

R. Srinivasan Vs. R. Natarajan,

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Court : Chennai

Decided On : Nov-29-2004

Reported in : 2005(2)ARBLR376(Madras); (2005)1MLJ111

Judge : S. Sardar Zackria Hussain, J.

Acts : [Constitution of India](#) - Article 227

Appeal No. : Civil Revision Petition (NPD) No. 3597 of 2001

Appellant : R. Srinivasan

Respondent : R. Natarajan, ;r. Thiagarajan and ;r. Raj Manohar

Advocate for Def. : T.P. Manoharan, Adv.

Advocate for Pet/Ap. : N. Istiaq Ahmed, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

S. Sardar Zackria Hussain, J.

1. This revision is filed against the order in I.A. No. 46 of 2001 in A.O.P. No. 10 of 2001 dated 29.10.2001 on the file of the Sub-Court, Uthagamandalam.

2. The petitioner filed A.O.P. No. 10 of 2001 under Section 9 of the Arbitration and Conciliation Act (hereinafter referred to as 'the Act') as follows: The petitioner and the respondents were the partners of Niton Tea Company as per the Partnership Deed entered into in the year 1972 and the partnership was constituted to carry on business in manufacture of tea in the name and style of Niton Tea Company at Kothagiri. In pursuance of the partnership deed, each contributed a sum of Rs. 4,25,000/- and the business was carried on for about five years and the second respondent was the managing partner. Since he could not manage the affairs of partnership properly, the entire business of the firm came to a grinding halt and the Company became defunct for a period of more than 10 years. The electricity supply was disconnected for non-payment of consumption charges due to the mismanagement of the firm by the second respondent. To revive the business, a fresh Partnership Deed was entered into on 25.02.1987. In December 1997, it was mutually agreed that the respondents would relinquish their right of partnership in favour of the petitioner and the petitioner was directed to pay Rs. 56,25,000/- as consideration to the respondents out of which Rs. 30 lakhs is payable within a period of one year, provided the business of the Tea factory is revived effectively. Though the petitioner invested Rs. 22 lakhs and the Central Excise also granted licence on 22.9.2000 and since further amount is required, the petitioner was requested to give his personal property as security towards payment to the respondents. It was also agreed that arrears of electricity consumption charges, Central Excise, property tax and other arrears of taxes have to be shared between them. It was further agreed that after revival of business in the factory, the respondents would execute their retirement deed from the partnership firm in favour of the petitioner and such settlement was arrived at as per negotiation made by their brother-in-law B. Shanmugam, Advocate of Pollachi, who kept all the originals with him and directed them to comply with the conditions imposed on them. After expiry of the said Shanmugam, the original letter executed could not be recovered. The petitioner was ready to pay the agreed sum to the respondents and they are not willing to receive and execute retirement deed. The petitioner has also filed necessary documents as stated in paragraph 4 of the petition to show that he is in possession and enjoyment of the properties belonging to Niton Tea Company pursuant to the arrangement entered into between them. Therefore, the

petitioner has filed the above petition under Section 9 of the Act since the Arbitrator cannot give relief of injunction restraining the respondents from dispossessing the petitioner. The petitioner also filed I.A. No. 46 of 2001 seeking interim injunction till the disposal of the main A.O.P.

3. The petition was opposed by the second respondent in the counter admitting the formation of partnership in the year 1972 and denying the allegation of mismanagement of the firm by him. At the instance of mediators, it was agreed on 12.12.1997 that the value of the business together with factory, building, etc. was fixed at Rs. 75 lakhs out of which, deducting the petitioner's share value of Rs. 18,75,000/-, the petitioner agreed to pay Rs. 56,25,000/- jointly to the respondents in which a sum of Rs. 30 lakhs is payable before 11.6.1998 and the balance amount of Rs. 26,25,000/- is payable within six months thereafter, i.e., on before 11.12.1998 and on payment of the first instalment of Rs. 30 lakhs within 11.6.1998, the other partners should relinquish their right in the partnership in favour of the petitioner and the petition should furnish his personal property as security for the payment of balance amount to the respondents. The written undertaking containing the said terms given by the petitioner was kept by Shanmugam, Advocate of Pollachi, and the xerox copy was given to each of the partners. Though Shanmugam died, the original undertaking was with the other mediator M.Loganathan, Auditor, Pollachi. The petitioner did not pay Rs. 30 lakhs within 11.6.1998 as well the balance amount of Rs. 26,25,000/- before 11.12.1998. In the months of August and September 2000, fresh certificates and licences were granted by the State and Central Government to the previous firm consisting of the petitioner and the respondents to start business and, therefore, it was felt among the partners that if the business is sold as an active and growing concern, it will fetch more price than when it is sold as a defunct and on that basis, the factory is being run for the past 5 months by all the partners jointly. Therefore, the agreement dated 12.12.1997 has become null and void. It is denied that the petitioner has invested Rs. 22 lakhs. After the agreement dated 12.12.1997, all the partners jointly paid the dues owned by the firm to the Government. The petitioner sold some of the old machines and installed new ones in the factory for which purpose, he might have invested some money. The area of about 2-1/2 acres surrounding the factory has got site value and is worth more than a Crore of

Rupees even in the year 1997. However, considering the relationship and as per the mediation, the respondents agreed to sell their share for Rs. 56,25,000/- to the petitioner. The respondents 2 and 3 jointly issued notice to the petitioner and the first respondent dissolving the firm with effect from 15.3.2001. The Arbitration Clause mentioned in the Partnership Deed is applicable only during the continuancy of the partnership. So the petition is not maintainable.

4. In separate counter filed by the first respondent, he has stated supporting the case of the second respondent as per the counter filed by him. It is further stated in the counter of the first respondent that the petitioner has not come to Court with clean hands and suppressed the material facts.

5. The trial Court, considering the documents Exs.P.1 to P.18 filed on the side of the petitioner and Exs.R.1 to R.5 filed on the side of the respondents, dismissed the petition vacating interim injunction already granted. The order is challenged in this revision.

6. The learned counsel for the petitioner argued that inasmuch as the petitioner has proved that he is in possession of the Niton Tea Company, Kothagiri, and is running the business by investing a sum of Rs. 22 lakhs pursuant to the agreement entered into between him and his brothers, viz., respondents, on 12.12.1997, in support of which Exs.P.1 to P.18 have also been filed before the trial Court, and the balance of convenience being in favour of the petitioner, the refusal for grant of injunction by the trial Court is not proper. In this regard, learned counsel also pointed out that pursuant to order of this Court in C.M.P. No. 19168 of 2001 dated 19.11.2001, the petitioner has also deposited a sum of Rs. 15 lakhs.

7. The learned counsel for the respondents vehemently contended that the petitioner has not paid a sum of Rs. 30 lakhs on or before 11.6.1998 and has also not paid the balance amount of Rs. 26,25,000/- on or before 11.12.1998 as agreed on 12.12.1997 and inasmuch as all the brothers including the petitioner have been carrying on business, the petitioner is not entitled for injunction as sought for and petition filed A.O.P. No. 10 of 2001 itself is not maintainable. The learned counsel also argued that pursuant to interim injunction granted by this Court on 19.11.2001 in C.M.P. No. 19168 of 2001, the petitioner has taken possession of the property

and after obtaining interim injunction before the trial Court, the petitioner has created forged documents.

8. Learned counsel relied on the decision in S.P.CHENGALVARAYA NAIDU (DEAD) BY LRS. v. JAGANNATH (DEAD) BY LRS. and Ors. : AIR 1994 SC853 wherein the Apex Court has held thus:

'A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage.'

In that case, Their Lordships held that a person, whose case is based on falsehood, has no right to approach the Court and he can summarily be thrown out at any stage of the litigation.

9. Learned counsel also relied on the decision of this Court in RANUKA DEVI v. D.MANOCHARAN : (1998)IIMLJ245 wherein it has been held that the possession was taken after obtaining injunction order and to obtain such orders, the plaintiff played fraud on Court and created and forged documents and hence, the suit was directed to be struck off from files directing the plaintiff to hand over possession.

10. Reliance was also placed on the decision in K. MARAPPA GOUNDER, K.M.S. BUS SERVICE v. THE CENTRAL ROAD TRAFFIC BOARD, MADRAS and Ors. in which this Court has held thus:

'It is a well-settled proposition of law that it is the duty of a person invoking the special writ jurisdiction of a Court to make a full and true disclosure of all relevant facts. He should not suppress any facts. An applicant for a writ under Article 226 of the Constitution must come in the manner prescribed and must be perfectly frank and open with the Court. If he make a statement which is false or conceals something which is relevant from the Court, the Court will refuse to go into the matter. If the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fully state the facts, but either suppressed the material facts or stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its

process, to refuse to proceed any further with the examination of the merits.'

11. The petitioner, who is the brother of respondents, claims that he is in possession of the Tea company, by name, Niton Tea Company, Kothagiri, in the manufacture of tea and also the properties belonging to the Tea Company pursuant to the agreement entered into between them in December 1997 and the petitioner also gave letter Ex.R.5 dated 12.12.1997 agreeing to pay a sum of Rs. 56,25,000/- jointly to the respondents out of which Rs. 30 lakhs was payable before 11.6.1998 and the balance sum of Rs. 26,25,000/- on or before 11.12.1998 and on payment of the first instalment of Rs. 30 lakhs within 11.6.1998, the other partners, viz., respondents, should relinquish their rights in the partnership in favour of the petitioner and the petitioner should furnish his personal property as security to the balance amount to the respondents. The petitioner did not pay the amount as agreed and moved the Sub-Court, Uthagamandalam, by filing a petition under section 9 of the Act for grant of injunction in respect of the properties including Niton Tea Company in which he was in possession pursuant to the agreement between the parties. The petitioner has marked Exs.P.1 to P.18 in support of his case that in pursuant to the agreement, he is in possession of Niton Tea Company and the properties belonging to the Tea Company. As per the said documents, the petitioner has paid Property Tax and Telephone charges. In support of his case, the petition also filed Ex.P.6-Savings Bank Pass Book, State Bank of India, Kothagiri, Ex.P.9-xerox copy of the Personal Ledger Account relating to Niton Tea Factory, Ex.P.10 xerox copy of Invoice of Niton Tea Company, Ex.P.11 xerox copy of account relating to raw materials and components, various stock account, receipts towards payment of current consumption charges, letter addressed to the Superintendent of Central Excise for issuance of new Registration Number in the name of the petitioner and the Partnership Deed between the parties for the relevant period, viz., from 1998 to 2000.

12. Though the respondents claimed that they are also in possession of the Niton Tea Company, no document has been filed in support of the same. In fact, respondents 2 and 3 caused lawyer's notice Ex.R.1 that the petitioner, by filing A.O.P. No. 10 of 2001 on the file of Sub-Court, Uthagamandalam, obtained interim

injunction against the first respondent herein restraining him from claiming to be in possession of Niton Tea Company and the properties belonging to the Tea Company. It is also stated in Ex.R.1 that in view of the strained relationship between the brothers, the partnership came to an end and informed the petitioner about their intention to dissolve the firm Niton Tea Company with effect from 15.3.2001. Therefore, it is clear from Exs.P.1 to P.18 that the petitioner is in possession of the Niton Tea Company and properties belonging to the Company. It is submitted by the learned counsel for the respondents that pursuant to the interim injunction granted by this Court in C.M.P. No. 19168 of 2001 dated 19.11.2001 and pursuant to the interim injunction granted by the trial court, the petitioner has taken possession of the property and created forged documents but the same has not been proved.

13. However, considering the fact that the petitioner is in possession of Niton Tea Company and is carrying on business and also in possession of the properties belonging to the Tea Company, it would be just and proper if the petitioner is allowed to continue in possession of the Niton Tea Company and the properties belonging to the Company on deposit of further sum of Rs. 15 lakhs within two months and till such time the matter is referred to Arbitration by March 2005. It is clear that the petitioner only filed petition under Section 9 of the Act and obtained interim injunction by way of interim measure of protection and nowhere it is stated in the petition that the matter will be referred to Arbitration for settling the dispute between the parties. It is admitted by the respondents that the original undertaking given by the petitioner containing the terms of agreement entered into between the parties, viz., the petitioner and the respondents herein, is available with the mediator one M.Loganathan, Auditor, Pollachi.

14. Clause 14 of the Partnership Deed, copy of which is marked as Ex.P.18, relates to reference for arbitration in case of dispute and difference of opinion between the parties the the agreement during the continuance of the Partnership. As per clause 10 of the said agreement, if any one of the partners dies or retires from the partnership business, the partnership shall not ipsofacto become dissolved, but the legal representatives of the deceased partner and the remaining party are entitled to the rights and shall also be bound by the liability of the

partnership.

15. In the light of the discussion made above, the Civil Revision Petition is allowed and the order passed by the trial Court in I.A. No. 46 of 2001 by order dated 29.10.2001 is set aside. Injunction is granted on condition of the petitioner depositing further sum of Rs. 15/- lakhs on or before 31.01.2005 to the credit of A.O.P. No. 10 of 2001 on the file of the Subordinate Judge, Udhagamandalam and on further condition of the petitioner taking steps to refer the matter in respect of the dispute between the parties for arbitration before March 2005. No costs. Consequently, C.M.P.Nos. 19168 of 2001 and 3508 of 2002 and V.C.M.P. No. 3507 of 2002 are closed.

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