REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.3399 OF 2019
(Arising out of S.L.P.(C) No.21469 of 2012)

Bhagwan Das Goel(Dead) Through
His L.Rs. & Ors. ....Appellant(s)

VERSUS

Pyare Kishan Agarwal ....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 14.05.2012 passed by the High Court of Judicature at Allahabad in Writ C. No.14839/1993 whereby the High Court

dismissed the writ petition filed by the appellants herein and upheld the order dated 18.03.1993 passed by the Civil Judge, Jhansi in O.S. No.140/1992.

3. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short point.

4. The appellants are the legal representatives of the original defendants and the respondent herein is the plaintiff of the suit out of which this appeal arises.

5. The respondent filed an application under Section 20 of the Arbitration Act, 1940 (since repealed) against the appellants' predecessors-in-title. The application was founded on the allegations *inter alia* that there was a partnership between the appellants' predecessors-in-title with the respondent on 05.07.1960 by name "Gupta Bus Service".

6. However, the disputes arose between the partners of this firm(Gupta Bus Service), which resulted in its dissolution. It was alleged that Clause 11 of the Partnership Deed provides for resolution of disputes arising out of the partnership between the parties by an Arbitrator. The respondent, therefore, prayed that an Arbitrator be appointed in terms of Clause 11 of the Partnership Deed for deciding the disputes, which have arisen between the parties relating to the partnership.

7. The appellants (defendants) on being served raised a preliminary objection contending therein that since the partnership in question on which the application under Section 20 of the Arbitration Act, 1940 was founded was an “unregistered partnership", therefore, in the light of the bar contained under Section 69 (3) of the Partnership Act, the application filed by the respondent was not

maintainable, therefore, it was liable to be dismissed as such.

8. The Civil Judge by order dated 18.03.1993 overruled the objection raised by the appellants (defendants) and held that the application filed by the respondent (plaintiff) is maintainable. The appellants (defendants) felt aggrieved and filed writ petition in the High Court at Allahabad under Article 227 of the Constitution of India.

9. By impugned order, the High Court dismissed the writ petition and upheld the order of the Civil Judge, which has given rise to filing of this appeal by way of special leave by the defendants in this Court.

10. So, the short question, which arises for consideration in this appeal, is whether the High Court was justified in dismissing the appellants' writ petition.

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow this appeal and while setting aside the impugned order remand the case to the High Court for deciding the writ petition afresh on merits in the light of the observations made *infra*.

12. In our considered view, the need to remand the case has occasioned because we find that the High Court did not decide the issue, which was the subject matter of the writ petition, keeping in view the law laid down by this Court in the case of **Krishna Motor Service by its Partners vs. H.B. Vittala Kamath**, 1996 (10) SCC 88.

13. In our view, the High Court should have noticed the aforementioned decision and decided the question accordingly in the light of law laid down therein. The High Court unfortunately did not take note of the said decision and has thus

committed an error requiring interference of this Court.

14. It is for this reason, we are of the considered view that the matter should be remitted to the High Court for deciding the writ petition afresh on merits keeping in view the law laid down by this Court in the case of **Krishna Motor Service** (supra).

15. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. The case is remanded to the High Court for deciding the writ petition, out of which this appeal arises, afresh on merits as observed above.

16. Since we have formed an opinion to remand the case to the High Court instead of deciding the issue for the first time in this appeal on facts, we refrain ourselves from exercising the issue on merits. The High Court will, therefore, decide the

matter strictly in accordance with law uninfluenced by any observations made in the impugned order and this order.

17. Since the matter is quite old, we request the High Court to dispose of the writ petition as expeditiously as possible preferably within six months.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[DINESH MAHESHWARI]

New Delhi;
April 04, 2019