

SUPREME COURT OF INDIA

Anil Bansal

Vs.

Ashok Kumar Bansal

C.A.Nos.1260-1261 of 1999

(S.H.Kapadia and V.N.Khare CJI.)

27.02.2004

JUDGMENT

S.H.Kapadia, J.

1. A partnership firm, M/s. Laxmi Fancy Stores had among others Laxmi Narain Bansal, Om Prakash Bansal and Jagdish Prasad Bansal as its partners. It carried on business from a shop owned by Laxmi Narain Bansal located at Topi Bazar, Lashkar, Gwalior. The three partners were members of Hindu Undivided Family (HUF). They were occupying different portions of a residential house at 31, Dahimandi, Daulatganj, Lashkar, Gwalior. On 28th May, 1971 dispute arose between the parties in the matter of repayment of loan of Rs. 2, 50, 400 owed by the firm to its creditors. By written agreement of even date, the partners appointed two Arbitrators, Mattulal and Nathulal for decision on the said dispute. On 12th June, 1971 Award was given by five Arbitrators. The Award refers to an oral agreement dated 09.06.1971 between the partners by which they had agreed to addition of three more Arbitrators and to enlargement of the scope of reference by which the parties sought settlement of all disputes including dissolution of the firm, settlement of accounts, settlement of assets and liabilities as also settlement of disputes pertaining to the shop of Laxmi Narain and the ancestral house (the recital clause). Under the Award dated 12.06.1971, directions were given on the question of repayment of loan undertaken by Laxmi Narain on behalf of the firm; contributions to be made by Laxmi Narain, Jagdish Prasad and Om Prakash towards the said repayment and it further recorded a family settlement involving partition and transfer of immovable properties. Thereafter, an application was moved by the Arbitrators before the District Judge under Section 14(2) of the Arbitration Act, 1940 to make the Award dated 12.06.1971, rule of the Court. An objection was filed by Laxmi Narain stating that the Award was a nullity as the partners had appointed only two Arbitrators by written agreement dated 28.05.1971 and that the two Arbitrators had no authority to co-opt three additional Arbitrators. It was further submitted that reference was made to the Arbitrators only for liquidation of the loans incurred by the firm and that the Arbitrators could not have enlarged the scope of the reference agreement which was in writing by placing reliance on oral consent which was also disputed. That the family settlement involving partition as ordered by the Arbitrators was beyond the scope of the reference. At this stage it may be noted that Om

Prakash and Jagdish Prasad also objected to para 7 of the Award by which Jagdish Prasad was asked to hand over a portion of the residential house in his occupation to Laxmi Narain. Laxmi Narain died in 1993. By judgment and order dated 29.11.1997 the District Judge upheld the Award and dismissed the above objections. Being aggrieved, heirs of Laxmi Narain and Jagdish Prasad came to the High Court by way of First Appeal No. 18/98 and cross Appeal No. 59/98 respectively. By impugned judgment, the High Court allowed the appeal filed by the heirs of Laxmi Narain and set aside the Award. By the impugned judgment the cross appeal filed by Jagdish Prasad for deletion of Clause 7 was also disposed of and parties were ordered to be relegated to their original position vis-a-vis the house. Being aggrieved, heirs of Om Prakash filed the present civil appeals before this Court.

2. Mr. U. N. Bachawat, learned Senior counsel for the appellant submitted that all the partners had acquiesced to the co-option of three additional Arbitrators, that all the parties had taken part in the proceedings, that the Award has been counter signed by all the parties saying that they accepted the Award and that the Award has been implemented and acted upon and in the circumstances the High Court had erred in setting it aside. In this connection reliance was placed on the judgment of this Court in the case of *Pooran Chand Nangia vs. National Fertilizers Ltd. reported in*¹.

3. Mr. Sunil Gupta, learned Senior counsel appearing on behalf of the respondents (heirs of Laxmi Narain) submitted that in view of Section 2(a) of the Arbitration Act, co-option of three additional Arbitrators could not have been done by oral consent. He submitted that there was no such consent. He submitted that the conduct of the parties cannot confer jurisdiction on the Arbitrators which was not there from the inception. He further submitted that the countersigning of the Award by the partners stating that they accepted it was a subsequent independent agreement which would not infuse fresh life into the proceedings which were ab initio void. Mr. Gupta, learned counsel next contended that the impugned Award went beyond the reference in as much as in terms of the written agreement the only issue before the Arbitrators was liquidation of debt of the firm and that the Arbitrators had no authority to record a family settlement involving partition and transfer of immovable properties.

4. We do not propose to examine the arguments advanced as we find on examination of the record that the appellant has come to this Court with unclean hands. As the facts mentioned above show that by the impugned Award the Arbitrators have worked out an adjustment of assets and liabilities of the firm and settlement of various disputes between the parties (including those relating to residential house) and in the process the Arbitrators ordered Jagdish Prasad to hand over a portion of the house in his occupation to Laxmi Narain which was objected to by Om Prakash and Jagdish Prasad vide objection dated 21.06.1972 filed before the District Judge. Moreover, all throughout, the appellant has contended that the Award of the Arbitrators was valid except to the extent of Clause 7 by which Jagdish Prasad was ordered to hand over possession of the portion of the house to Laxmi Narain. On 17.08.1972, pending decision on these objections by the Civil Court, Om Prakash, Jagdish Prasad and their mother sold the portion of the house covered by Clause 7 to a third party for consideration. Therefore, the appellant before us seeks to eat the cake and have it to. He

wants all the benefits but not the liability. The appellant has contended right up to this Court that the Arbitrators had erred in directing Jagdish Prasad to hand over a portion of his house to Laxmi Narain. The Award is based on distribution of assets, liabilities and properties of the parties. If we are to uphold the Award it would lead to an iniquitous position because the portion of the house under the Award which is to go to the heirs of Laxmi Narain-respondent herein has been disposed of by Jagdish Prasad and Om Prakash for consideration in which event the appellant herein would have best of both the worlds. Hence, we have refrained from going into the merits of the case as we are satisfied that the appellant has come to this Court with unclean hands.

5. For the aforestated reasons, we dismiss these civil appeals. In the facts and circumstances of the case, parties will bear their respective costs.

¹2003 (3) Arb. LR 406 (SC)