

UNREGISTERED PARTNERSHIP FIRMS CAN MAINTAIN ARBITRAL PROCEEDINGS – Supreme Court of India

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In *Umesh Goyal vs Himachal Pradesh Co-operative Group Housing Society* (2016 SCC Online 264), the Supreme Court has adjudicated upon an ambiguous legal issue and settled the law relating to Section 69 of the Indian Partnership Act, which deals with effects of non registration of a partnership firm and the applicability of the bar to maintain proceedings under Arbitration Act.

BRIEF FACTS OF THE CASE:

The Respondent, which is a co-operative group housing society invited tenders for construction of 102 dwelling units with basement at Plot No 21, Sector 5, Dwarka, New Delhi, in May 1998. The Appellant, which was an unregistered partnership firm, successfully submitted a bid on 06.05.1998 and was awarded the contract at an estimated cost of Rs. 9.80 Crores. An agreement to this effect was signed between the parties on 02.02.1999. A dispute arose between the parties with regards to some delay in getting the plan sanctioned and the Appellant moved the Delhi High Court under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter known as “the 1996 Act”) to restrain the Respondent from dispossessing the Appellant from the work site and further restraining the Respondent from operating its bank accounts. On 05.05.2005, Arbitration Award was passed by the Arbitrator 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 01.06.2002 till the date of the award and further interest from the date of the award till its payment at the rate of 18% per annum. The Respondent did not specifically raise any plea under Section 69 of the Indian Partnership Act claiming a bar on such proceedings. The Respondent challenged the Arbitration Award before the Delhi High Court by way of an application under Section 34 of the 1996 Act which was dismissed by the Learned Single Judge. Subsequently, the Respondent filed the review application which was again dismissed by the Learned Single Judge. However, the Respondent’s appeal was allowed by the division bench, consequently the Appellant filed an application in the Supreme Court of India.

CONTENTIONS OF THE PARTIES:

The Appellant contended in the Supreme Court of India that with regards to sub-section (3) of Section 69, of the Indian Partnership Act (hereinafter referred to as the “Partnership Act” or “IPA”), it cannot be read in isolation and when sub-section (1) and (2) are read into sub-section (3), the expression “other proceedings” mentioned in sub-section (3) should be with respect to other proceedings connected with a suit initiated in a court. He further contended that Section 69(3) can have no relevance nor referable to arbitral proceedings in isolation because an arbitrator cannot be said to be a Court of Law for the purpose of Section 69. Section 36 of the 1996 Act is only a statutory fiction by which an Arbitral Award is deemed to be a decree only for the purpose of enforcement and it can not be enlarged to an extent to mean that since the Award is deemed to be a decree, the arbitrator can be held to be a court of Law by that virtue.

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The respondent on the other hand contended that under Section 69 (3) of the Partnership Act, the phrase “other proceedings” will include arbitral proceedings and that the foundation for the same must be based only on a right in a contract. Respondent further submitted that as per Section 14 of the Limitation Act, arbitration proceedings have been held to be on par with civil proceedings and even under Section 35 and 36 of the 1996 Act, the award passed by the arbitrator is equated to a decree passed by the court.

LEGAL ISSUE:

The question for consideration which arose before the Apex Court was by virtue of sub-section (3) of Section 69 of Indian Partnership Act, whether the expression “other proceedings” contained therein will include Arbitral proceedings and can be equated to a suit filed in a Court and thereby the ban imposed against an unregistered firm by virtue of Section 69 IPA can operate in the matter of arbitral proceedings.

OBSERVATIONS OF THE COURT:

The Apex Court found merit in the contentions of the Appellant and observed that the when Section 69 of the Partnership Act is read as a whole, the provision of sub-section (1) and (2) clearly seem to have been impliedly incorporated in sub-section (3). The Apex Court further noted that while reading sub-section (3), it is imperative that all the ingredients contained in sub-section (1) and (2) should be read into sub-section (3) and thereafter the said sub-section should be applied when such application is called for any matter.

The Supreme Court relied on the other Supreme Court judgement delivered by Justice Mr. Hidayatullah in the case of *Jagdish Chander Gupta*² wherein it was held that the sub-section (3) of Sec 69 provides for the application of the provision of sub-section (1) and (2) to claims of set-off and also to other proceedings of any kind which can properly be said to be for enforcement of any right arising from contract except those expressly mentioned in sub-section (3) and (4).

The court further expounded that to invoke Section 69(3), three mandatory conditions are required to be fulfilled which can be summarized as:

1. there should be a suit and other proceedings should be intrinsically connected to the suit,
2. such suit should have been laid to enforce a right arising from the contract,
3. such suit should be filed in a Court of Law.

Apex Court further elaborated that while under sub-section (1) of Section 69, the ban is against filing a suit in a Court by a partner of an unregistered firm against the firm itself or any of its partners, but under sub-section (2), such a ban in the same form of a suit will also operate against any third party at the instance of an unregistered firm. In order to invoke Section 69(3) and further to operate the ban, either the firm should be an unregistered one or the person who wants to sue should be a partner of an unregistered firm and that the suit should have been filed in a Court. In this case, the

² *Jagdish Chander Gupta Vs Kajaria Traders (India) Ltd (1964 SCR (8) 50)*

Supreme Court laid down that the condition precedent for the operation of ban under sub-section (3) is that the launching of a suit in a court of law should be present and that it should be by an unregistered firm or by a partner of such firm either to claim for set of in the said suit or any proceedings intrinsically connected with the said suit.

DECISION:

The Supreme Court finally held that the ban imposed under Section 69 of the Partnership Act will have no application to Arbitral proceedings as well as in the enforcement of an Arbitration Award and the expression “other proceedings” mentioned in Sec 69 (3) will not include for Arbitration proceedings.

