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Arbitration Agreement Enforceable Against Legal Representatives of Deceased Party

Introduction

Section 40 of the Arbitration and Conciliation Act, 1996 [the 1996 Act] provides that an arbitration agreement shall not be discharged by the death of any party thereto either as respect to the deceased or as respect to any other party, but shall in such event be enforceable by or against the legal representative of the deceased. Applying this principle, the Hon'ble Supreme Court of India [the Apex Court] upheld the decision of the Gauhati High Court [HC] which quashed and set aside the order passed by the Civil Judge (Sr. Div.), Dibrugarh. [Rahul Verma & Ors. V. Rampat Lal Verma & Ors., 2025 SCC OnLine SC 578]. The Apex Court reaffirmed the well-established position of law that the term 'partners' extends to and would include their legal heirs, representatives, assigns or legatees, etc., and therefore, the legal heirs are also entitled to enforce an arbitral award. This short article intends to examine and analyse the legal provisions and case laws on this legal aspect.

Provisions Involved

Section 2(11) of Civil Procedure Code [CPC] defines legal representative in a very wide and inclusive manner. It states that legal representative means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

Section 42 of the Partnership Act, 1932 provides that subject to contract between the partners a firm is dissolved by the death of a partner.

However, Section 46 of the Partnership Act, 1932 provides for the right of partners to have business wound up after dissolution. It says that on the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts

and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights. Further, Section 48 takes care of the mode of settlement of accounts between the partners.

Whereas, Section 2(1)(g) of the 1996 Act provides a similar definition of 'legal representative' as provided under CPC. It defines 'legal representative' as a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting.

Section 35 of the 1996 Act provides that the award shall have binding effect on the "parties and persons claiming under them". Therefore, persons claiming under the rights of a deceased person are the personal representatives of the deceased party and they have the right to enforce the award and are also bound by it.

Finally, Section 40 of the 1996 Act makes it clear that an arbitration agreement is not discharged by the death of any party thereto and on such death it is enforceable by or against the legal representatives of the deceased, nor is the authority of the arbitrator revoked by the death of the party appointing him, subject to the operation of any law by virtue of which the death of a person extinguishes the right of action of that person.

Judicial Decisions

The Apex Court in the case of *Ravi Prakash Goel v. Chandra Prakash Goel*, (2008) 13 SCC 667, held that an arbitration agreement does not cease to exist on the death of any party and the arbitration agreement can be enforced by or against the legal representatives of the deceased. The Court emphasized on the definition of a 'legal representative' under Section 2 (1)(g) of the Act of 1996 to hold that an arbitral agreement and the award is enforceable by or against the legal



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representatives of the deceased. The Court emphasized on the definition of a 'legal representative' under Section 2 (1)(g) of the Act of 1996 to hold that an arbitral agreement and the award is enforceable by or against the legal representatives of the deceased provided the right to sue in respect of the cause of action survives. The court also noted that while right to sue for rendition of accounts of partnership firm survives on the legal representative of a deceased partner, he is also entitled to invoke the arbitration clause contained in the partnership deed.

In *Jyoti Gupta v. Kewalsons*, 2018 SCC OnLine Del 7942, the High Court of Delhi also held that an arbitration agreement does not stand discharged on the death of a partner and it can be enforced by the legal heirs of the deceased-partner. It categorically held that merely because the arbitration agreement refers to the disputes between 'partners', it cannot bar the legal heirs from seeking their remedies by virtue of the arbitration agreement. The court further observed that merely because the arbitration agreement refers to the disputes between 'partners', the same cannot debar or take away the right of enforcement of such an arbitration agreement vested in the legal heirs of the deceased partner in view of Section 40 of the Act.

The Apex court *Rahul Verma* case while reiterating the above case laws held that persons claiming under the rights of a deceased person are the representatives of the deceased party, and therefore, both the parties to the agreement and their legal heirs are entitled to enforce an arbitral award and are bound by it. In light of Section 40 of the Act of 1996 the existence of an arbitration agreement is not affected by the death of a party to the arbitration agreement. As a consequence, the right to sue for rendition of account also survives, ensuring that the legal representatives can assert or defend claims arising from the partnership agreement.

Analysis

While it is a well-known fact that arbitration acts as an amicable dispute resolution mechanism between and among the disputing parties. Further, arbitration process is timely, cost-effective and do away with the complex legal formalities. It is also a well-known proposition that the result of the arbitration process in the form of the arbitral award is binding on the parties signatories to the arbitration agreement or to the agreement to which the arbitration clause is a part of. However, lately, time and again the applicability of the arbitration agreement or clause on the legal heirs or representatives of the contracting parties has come up before the court as a legal dispute. With the decision of the Apex Court in *Rahul Verma* case, this legal uncertainty seems to have been settled for now. The Apex Court while relying on section 40 of the 1996 Act categorically held that an arbitration clause in a partnership deed is binding not only on the original parties but also their legal representatives. The Apex Court while relying on Section 46 and 48 of the Partnership Act also established the right to sue for rendition of accounts survive even after the death of a partner.

Conclusion

The decision of the Apex Court on the aspect of the applicability of the arbitration agreement on the legal heirs/representatives of the partners not only clarifies the legal position but also enhances the importance of the arbitration in the partnership firm disputes. The decision is a landmark ruling as it extends the enforceability of the arbitration clause even after the death of the partners of a firm and thereby averting any lengthy litigation in the already burdened courts of law. The decision is landmark also for the reason that the extension of arbitration agreement to legal heirs/representatives brings clarity in the commercial area and therefore strengthens ease of doing business in the country.