

CIVIL REVISION

Present:

The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 03.09.2010

C.O. No. 2592 of 2010

Ram Kishan Mimani & anr.

Versus

Saroj Mimani & ors.

Points:

Rejection of Plaint- Without considering the arbitration clause of the deed whether rejection of application for rejection of plaint justified.-Code of Civil Procedure, 1908 O 7 R 11

Facts:

The defendant no.5 is a partnership firm and the plaintiffs / petitioners and the opposite party nos.1 to 4 are the partners in the said firm. In that firm, there is an arbitration clause in the partnership deed entered into in between the parties. Thereafter, the dispute arose between the parties and the plaintiff filed the suit. In that suit, the defendants / petitioners appeared and filed an application under Order 7 Rule 11 of the C.P.C. praying for rejection of the plaint. By the impugned order, the learned Trial Judge rejected the application.

Held:

There was a term for solving the disputes by the arbitrator to be appointed as per terms of the partnership deed. The order impugned does not lay down discussion relating to such terms and on the basis of such term whether the suit is maintainable or not. Since the order impugned is devoid of such observations, it can well be presumed that such clause escaped the notice of

the learned Trial Judge. This being the position, it will be proper to remit the matter to the learned Trial Judge on remand for making a fresh findings relating to the application under Order 7 Rule 11(d) of the C.P.C.

Para 5 and 6

For the Petitioners: Mr. Amitava Das,

Mr. Mayank Kakrania.

For opposite parties: Mr. Jiban Ratan Chatterjee,

Mr. Animesh Das.

Prasenjit Mandal, J. : This application is at the instance of the defendants and is directed against the order no.13 dated June 17, 2010 passed by the learned Judge, City Civil Court, Third Bench, Calcutta in Title Suit No.5888 of 2009 thereby dismissing an application under Order 7 Rule 11 of the Code of Civil Procedure. 2. The plaintiffs/opposite parties instituted the Title Suit No.5888 of 2009 praying for declaration that the impugned notice dated September 11, 2009 and the notice dated September 14, 2009 are bad in law, arbitrary in nature and the same are not binding upon the plaintiffs and are liable to be cancelled and other reliefs. The defendant no.5 is a partnership firm and the plaintiffs / petitioners and the opposite party nos.1 to 4 are the partners in the said firm. In that firm, there is an arbitration clause in the partnership deed entered into in between the parties on April 1, 2002 and so any dispute or difference between the parties, shall be referred to the arbitrator to be appointed subsequently.

3. Thereafter, the dispute arose between the parties and the plaintiff filed the suit for the reliefs stated.

4. In that suit, the defendants / petitioners appeared and filed an application under Order 7 Rule 11 of the C.P.C. praying for rejection of the plaint. By the impugned order, the learned Trial Judge rejected the application. Being aggrieved by that portion of the impugned order, the defendants/petitioners have come up with this application.

5. Upon hearing the learned Advocate for the petitioner and on going through the record, I find that the petitioners and the opposite party nos.1 to 4 are the partners of the partnership firm, opposite party no.5 herein. There was a term for solving the disputes by the arbitrator to be appointed as per terms of the partnership deed dated April 1, 2002. Accordingly, when the suit was preferred by the plaintiffs for the reliefs stated, the defendants filed the said application for rejection of the plaint. But, surprisingly the order impugned does not lay down anything in the matter of appointment of any arbitrator. Clause C of the application under Order 7 Rule 11 of the C.P.C. clearly lays down that in case of any dispute or difference that may arise between the parties, such dispute or difference shall be referred to the arbitrators under the provisions of the Arbitration Act. The order impugned herein does not lay down discussion relating to such terms and on the basis of such term whether the suit is maintainable or not. Since the order impugned is devoid of such observations, it can well be presumed that such clause escaped the notice of the learned Trial Judge.

6. This being the position, I am of the view that it will be proper to remit the matter to the learned Trial Judge on remand for making a fresh findings relating to the application under Order 7 Rule 11(d) of the C.P.C.

7. Accordingly, the impugned order referred to above is hereby set aside.

8. The learned Trial Judge is directed to dispose of the application under Order 7 Rule 11 of the C.P.C. filed by the defendants afresh. Such exercise

must be done within a period of 30 days from the date of communication of the order.

9. Considering the circumstances, there will be no order as to costs.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.

(Prasenjit Mandal, J.)