

Court No. - 46

Case :- ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 69 of 2020

Applicant :- Gurucharan Das

Opposite Party :- Tribhuvan Pal And 2 Others

Counsel for Applicant :- Satya Prakash Gupta, Jai Prakash Gupta

Counsel for Opposite Party :- Ajay Kumar Singh, Ashish Kumar Singh, Saurabh Kumar

Hon'ble Ashwani Kumar Mishra, J.

Heard learned counsel for the applicant, and Sri Saurabh Kumar & Sri Ashish Kumar Singh, learned counsel for the opposite parties.

This petition has been filed with a prayer to refer the dispute to arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

Records reveal that a partnership deed was executed between the applicant and the opposite party on 3rd August, 1985, which contained an arbitration clause. It appears that a dispute came into existence between the parties and the applicant approached the civil court by filing Original Suit No.424 of 2000. The prayer in the suit was to restrain the opposite party from running the firm by the plaintiff. The suit instituted in August 2000 has ultimately been withdrawn in the year 2019 itself. Thereafter an application has been moved for reference of dispute to arbitrator.

On behalf of opposite party it is stated that partnership deed itself stood dissolved in 1999. It is further stated that dispute between the parties had come into existence in the year 1999 and a suit was also instituted by the applicant in the year 2000. It is alleged that the dispute has arisen in the year 2000 and the limitation of invoking arbitration clause by virtue of clause 132 of the schedule to the Limitation Act would be of three years, which has expired in the year 2003 itself. It is contended that filing the application under Section 11 after expiry of more than twenty years of the accrual of the cause would not be maintainable. Submission is that dead claim is sought to be revived.

Reference placed on record clearly shows existence of an arbitration clause between the parties.

What is, however, admitted on record is that a dispute did occur between the parties in the year 2000. The applicant was aware of the arbitration clause. However, the applicant choose not to invoke the arbitration clause and pursued his claim in suit, which has since been withdrawn. This Court finds substance in the objection of the opposite party that such dead and stale claim ought not to be allowed to be revived after such a long lapse of time. The limitation of three years expired in the year 2003. Filing of this petition, after 20 years is thus grossly barred by delay and latches.

Petition, accordingly, is dismissed.

Order Date :- 17.8.2023

A. K. Singh