H. SRINIVAS PAI & ANR. A

v.

H.V. PAI (D) THR. LRS. & ORS.

(Civil appeal No. 5220-5221 of 2010)

JULY 9, 2010 B

[R.V. RAVEENDRAN AND H.L. GOKHALE, JJ.]

Arbitration Act, 1940:

s.34 – Application for stay of proceedings in a civil suit C
– Rejected – Order upheld in appeal and revision – Thereafter application u/s 8 of Arbitration and Conciliation Act, 1996 filed – Application dismissed by trial court as also by High Court – However, High Court observing that the 1996 Act has got application to commercial matters and international D
commercial matters and the suit relating to partition of joint family properties, would not attract provisions of the Act – HELD: Order dismissing application u/s 34 having become final, High Court and trial court rightly negatived the attempt of appellants by filing the application u/s 8 of the 1996 Act – E
However, the observation of the High Court in para 4 of its judgment that the 1996 Act will not apply to civil disputes is set aside – Arbitration and Conciliation Act, 1996 – s.8.

Arbitration and Conciliation Act, 1996:

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Applicability of the Act – HELD: There is no basis to hold that the Act will not apply to 'civil disputes', but will apply only to 'commercial disputes' or 'international commercial disputes' – The Act applies to domestic arbitrations, international commercial arbitrations and conciliations – The applicability G
of the Act does not depend upon the dispute being a commercial dispute – Reference to arbitration and arbitability depends upon the existence of an arbitration agreement, and not upon the question whether it is a civil dispute or

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A *commercial dispute – There can be arbitration agreements in non-commercial civil disputes also – Arbitration Act, 1940 – s.34.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5220-21 of 2010.

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From the Judgment & Order dated 03.11.2008 of the High Court of Karnataka in CRP No. 1710 of 2003 and final Judgment and Order dated 17.04.2009 in Review Petition No. 448 of 2008 in CRP No. 1710 of 2003.

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Sampat Anand Shetty, Rameshwar Prasad Chandrashekar for the Appellants.

G.V. Chandrashekar, N.K. Verma, Anjana Chandrashekar for the Respondents.

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The following order of the Court was delivered

ORDER

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1. Leave granted. Heard the counsel.

2. The first respondent filed a suit for partition in the year 1991. In the said suit, the appellant filed an application for stay of proceedings under Section 34 of the Arbitration Act, 1940 ('old Act' for short). The said application under Section 34 was F dismissed on 15.3.1995 on the ground that the appellant had acquiesced to court's jurisdiction. The appeal filed by the appellants, as also a further revision by them, were dismissed in 2000 and 2001.

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3. The suit, however, continued to be pending and the appellants thought fit to file an application under Section 8 of the Arbitration and Conciliation Act, 1996 ('Act', for short). That application was dismissed by the trial Court by order dated 29.3.2003. Feeling aggrieved, the appellants filed a revision which was referred by a learned single Judge of the High Court

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to a Division Bench. The Division bench, by order dated 3.11.2008, dismissed the application under Section 8 of the Act but while so doing, observed thus:

> "In view of Section 1 (2) of the Act, the said Act has got application in respect of commercial agreement matters and international commercial matters. The right claimed by the respondent in the original suit for partition of the joint family properties, is a civil dispute, which does not attract the provisions of the Act."

The appellants filed a review petition which was dismissed on 17.4.2009. The said orders dated 3.11.2008 and 17.4.2009 are challenged in this appeal by special leave.

4. This court while issuing notice granted stay of the said observation and made it clear that there shall be no stay of the suit and that the suit shall proceed expeditiously as it has been pending for 18 years.

5. There is absolutely no basis for the observation of the High Court that Arbitration and Conciliation Act, 1996 will not apply to 'civil disputes', but will apply only to 'commercial disputes' or international commercial disputes. The Act applies to domestic arbitrations, international commercial arbitrations and conciliations. The applicability of the Act does not depend upon the dispute being a commercial dispute. Reference to arbitration and arbitability depends upon the existence of an arbitration agreement, and not upon the question whether it is a civil dispute or commercial dispute. There can be arbitration agreements in non-commercial civil disputes also.

6. However, the said observation of the High Court does not, in any way, affect the correctness of the said order passed by the High Court. As already noticed, the application under Section 34 of the old Act was dismissed in the year 1995 and affirmed in appeal in 2000 and by the High Court in 2001 and attained finality. The subsequent attempt of the appellants by

A filing an application under Section 8 of the Act has been rightly negatived by the trial Court and by the High Court.

7. In view of the above, we dispose of these appeals without disturbing the dismissal of the revision by the High Court. We, however, set aside the observation of the High Court in paragraph 4 of its Judgment (extracted in para 3 above) holding that the Act will not apply to 'civil disputes'. We request the trial Court to dispose of the suit expeditiously not later than three months from today.

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C R.P. Appeals disposed of.