

CASE NO.:
Appeal (civil) 5680-81 of 1994

PETITIONER:
N. Khadervali Saheb (Dead) by LRs. and Anr.

RESPONDENT:
N. Gudu Sahib(Dead) and Ors.

DATE OF JUDGMENT: 05/02/2003

BENCH:
M.B. Shah, Ashok Bhan & Arun Kumar.

JUDGMENT:

J U D G M E N T

ARUN KUMAR, J.

These appeals involve a pure question of law as to whether an award by which residue assets of a partnership firm are distributed amongst the partners on dissolution of the partnership firm requires registration under Section 17 of the Registration Act, 1908?

Briefly the facts are that a partnership firm was constituted comprising of four persons belonging to the same family. Disputes and differences arose between the partners which were ultimately referred to arbitration. The arbitrators made an award on 2nd October, 1972. The award was challenged by way of objections filed under Section 30 of the Arbitration Act, 1940 by some of the partners. The objection petition was contested by the other partners who prayed that the award be made a rule of the Court. The grounds of challenge to the award included misconduct on the part of the arbitrators as well as another ground that the award required registration under Section 17 of the Registration Act. The trial Court accepted both the objections holding that there was misconduct on the part of the arbitrators as also that the award was required to be compulsorily registered and since it was not registered it was inadmissible in evidence. This decision of the trial court was challenged before the High Court by way of a Civil Revision filed under Section 115 of the Code of Civil Procedure. The High Court found that in the facts and circumstances of the case it could not be said that there was any legal misconduct on the part of the arbitrators. Thus the first ground of attack against the award was found to be unsustainable. However, the High Court accepted the finding of the trial Court on the second ground, that is, the award was required to be compulsorily registered. Since the award was unregistered, it could not be made a rule of the Court. Hence the present appeals.

We have carefully perused the award in question. By the award the arbitrators have distributed the assets of the dissolved firm between the partners in accordance with their respective shares in the partnership. The real question for consideration is whether such an award amounts to creation of or transfer of any fresh rights in movable or immovable properties so as to bring it within the ambit of Section 17 of the Registration Act? A perusal of the award shows that it is

simply a case of distribution of assets of the dissolved firm amongst the partners themselves. A partnership firm is not an independent legal entity, the partners are the real owners of the assets of the partnership firm. Actually the firm name is only a compendious name given to the partnership for sake of convenience. The assets of the partnership belong to and are owned by the partners of the firm. So long as partnership continues each partner is interested in all the assets of the partnership firm as each partner is owner of the assets to the extent of his share in the partnership. On dissolution of the partnership firm, accounts are settled amongst the partners and the assets of the partnership are distributed amongst the partners as per their respective shares in the partnership firm. Thus, on dissolution of a partnership firm, the allotment of assets to individual partner is not a case of transfer of any assets of the firm. The assets which hereinbefore belonged to each partner, will after dissolution of the firm stand allotted to the partners individually. There is no transfer or assignment of ownership in any of the assets. This is the legal consequence of distribution of assets on dissolution of a partnership firm. The distribution of assets may be done either by way of an arbitration award or by mutual settlement between the partners themselves. The document which records the settlement in this case is an award which does not require registration under Section 17 of the Registration Act since the document does not transfer or assign interest in any asset. This question stands concluded by a decision of this Court in S.V. Chandra Pandian and Others vs. S.V. Sivalinga Nadar and others [(1993) 1 SCC 589]. This was also a case of distribution of assets of a dissolved firm by way of an award. This Court noticed that the award read as a whole made it clear that the arbitrators had confined themselves to the property belonging to the partnership firm and had scrupulously avoided other properties. While distributing the residue assets, the arbitrators allocated the properties to the partners. Section 48 of the Partnership Act was applied and the properties were allocated to the partners as per their share on the distribution of the residue. The award sought to distribute the assets of the partnership firm after settlement of accounts on dissolution. This Court took the view that the property falling to the share of the partner on distribution of the residue would naturally belong to him exclusively "but since in the eye of law it is money and not an immovable property there is no question of registration under Section 17 of the Registration Act." It was further observed "even if one looks at the award as allocating certain immovable property since there is no transfer, no partition or extinguishment of any right therein there is no question of application of Section 17(1) of the Registration Act." As observed in the above case, in the present case also we are satisfied that the award seeks to distribute the residue after settlement of accounts on dissolution, while distributing their residue the arbitrators allocated the properties to the partners. The award in such circumstances did not require registration under Section 17 (1) of the Registration Act.

The learned counsel appearing for the respondents was unable to contest this legal preposition which stand concluded on the basis of the above mentioned decision of this Court, however, he sought to rely on an earlier decision of this Court in Ratan Lal Sharma vs. Purshottam Harit [(1974)1 SCC 671]. The said decision was noticed by this Court in Pandian's case (supra) and was explained. The

said case is clearly distinguishable. It need not detain us from concluding that the award in the present case did not require registration under Section 17 (1) of the Registration Act. The appeals are accordingly allowed. The judgment of the High Court is hereby set aside. The result would be that the objections against the award dated 2nd October, 1972 stand rejected and the award is ordered to be made a rule of the Court. Decree to follow in terms of the award. Both the appeals stand disposed of. There will be no order as to costs.

JUDIS