

Subhash Chand Jain and Ors. Vs. Rukmani Devi Jain and Ors.

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Court : Delhi

Decided On : Feb-03-2015

Judge : S. Muralidhar

Appellant : Subhash Chand Jain and Ors.

Respondent : Rukmani Devi Jain and Ors.

Advocate for Def. : Mr. Ankit Jain

Advocate for Pet/Ap. : Mr. Ravinder Sethi, Mr. Puneet Sharma

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI ARB.A. 34/2014 SUBHASH CHAND JAIN & ORS. Appellants Through: Mr. Ravinder Sethi, Senior Advocate with Mr. Puneet Sharma, Advocate. versus RUKMANI DEVI JAIN & ORS. Respondents Through: Mr. Ankit Jain, Advocate. CORAM: JUSTICE S. MURALIDHAR

ORDER

0302.2015 1. The challenge in this appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (Act) is to an Order dated 30th September 2014 passed by the learned Arbitrator in the disputes between the parties.

2. The background to the present appeal is that a Civil Suit No.178 of 1997 was filed by Smt. Shanti Devi Jain, wife of late Shri Basheshwar Nath Jain, Shri Subhash

Chand Jain (Appellant No.1), Smt. Kanak Lata Jain (Appellant No.2), Shri Anil Kumar Jain (Appellant No.3), Shri Sunil Kumar Jain (Appellant No.4) and Shri Subhash Chand Jain (HUF) of which Appellant No.1 is the karta. The Defendants in the suit were Smt. Mohini Devi w/o late Shri Sukhbir Chand Jain, Shashi Kumar Jain s/o late Shri Sukhbir Chand Jain (Respondent No.2 herein), Shri Sanjay Kumar Jain (Respondent No.4 herein), Smt. Amita Kumari (Respondent No.7 herein), Shri Rajeev Kumar Jain (Respondent No.5 herein), Smt. Pratibha Jain (Respondent No.3 herein), Smt. Rukmani Devi w/o late Shri Prabhash Chand Jain (Respondent No.1 herein), M/s Solano Investment & Finance Pvt. Ltd. (Respondent No.9 herein) and Mrs. Sukhbir Chand Jain (HUF) (Respondent No.6 herein).

3. The suit was for recovery of the sum of Rs. 7,23,193 along with pendente lite interest, for partition of movable and immovable properties held jointly by the Plaintiffs and the Defendants and for rendition of accounts and partition of immovable properties by metes and bounds. Late Shri Basheshar Nath Jain, the father of Appellant No.1, had married thrice during his lifetime. The suit involved the partition of the properties of that branch of late Shri Basheshar Nath Jain through his third wife, Smt. Shanti Devi (Plaintiff No.1). A partition took place in 1974 with the other branches of late Shri Basheshar Nath Jain. Thereafter, the parties to suit conducted several joint businesses. In the process one public limited company and some private limited companies were floated. At the time of filing of the suit, it was stated that the private limited company (Respondent No.9 herein) was not doing any business. In addition thereto, there were many partnership firms, which had since been dissolved. Even 2 years prior to the filing of the suit on account of the disputes between the parties, no major business had been carried out by the partnership firms. Schedule-I to the suit listed out the properties in which the dissolved firms were tenants.

4. The said suit with an interlocutory application came up for hearing before the Court on 1st April 2014 when, with the consent of the parties a preliminary decree was passed in respect of the properties detailed in Schedule-I defining the respective shares of the parties.

5. The suit was again listed on 15th May 2014. During the hearing, the parties agreed that a former Judge of the Court could be appointed as Arbitrator to adjudicate the disputes and differences, claims and counter-claims, which included the subject matter of the present suit. The learned Arbitrator was to proceed further in the matter taking into consideration that the pleadings already stand completed, issues stand framed, part of evidence has been recorded and a preliminary decree has also been passed.

6. By the order dated 15th May 2014, the Court also disposed of an application being I.A. 13922/2013 filed under Section 151 CPC by Defendant No.7, Smt. Rukmani Devi Jain (Respondent No.1 herein). In the said application, it was stated by Respondent No.1 that since her marriage she had been residing in the property No.3783, Pahari Dheeraj, Delhi along with her mother-in-law, late Smt. Shanti Devi. Respondent No.1 had five daughters who were married and residing with their respective families. It was stated that after the death of Smt. Shanti Devi Jain, Defendant No.7, i.e., Respondent No.1 herein (Smt. Rukmani Devi Jain) remained alone in the said house and had no one to take care of her. It was stated that Plaintiff No.2 (Appellant No.1 herein) and Defendant No.2 (Respondent No.2 herein) had taken over all the business concerns and properties after 1992. It was claimed that the Appellant No.1 had forcibly taken the signatures of Respondent No.1 and even raised loans on her share of the property. Respondent No.1 claimed that she had not been paid any amount constituting her share of the rent realized by the Plaintiffs and other Defendants in the properties belonging to the joint family business and the family itself. She had no source of income for her survival and accordingly she prayed that the Plaintiffs and the Defendants should be directed to pay her a fixed amount of Rs. 1 lakh per month towards maintenance.

7. By the order dated 15th May 2014, the Court disposed of the above application with leave to file a fresh application before the Arbitrator, if so advised.

8. The first hearing before the learned Arbitrator took place on 23rd May 2014. However, as noted by the learned Arbitrator in the impugned order dated 30th September 2014 instead of filing a fresh application, Respondent No.1 preferred to

seek revival of the application already filed by her and since there was no objection she was permitted to do so.

9. In the impugned order dated 30th September 2014, the learned Arbitrator noted the stand of the Plaintiffs that they were willing to pay Defendant No.7, Rs. 10,000 per month provided that she returned the jewellery which was given to her by Smt. Shanti Devi Jain and executed the requisite documents relinquishing her share in the joint properties in favour of Plaintiff No.2.

10. The stand of the other Defendants was that the loan and liabilities over Rs. 2 crores were outstanding in the name of Defendant No.2 who had no source of income for the last 20 years. Therefore, they were unable to pay any maintenance.

11. The learned Arbitrator first considered the issue whether the maintenance could be paid to one of the co-owners of the properties which was a subject matter of the partition suit. Relying on the decision in *Sunanda Suri v. Kamlesh Suri* 74 (1998) DLT647 the said question was answered in the affirmative.

12. Then the learned Arbitrator perused Schedule-I to the suit in terms of which a preliminary decree of partition had already been passed. It was found that Plaintiff No.1, Plaintiff No.6, Defendant No.1, Defendant No.2, and Defendant No.7, i.e., Respondent No.1 herein had also 1/5th share each in the property at J-91, NDSE, Part-I, New Delhi, Flat No.29, Dakshaneshwar Building, 10, Hailey Road and property No.2-B, Monolith Building, 7, Nepean Sea Road, Mumbai. Defendant No.7 also had a 1/6th share in Surat Ring Road Office. She was also a joint tenant in the property at 4867, Cloth Market, Delhi rented out to Basheshar Nath & Company.

13. The learned Arbitrator then undertook a lengthy exercise of determining what the notional value of the properties was and how much rent was realised by other parties to the suit. As far as Defendant No.7 was concerned, the learned Arbitrator determined that she was in occupation of a property, the notional rent value of which could not exceed Rs. 5,000 per month. Otherwise her monthly entitlement in terms of the share of the rental value of all other properties in which she had a share came to Rs. 1, 38,000 per month. In the circumstances, the learned

Arbitrator directed that the Plaintiffs, i.e., the Appellants herein should pay Respondent No.1 interim maintenance of Rs. 65,000 per month and Defendants 3 and 5 should pay her Rs. 5,000 per month each.

14. Aggrieved by the above order, the present appeal has been filed.

15. As noted in the order dated 24th November 2014, a preliminary objection has been raised by the Respondent No.1 regarding the maintainability of the appeal.

16. It is contended by Mr. Ankit Jain, learned counsel appearing for Respondent No.1 that the impugned order cannot be stated to be one passed under Section 17 of the Act but in exercise of the powers that would have otherwise been exercised by the Civil Court under Section 151 CPC. He accordingly submits that the impugned order is not one which would be characterised as an appealable order for the purposes of Section 37 (2) (b) of the Act.

17. Countering the above submissions, Mr. Ravinder Sethi, learned Senior counsel appearing for the Appellants, submits that the Arbitrator has only three kinds of powers that can be exercised in terms of the Act. He can pass a final Award, an interim Award and can grant interim measures under Section 17 of the Act. The power under Section 17 is to pass an order directing a party to take any interim measure of protection and this too is in respect of the subject-matter of the dispute. Although the contention of the Appellants is that the impugned order passed by the learned Arbitrator exceeds the power under Section 17 of the Act, for the purposes of maintainability, it is contended that even an erroneous order passed under Section 17 of the Act is appealable.

18. This Court has considered the above submissions on the issue of maintainability.

19. The Court is inclined to agree with the contention of Mr. Sethi that the impugned order can only be traced to the powers of the learned Arbitrator under Section 17 of the Act. There can be no doubt that an Arbitrator has to exercise his powers only with reference to the Act. All his actions have to be justified in relation to such powers. It is true, however, that while exercising the powers under the Act,

the learned Arbitrator will have to abide by the discipline of any other statute determining upon the subject-matter of the dispute. For instance, if it is a dispute concerning trademarks, he will have to abide by the principles of the Trademarks Act, 1994. In the present case, a pending suit has been referred to the learned Arbitrator for adjudication from the stage where at which it was when the reference was made. The scope of the powers of the Arbitrator to decide an application in a suit, later referred to arbitration, would extend to the powers that govern exercise of the powers of a civil court while dealing with such an application.

20. The Court would like to make a distinction between the exercise of the power by an Arbitrator to grant interim measures which is traceable to Section 17 of the Act and the requirement in law that the Arbitrator should, while exercising those powers, act in terms of the law governing the subject matter of the dispute. Therefore, it is not as if in the present case, while dealing with the application of Respondent No.1 under Section 151 CPC, the learned Arbitrator was not exercising powers under Section 17 of the Act. Consequently, as far as the impugned interim order is concerned, it has to be characterised as an order traceable to Section 17 of the Act which is appealable under Section 37 (2) (b) of the Act.

21. Consequently, the objection of Respondent No.1 as to the maintainability of the appeal is hereby rejected.

22. Turning to the merits of the appeal, the contention of Mr. Sethi, learned Senior counsel appearing for the Appellants, is that the subject matter of the dispute between the parties was the partitioning of the immovable properties belonging to the firms, companies and the joint ventures and the rendition of accounts. The question of paying any maintenance to one of the co-sharers or co-owners of the properties did not arise and it could not be characterised as the subject matter in dispute for the purpose of Section 17 (1) of the Act. He submitted that the impugned order grants a relief which is not consistent with the final relief that can be granted. Mr. Sethi further submits that the learned Arbitrator has yet to decide the application seeking rendition of accounts. Without ascertaining what the present position is as far as the liabilities of the firms are concerned, it would be

difficult to simply direct the Appellants to pay an ad hoc amount as interim maintenance to Respondent No.1. He pointed out that even the basis on which the amount has been calculated is arbitrary and notional since the Appellants are in fact not receiving any rent from the properties occupied by them.

23. Countering the above submissions, Mr. Ankit Jain, learned counsel for Respondent No.1 submits that, in similar circumstances, the Court had in *Subhash Chander Chachra v. Ashwani Kumar Chachra* 137 (2007) DLT401 directed interim payments to be made even without the accounts of the firm being finalised. He further submits that the Defendants 3 and 5 (Respondent Nos. 4 and 5 herein) have not challenged the impugned order insofar as it directs them to pay an interim maintenance of Rs. 5,000 each to Respondent No.1. He submits that in any event the impugned interim order is to operate prospectively, would be subject to adjustment, after the respective amounts to which each of the parties is entitled, is determined. He points out that by means of preliminary decree passed by the Court, the shares of the parties already stand determined and, therefore, there should be no difficulty in ordering the adjustments of the amount paid to Respondent No.1 at the time of the final Award. He submits that Respondent No.1 has no reasonable means to have a decent living and the amount fixed by the learned Arbitrator cannot, therefore, be said to be arbitrary or excessive. He, nevertheless, left it to the Court to fix any reasonable amount of maintenance to be paid to Respondent No.1.

24. At this stage, it should also be noted that Mr. Sethi, learned Senior counsel submits, on the instructions of the Appellants, that without prejudice to their rights and contentions, the Appellants are prepared to match the amount directed to be paid under the impugned interim order by other Respondents to Respondent No.1. In other words, the Appellants are also prepared to pay without prejudice to their rights and contentions, a sum of Rs. 10,000 per month to Respondent No.1 from the date of the impugned interim order till the date, the final Award is made.

25. The Court finds that indeed in terms of the preliminary decree already passed by the Court, the shares of the parties already stand determined in terms of Schedule-I to the plaint. Going by Schedule-I, the 1/5th share of Respondent No.1

in at least three of the properties already stands determined. The properties are jointly owned with individuals and firms. Admittedly, as far as the property at J-91, NDSE, Part-I, New Delhi is concerned, no rental income as such has been received since it is under the occupation of the Appellants. What the learned Arbitrator has done, is determine a notional sum as interim maintenance to Respondent No.1. Unless the accounts are audited and thereafter an auditor is appointed to determine the liabilities of the firms as well as the companies, it is not possible to determine what would be the precise amount that each of the parties will be entitled to.

26. As far as the immovable properties are concerned, they will have to be evaluated by a government approved valuer. In other words, the determination of the share of each of the parties to the arbitration will depend on the further steps to be taken.

27. In the circumstances, the Court is of the view that it was necessary, before determining the amount payable to Respondent No.1, to have decided the application for the rendition of accounts and appointed a Chartered Accountant and/or a government approved valuer to take the aforementioned steps.

28. The Court takes on record the submission made on behalf of the Appellants that they are prepared to match the maintenance amount directed to be paid in terms of the impugned interim order by Respondent Nos. 4 and 5 to Respondent No.1.

29. Accordingly, it is directed that with effect from 1st October 2014, the Appellants will pay to Respondent No.1 a sum of Rs. 10,000 per month without prejudice to the rights and contentions of the parties. The arrears from 1st October 2014 onwards will be paid within a period of two weeks from today which would include the current maintenance for the month of February 2015. From March 2015 onwards, the said monthly payment of Rs. 10,000 should be made before the 10th of every month.

30. Subject to the compliance with the above directions, the impugned order to the extent it requires the Appellants to pay Respondent No.1 a sum of Rs. 65,000 per

month, shall remain stayed till the next date. It is clarified that the other Respondent Nos. 4 and 5 will continue to pay Respondent No.1 the interim maintenance in the sum of Rs. 5,000 each as directed by the impugned order of the learned Arbitrator.

31. The Court would like to await the decision of the learned Arbitrator on the application filed for rendition of accounts before deciding any further directions to be passed in the present appeal.

32. List on 17th April 2015.

33. Order dasti to counsel for parties. S. MURALIDHAR, J.

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