the supply of Dal and that Satya Narain, as found by the Trial Court, was authorised to do business on behalf of the firm.

Under those circumstances, the reference is clearly valid. We do not find any illegality to interfere with the order of the High Court.

In this view, the decisions in *Gopal Das* v. *Baij Nath & Ors.*, AIR 1926 Allahabad 238; *Firm Radhakishan Chunnilal* v. *Firm Ashamal Isharidas,* AIR 1926 Lahore 91; *Rajendra Prasad* v. *Pannalal Champalal & Ors.*, AIR 1932 Calcutta 343; *Mansabdar Khan* v. *M.T. Allah Devi & Ors.*, AIR 1934 Lahore 485; *Sohanlal* v. *Firm Madhoram Banwarilal*, AIR 1952 Punjab 240; and *M/s Alazappa Cotton Mills* v. *Indo Burma Trading Corporation,* AIR 1976 Madras 79; cited by learned counsel are of little assistance to the appellant. In *M/s Alazappa Cotton Mills* case the original contract does not contain arbitration clause. In a separate letter with a rubber stamp (facsimile) of the firm one of the partners agreed for reference to arbitration. On those facts it was held that the reference does not bind the other partners. The appeal is accordingly dismissed. Since we do not call upon the respondents to argue, there will be no order as to costs.

V.P.R. Appeal dismissed.