

A

RATAN LAL SHARMA

v.

PURSHOTTAM HARIT

January 11, 1974

[P. JAGANMOHAN REDDY, S. N. DWIVEDI

B

AND P. K. GOSWAMI, JJ.]

*Arbitration Act, 1940, Sec. 17—Award—Whether, one assigning share in partner-ship or one creating rights in immovable property worth more than Rs. 100/-.*

*Registration Act 1908—Requirement of registration under Sec. 17.*

C

*Held, court cannot pronounce judgment in terms of unregistered award creating rights in immovable property worth above Rs. 100/-*

D

The appellant and the respondent set up a partnership business in December, 1962. The partners soon fell out. At the time the disputes arose, the running business had a factory and various movable and immovable properties. On August 22, 1963, by agreement in writing, the parties referred "the disputes of our concern" to the arbitration of two persons and gave "the arbitrators full authority to decide our dispute". The arbitrators gave their award on September 10, 1963. The award made an exclusive allotment of the partnership assets, including the factory, and liabilities to the appellant. He was "absolutely entitled to the same" in consideration of a sum of Rs. 17,000/- plus half the amount of the realisable debts of the business to the respondent and of the appellants renouncement of the right to share in the amounts already received by the respondent. The award, stipulated that the appellant should not run the factory unless he has paid the awarded consideration to the respondent. The arbitrators filed the award in the High Court on November 8, 1963. On September 10, 1964, the respondent filed an application for determining the validity of the agreement and for setting aside the award. On May 27, 1966, a learned single judge of the High Court dismissed the application as time barred. But he declined the request of the appellant to proceed to pronounce judgment according to the award because in his view; (i) the award was void for uncertainty and (ii) the award, which created rights in favour of the appellant over immovable property worth over Rs. 100/-, required registration and was unregistered. From this part of the order, the appellant filed an appeal which was dismissed as not maintainable by the Division Bench of the High Court. In this Court, the appellant preferred an appeal by special leave against the decision of the single Judge declining to pronounce judgement in accordance with the award. He also filed a special leave petition against the judgement of the Division Bench. In the appeal before this Court, the appellant contended : (i) that the award is not void for uncertainty; (ii) that the award seeks to assign the respondent's share in the partnership to the appellant and so does not require registration; (iii) that under sec. 17 of the Arbitration Act, the court was bound to pronounce judgment in accordance with the award after it had dismissed the respondent's application for setting it aside.

E

F

Dismissing both the appeal and the special leave petition,

G

HELD : (i) The share of a partner in the assets of the partnership, which has also immovable properties, is movable property and the assignment of the share does not require registration under Sec. 17 of the Registration Act. But the award in the instant case does not seek to assign the share of the respondent to the appellant, either in express words or by necessary implication. The award expressly makes an exclusive allotment of the partnership assets including the factory and liabilities to the appellant. It goes further and makes him "absolutely entitled to the same", in consideration of a sum of Rs. 17000/- plus half of the amount of Rs. 1924-88P. to the respondent and the appellant's renouncement of the right to share in the amounts already received by the respondent. In express words the award purports to create rights in immovable property worth above Rs. 100/- in favour of the appellant. It would accordingly require registration under Sec. 17 of the Registration Act. [111D; 112F]

H

*Ajudhia Parshad Ram Parshad v. Sham Sunder and Ors.* A. I. R. 1947, Lahore 13 at p. 20, *Addanki Narayan v. Bhaskara Krishappa*, [1966] 3 S.C.R. 400 at pp 406 and 407 and *Commissioner of Income Tax v. West Bengal, Calcutta v. Juggilal Kamalapat* [1967] S.C.R. 784 at p. 790 referred to.

*Satish Kumar and Others v. Surinder Kumar and others* [1969] 2 S.C.R. 244 at pp. 251-252 applied.

(ii) As the award is unregistered, the Court could not look into it. The award being inadmissible in evidence for want of registration the Court could not pronounce judgment in accordance with it. Sec. 17 of the Arbitration Act presuppose an award which can be validly looked into by the Court. The appellant cannot successfully invoke sec. 17. The award is an inseparable tangle of several clauses and cannot be enforced as to the part not dealing with immovable property. [112H]

CIVIL APPELLATE JURISDICTION : CIVIL Appeal No. 1625 of 1967.

Appeal by Special leave from the judgment and order dated the 27th May, 1966 of the Calcutta High Court in Award Case No. 320 1963.

*S. K. Mehta, K.R. Nagaraja, M. Qamaruddin and Vinod Dhawan*, for the appellant and petitioner.

*B.P. Maheshwari, Suresh Sethi and R. K. Maheshwari*, for the respondent.

The Judgment of the Court was delivered by

DWIVEDI, J.—Before us there is this associate litigation—the civil appeal and the special leave petition for admission. Its history runs thus : There is the New Bengal Engineering Works. It has a factory and various movable and immovable properties. It is a running business. The business was set up by the appellant and the respondent as partners in December 1962. As usual with many partnerships, the partner did not march in step for long. Within six months they fell out. On August 22, 1963, they could, however, agree to refer their disputes to the arbitration of two persons, Sri R.N. Sharma and Sri C.M. Sharma. The agreement is in writing. It referred “the disputes of our concern” and gave “the arbitrators full authority to decide our dispute”. The arbitrators gave their award on September 20, 1963. They filed the award in the high Court on November, 1963. On September 10, 1964 the respondent filed an application for determining the validity of the agreement and for setting aside the award. On May 27, 1966 a learned single Judge of the High Court dismissed the application as time-barred. But he declined the request of the appellant to proceed to pronounce judgement according to the award. From this part of the order the appellant filed an appeal, but the appeal was dismissed as unmaintainable by a Division Bench. The appellant has now preferred the present appeal against the decision of the single Judge declining to pronounce judgement in accordance with the award. He has also filed the special leave petition against the judgment of the Division Bench.

We shall first take up the civil appeal. The special leave petition will become infructuous or anaemic after our decision for or against the appellant. The learned Single Judge refused to pronounce judgment in accordance with the award because (1) according to

- A him the award was void for uncertainty, and (2) the award, which created rights in favour of the appellant over immovable property worth over Rs. 100/-, required registration and was unregistered. Counsel for the appellant has advanced three arguments : (1) the award is not void for uncertainty; (2) the award seeks to assign the respondent's share in the partnership to the appellant and so does not require registration; and (3) under s. 17 of the Arbitration Act, the Court was bound to pronounce judgment in accordance with the award after it had dismissed the respondent's application for setting it aside.
- B

It is not necessary to express any opinion on the first argument as we are of opinion that the award requires registration and, not being registered, is inadmissible in evidence for the purpose of pronouncing judgment in accordance with it. So we pass on to the remaining two arguments of the appellant.

C

- It is well settled now that the share of a partner in the assets of the partnership which has also immovable properties is movable property and the assignment of the share does not require registration under s. 17 Registration Act. (See *Ajudhia Parshad Ram Parshad v. Sham Sunder and others* (1) *Addanki Narayanappa v. Bhaskara Kristappa* (2) and *Commissioner of Income-tax, West Bengal Calcutta v. Juggilal Kamalapat* (3). But the award with which we are concerned does not seek to assign the share of the respondent to the appellant, either in express words or by necessary implication. We set out the relevant portion of the award :
- D

“(We) make our award as follows :

- E (1) The factory and all assets and properties of New Bengal Engineering Works are exclusively allotted to Dr. Ratan Lal Sharma, who is absolutely entitled to the same. He will pay all liabilities of the factory.
- (2) Dr. Ratan Lal Sharma shall have no claim for the receipts assigned by Sri Purushottam Harit.
- F (3) Payment of all cheques issued by Dr. Ratan Lal Sharma on behalf of Modern Processors to Shri Purushottam Harit shall be treated invalid.
- (4) Dr. Ratan Lal Sharma shall pay Rs. 17,000/- (Rupees seventeen thousand only) to Shri Purushottam Harit.
- G (5) Shri Purushottam Harit shall render all assistance to Dr. Ratan Lal Sharma for realising all the dues of the said firm as and when necessary and for transfer of tenancy right of the Factory in favour of Dr. Ratan Lal Sharma.
- (6) All papers and documents in respect of the said business shall be made over to Dr. Ratan Lal Sharma.
- H

(1) A. I. R. 1947 Lahore 13 at p. 20.

(2) [1966] 3 S. C. R. 400 at pp. 406 and 407.

(3) [1967] 1 S. C. R. 784 at p. 790.

(7) The following sums when realised shall be divided equally between Dr. Ratan Lal Sharma and Shri Purushottam Harit.

Name of Debtors	Amount	
1. Associated Engineering Corporation	Rs. 284·17	
2. Link Machinery Ltd.	Rs. 1079·28	B
3. Clendent Products	Rs. 47·25	
4. Minerva Engineering Works	Rs. 514·18	
Total	Rs. 1924·88	

N.B. (8) —The factory should not be run by Dr. Ratan Lal Sharma until and unless the payment of the award is not made to Shri Purushottam Harit”.

The word “not” is a slip here. The parties conceded before the learned Single Judge that the award deals with immovable property worth above Rs. 100/-. So if it is found by us that the award purports to create rights in the appellant over immovable property, it would require registration under s. 17 Registration Act. (See *Satish Kumar and others v. Surinder Kumar and others* (1)). On the dissolution of the partnership or with the retirement of a partner from the partnership the share of the partner in the partnership assets is equal to the value of his share in the net partnership assets after deduction of all liabilities and prior charges. Even during the subsistence of the partnership, he may assign his share to another partner. In that event the assignee partner would get only the right to receive the share of profits of the assigner. (See Narayanappa (supra) at p. 407).

Now the award does not transfer the share of the respondent, interpreted in the aforesaid sense, to the appellant in express words. Nor such is the necessary intendment of the award. It expressly makes an exclusive allotment of the partnership assets including the factory and liabilities to the appellant. It goes further and makes him “absolutely entitled to the same”. in consideration of a sum of Rs. 17000/- (See clause 4) plus half of the amount of Rs. 1924·88 p. to the respondent and the appellant’s renouncement of the right to share in the amounts already received by the respondent. So in express words it purports to create rights in immovable property worth above Rs. 100/- in favour of the appellant. It would accordingly require registration under S. 17, Registration Act. As it is unregistered, the Court could not look into it. If the Court could not, as we held, look in to it, the Court could not pronounce judgment in accordance with it. Sections 17 Arbitration Act presupposes an award which can be validly looked into by the Court. The appellant cannot successfully invoke s. 17.

(1) [1969] 2 S. C. R. 244 at pp. 251-252.

- A** The award is an inseparable tangle of several clauses and cannot be enforced as to the part not dealing with immovable property. As already stated, various other relevant clauses constitute consideration for clause (1), that is, for the creation of absolute rights in the factory and other properties in favour of the appellant. This is perfectly clear from the note of the arbitrators appended to the award as clause 8. The appellant is not given a right to run the factory unless he had paid the awarded consideration to the respondent.
- B**

For the reasons already discussed, we agree with the learned single Judge that the award requires registration and not being registered, no judgment could be pronounced upon it. In the view that we have taken, the special leave petition cannot be admitted.

- C** The appeal as well as the special leave petition are accordingly dismissed. The respondent shall get his costs in the appeal.

S.B.W.

*Appeal and petition dismissed.*