

**Manoj Kumar Bhargav Vs. Pawan Kumar Bhargav and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/981350](http://sooperkanoon.com/981350)

**Court :** Delhi

**Decided On :** Aug-07-2013

**Judge :** Rajiv Shakdher

**Appellant :** Manoj Kumar Bhargav

**Respondent :** Pawan Kumar Bhargav and anr.

**Judgement :**

\* THE HIGH COURT OF DELHI AT NEW DELHI % Judgment reserved on:

19. 07.2013. Judgment delivered on:

07. 08.2013 + ARB.P. 235/2012 MANOJ KUMAR BHARGAV .....Petitioner Vs PAWAN KUMAR BHARGAV & ANR. ....Respondents ADVOCATES WHO APPEARED IN THIS CASE: For the Petitioner: Mr. Sanjay Mishra, Advocate. For the Respondents: Mr Pawan Kumar, Respondent no. 1 in person. Mr S.K. Nanda, Advocate for respondent no.

2. CORAM :HON'BLE MR. JUSTICE RAJIV SHAKDHER RAJIV SHAKDHER, J.

1. The petitioner seeks appointment of an arbitrator under Section 11 of the Arbitration & Conciliation Act, 1996 (in short the Act) in the background of the following brief facts, which are essential for the disposal of the captioned petition.

2. The petitioner along with respondent nos. 1 and 2, who are his siblings, are partners in a firm bearing the name Messers Bhargav Bhatta Company (hereinafter referred to as the firm). The said firm operates and manages a brick kiln situated at Jhajjar, in the Bahadurgarh district, in the State of Haryana.

3. It appears that respondent no. 2 being the youngest of the three partners was introduced into the business at the say so of the father of the parties herein, i.e., Mr. Jagdish Chander Sharma. Consequently, a new partnership deed was executed between the parties, on 29.06.1999. 3.1 As per the averments made in the petition, the firm is in financial distress, and if, the version given by the petitioner is to be believed, the respondents are responsible for the same as they are alleged to have illegally drawn funds from the bank accounts of the firm and misappropriated the same. 3.2 It is, therefore, the case of the petitioner that the firm is in litigation with its banker, Punjab & Sind Bank, before various courts and as also the Debt Recovery Tribunal, at Delhi. 3.3 It is also averred that because of inter se disputes between the parties, and on account of various civil and criminal complaints filed against each other, the father, i.e., Mr. Jagdish Chander Sharma, stepped-in to settle the disputes obtaining amongst the parties.

4. As a consequence, a family settlement was drawn up and executed between the parties herein on 07.11.2000, whereby, assets and liabilities referred to therein, were divided between the parties herein; which included the brick kiln business at Bahadurgarh. 4.1 It is alleged by the petitioner herein that contrary to the family settlement of 07.11.2000, respondent no. 2, by employing misrepresentation obtained a No Objection Certificate (NOC) from the bank, which had funded the cost of land, on which the brick kiln was situated. It is alleged that respondent no. 2 has transferred the rights in the land on which the brick kiln is constructed to one of his close friends. 4.2 Apparently, the petitioner became aware of the same while seeking to file a reply to an application in a civil suit filed by respondent no. 1 being: Civil Suit No. 137/2008 filed in the District Court, Patiala House Courts, (though in the petition it has been averred that the civil suit was instituted in the District Court, Saket) at New Delhi. 4.3 To be noted, the said suit was instituted by respondent no. 1 in 2008, in which, the petitioner, (who is impleaded as defendant no. 2), has entered appearance and filed a written

statement. The reliefs sought for in the suit (which is a suit framed as a suit for permanent injunction), are pivoted on the family settlement of 07.11.2000.

5. Undeniably, the petitioner who is impleaded as defendant no. 2 in the aforementioned suit, has not only filed a written statement but also failed to move an application under Section 8 of the Act. A perusal of the averments made in the written statement would show that there is no averment whatsoever with regard to the maintainability of the suit in view of an arbitration agreement obtaining between the parties which, as averred in the captioned petition, finds mention in clause 17 of the partnership deed dated 26.06.1999.

6. Pertinently, respondent no. 1, who is the plaintiff in the suit, has not filed any reply to the captioned petition. As a matter of fact, during the course of hearing, quite curiously, respondent no. 1 stated that he had no objection to the matter being referred to an arbitrator. This aspect is recorded by me in the proceeding dated 19.07.2013, when judgment in the matter was reserved.

7. In view of the fact that the subject matter of the dispute is the same, and given the fact that the petitioner has filed his written statement in the suit instituted by respondent no. 1, I am not inclined to grant the reliefs prayed for by the petitioner. The petitioner appears to have given up his right to insist qua the dispute raised in the captioned petition, to be settled, by parties, taking recourse to arbitration.

8. For the reasons given hereinabove, the petition is dismissed. Parties are, however, left to bear their own costs. RAJIV SHAKDHER, J.

AUGUST 07 2013 kk

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