(2013) 07 DEL CK 0356

In the Delhi High Court

Case No : FAO (OS) 83 of 2007

Bhai Sunder Das Sardar Singh Pvt. Ltd. APPELLANT

Vs

Bhai Balbir Singh and Another RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Civil Procedure Code, 1908 (CPC) — Section 151
Criminal Procedure Code, 1973 (CrPC) — Section 340

Citation : (2013) 07 DEL CK 0356

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Manish Kumar, No. 3b, Dr. Arun Mohan, Adv and Mr. Arvind Bhatt, Mr. Kuber Giri, 3a, Mr. Sumit Bansal and Mr. Udit Gupta, No. 2, for the Appellant; Rishi Agrawala, for the Respondent

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J.—The appellant is aggrieved by an order made by the learned Single Judge disposing off objections u/s 34 of the Arbitration & Conciliation Act 1996 to an award. The parties to the arbitration agreement and consequently the award are family members.

The parties'' inter se disputes pertained to extensive family properties, as well as closely held companies to which rival claims were made by different branches of the family. During the pendency of the present appeal, the third appellant died. The disputes which arose between his heirs inter se were sought to be settled. The Court had suggested that the said dispute parties should approach Delhi High Court Mediation & Conciliation Centre. Pursuant to this process on 6th August, 2010, an over-all mediation settlement was arrived at. Prior to this, i.e. on 5th August, 2010, this Court had called for the records of certain pending matters, i.e. two suits [CS(OS) 1698/2007, & CS(OS) 684/2008] and a Testamentary Case 2/2008 pending on the file of this Court. The settlement recorded on 6th August, 2010 between all heirs of the third appellant is extracted in full as under:-

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into on 06.08.2010 Between Mrs. Indu Sabharwal W/o Late Bhai Tirlochan Singh R/o. 9, Amrita Shergil Marg, New Delhi-110003, Ms. Nisha Singh D/o. Late Bhai Tirlochan Singh R/o. B-97, Neeti Bagh, Second Floor (Front Portion), New Delhi-110049 and Ms. Tara Sabharwal D/o. Late Bhai Tirlochan Singh R/o. A-17, Neeti Bagh, New Delhi-110049 AND Dr. Sabi Sabharwal S/o. Late Bhai Tirlochan Singh, R/o. 9, Amrita Shergil Marg, New Delhi-110003.

whereas

1. Disputes and differences had arisen between the Parties hereto and a FAO(OS) No. 83/2007 was filed before the Hon''ble High Court of Delhi.

2. The matter was referred to the Delhi High Court Mediation and Conciliation Centre vide an order dated 05.08.2010 passed by a Division Bench comprising of Hon''ble Mr. Justice Badar Durrez Ahmed and Hon''ble Mr. Justice V.K. Jain.

3. Ms. Sadhana Ramachandran, Advocate was appointed mediator by the Hon''ble Court and the parties agreed that she would act as Mediator for the parties in the matter of Mediation and Conciliation proceedings.

4. A meeting was held on 06.08.2010 with all the parties without their counsel and parties have, with the assistance of the Mediation/Conciliator, voluntarily arrived at an amicable solution resolving the above-mentioned disputes and differences.

5. Parties hereto also confirm and declare that they have respected and adhered to the spirit of mediation while arriving at the Settlement Agreement.

6. The following settlement has been arrived at between the parties hereto:-

a) It is agreed between the parties that with regard to all the disputes and differences arising in the present case, they will, in principle, divide all the movable, company and immovable properties as heirs of Bhai Trilochan Singh in the following manner:-

i) Share of Dr. Sabi Sabharwal shall be 40% of the total movable company and immovable assets.

ii) Share of Mrs. Indu Sabharwal shall be 20% of the total movable company and immovable assets.

iii) Share of Ms. Nisha Singh shall be 20% of the total movable, company and immovable assets.

iv) Share of Ms. Tara Sabharwal shall be 20% of the total movable, company and immovable assets.

Immovable Properties

b) It is agreed between the parties that the immovable properties comprising the subject matter of the dispute between the parties herein and the settlement are as follows:-

i) 5/18th share of 9, Amrita Shergill Marg, New Delhi-110003,

ii) 71, Jor Bagh, New Delhi-110003, ad measuring 564 sq yds.

iii) B-II/7, Mohan Co-operative Industrial Estate, New Delhi, ad measuring 803.33 sq yds. (proprietorship concern namely Universal Rubber).

iv) 610, Bhandari House, Nehru Place, New Delhi, ad measuring 713 sq ft.

v) Agricultural Land at Budhewal (Ludhiana) ad measuring 23 kanals &

11 marlas ad measuring 13,900 sq. yds.

vi) 50% share in land owned by Bhai Construction Machinery ad measuring 24 kanals & 5 marlas =17,500 sq. yds.

vii) 50 % share in the land at Budhewal ad measuring 14 kanals and 35 marlas = 19,763 sq. yds. in the name of Bhai Engineering Corporation.

viii) 1/16 A, Asaf Ali Road Flat, First Floor, ad measuring total covered area of 314.6 sq. metres.

c) It is agreed between the parties that after valuation, the share of the parties to this Settlement Agreement in 9, Amrita Shergill Marg, New Delhi, referred to above shall be mutually interpreted to result in the physical possession being undivided with one party and cash value distributed to the remaining parties in accordance with their respective shares.

Company Properties

d) It is agreed between the parties that the company assets comprising immovable and movable properties which form the subject matter of the dispute between the parties herein and the settlement are as follows:-

i) Bhai Tirlochan Singh (hereinafter referred to as BTS) individual share of 546 and BTS HUF share of 623 in Bhai Sunder Dass Sardar Singh Pvt. Ltd. Company including the building comprising Hotel President, 4/23, Asaf Ali Road, Delhi and deposits held in FAO (OS) No. 83/2007 with the Registrar General of the Hon''ble Delhi High Court.

ii) BTS individual 1700 shares and 816 BTS HUF shares held in Bhai Sunder Dass & Sons Pvt. Ltd.

iii) 50% business and partnership interest in Bhai Engineering Corporation including plant machinery and stock and 10,500 sq yds. land at B-53, Focal

Point, Phase-V, Ludhiana.

iv) Movable assets of Bhai Tower Crane proprietorship including stock thereof.

e) The ROC Annual Returns of the two companies as on 31.03.2006 are annexed herewith as ANNEXURE-A and ANNEXURE-B respectively.

Movable Properties

f) It is agreed between the parties that the cash and liquid assets comprising movable properties which form the subject matter of the dispute between the parties herein and the settlement are as follows:-

i) Deposit paid by Tirlochan Singh for Second Flor at A-11, Pamposh Enclave, New Delhi, to be returned by the builder namely Casa Techno.

ii) Deposit paid by BTS in his name for one plot at Saraswati Kunj Co-operative Society, Gurgaon.

iii) Any other movable assets comprising shares, bank accounts, RBI bonds, rental deposits deposited with Registrar General, Delhi High Court, including items annexed herewith as

ANNEXURE-C.

g) It is agreed between the parties that an independent valuation be made of the immovable and company properties referred to in paras (b) and (c) above preferably within a period of two months from the date of signing of this Settlement Agreement and all the parties to this settlement will abide by the valuation of the said independent valuer.

h) It is agreed between the parties that they will abide by the valuation in this regard by an independent valuer appointed by this Hon''ble Court with regard to the above mentioned properties.

i) It is agreed between the parties that with reference to any future litigation with third parties regarding the immovable and movable assets referred to in the present Settlement Agreement, all parties to this Agreement shall do all acts necessary to protect each other from third parties interests.

j) It is agreed between the parties that in the event of any of the parties to this agreement acquiring shares in movable and/or immovable properties in future by any court''s order/judgment/directions/family settlement, that party shall duly relinquish the said share to the respective party to this Agreement in the spirit of this Agreement.

k) It is agreed between the parties that they will not file any litigation against each other with regard to any movable or immovable properties with respect to the disputes in the present case. It is agreed between the parties that in the event of a third party litigation filed against any of the parties to this Settlement Agreement, all parties to this Settlement Agreement shall support each other.

l) It is agreed between the parties that Mrs. Indu Sabharwal, Ms. Nisha Singh and Ms. Tara Sabharwal including their legal heirs shall support Dr. Sabi Sabharwal in his litigation pertaining to FAO (OS) No. 87/2007. The said support shall include filing of affidavits in support of Dr. Sabi Sabharwal.

m) It is further agreed between the parties that Mrs. Indu Sabharwal, Ms. Nisha Singh and Ms. Tara Sabharwal including their legal heirs shall support Dr. Sabi Sabharwal in his litigation pertaining to Letters of Administration or probate of Smt. Somawanti''s Will of 1981. The said support shall include filing of affidavits in support of Dr. Sabi Sabharwal. In the event of there being no probate of the said Will then Mrs. Indu Sabharwal, Ms. Nisha Singh and Ms. Tara Sabharwal shall relinquish their rights coming from Smt. Somawanti''s estate in favour of Dr. Sabi Sabharwal.

7. It is agreed between the parties that by signing this Agreement, all pending litigations between the parties shall stand withdrawn and settled. It is further agreed between the parties that with regard to all/any criminal actions filed by the parties against each other, they shall proceed with withdrawal of their respective complaints and submit before the Hon''ble Delhi High Court or any other Court the manner and time frame in which action for the quashing of the same shall be taken by them.

8. It is agreed between the parties that the partition suit being CS(OS) No. 1698/2007 shall be withdrawn by all the parties to this Settlement Agreement at the time of passing of the final order by this Hon''ble Court.

9. It is agreed between the parties that they shall make every effort to harmonize their relationship and do no act that would cause any physical, mental or emotional harm or stress to each other. The parties undertake to implement this term of the Settlement Agreement with immediate effect.

10. By signing this Agreement the parties hereto state that they have no further claims or demands against each other and all the disputes and differences in this regard have been amicably settled by the Parties hereto through the process of Conciliation/Mediation.

11. That the parties undertake before the Hon''ble Court to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future.

2. The Court which was apprised of this development on 29th October, 2010 directed the parties to again approach the Mediator to work out certain loose ends. Eventually, on 2nd November, 2010, the Court issued directions for valuation of some properties. The said order dated 2nd November, 2010 reads as follows:-

The counsel for the parties submit that it would be necessary to appoint a valuer to value all the immovable assets as also the shares of Bhai Trilochan Singh in the companies which are recorded in detail in paragraphs 6(b) and (d) of the settlement dated 06.08.2010.

2. The counsel for the parties as well as the parties, who are present in court, have suggested the name of M/s. Cushman and Wakefield as the valuers to assess the valuation of both the immovable properties as well as the shares mentioned above. The charges/fees towards valuation would be borne by the parties in the proportion of 20:20:20:40 by the appellants 3(a), (c), (d) and (b) respectively. It is specifically understood and agreed by the parties and their respective counsel that the valuation arrived at by the said valuers would be final and binding on the aforesaid parties and none of them would have any

right to challenge or question the valuation. It is further acknowledged by the appellants 3(a), 3(c) and 3(d) that the appellant 3(b) has a share in 9, Amrita Shergil Marg, New Delhi. The appellants 3(a), 3(c) and 3(d) will not oppose appellant 3(b)''s Test. Case No. 108/2008 and will fully cooperate in the said proceedings.

3. We make it clear that the valuation of 9, Amrita Shergil Marg, New Delhi would be in its entirety and not on the basis of a 5/18th share as mentioned in paragraph 6(b) of the Settlement dated 06.08.2010. The report be prepared by the said valuers within a month of receipt of a copy of this order.

Renotify on 10.12.2010.

Dasti.

3. The complaint of the Appellant No. 3(b) is that despite an over-all settlement in which other heirs of the third appellant agreed to withdraw a pending partition suit, no such steps have been taken. The said appellant No. 3(b) has consequently moved several applications, i.e., 19933/2011, 15454/2012, 15456/2012 and 15958/2012 for various directions including appropriate directions to effectuate the settlement; for initiation of proceedings u/s 340 Cr.P.C. and for appointment of receiver in respect of late Shri Trilochan Singh Estate. It was contended by the counsel for the said appellant that this Court has to make a final order and consequently the other appellants 3(c) and 3(d) have to withdraw the pending partition suit CS(OS) 1698/2007.

4. Counsel for the other appellants, on the other hand, submit that this Court has not passed or indicated that a final order in terms of Rule 25 of Delhi Mediation Rules has been made or a decree in accordance with the procedure established by law is drawn. It is submitted that till such order is made, the question of withdrawing the partition suit does not arise.

5. This Court is of the opinion that the settlement arrived at on 6th August, 2010 is lawful and binding upon those who were parties to it. Even though the Court exercises jurisdiction under Arbitration & Conciliation Act, the fact remains that the parties were referred to the Mediation Centre consequent to which a binding settlement was arrived at. It is not as if parties to the said settlement are questioning its legality. In these circumstances, the Court is of the opinion that in

view of the unanimity of the parties as to the binding nature of the settlement, the most appropriate course, which is prescribed by law, would be to require that the settlement is formally taken on record and a decree be directed to be drawn in accordance with law by the concerned learned Single Judge, who is seized of civil proceedings. Likewise, if the appellant No. 3(b) or any of the parties to the settlement have any concern with regard to its effect or implementing the terms thereof, (which are to be embodied in terms of the decree to be drawn by the learned Single Judge), the same too would be dealt with and decided by the learned Single Judge in accordance with law.

6. In view of the above discussion, the task of directing a formal order resulting in a decree would have to be necessarily exercised by the learned Single Judge.

7. Learned counsel for the parties submitted that no formal dispute survives adjudication in the appeal FAO (OS) No. 83/2007. The same is accordingly disposed off.

CM 16459/2012 (u/s. 151 CPC for directions on behalf of appellant No. 3(b) & 5914/2013(for release of rent deposit)

8. Heard counsel for the parties. These applications seek suitable directions from the Court for disbursement of certain amounts lying-in-deposit with the Registry. These pertain to disputes with regard to the shareholding in M/s. Bhai Sundar Das Sardar Singh Pvt. Ltd. Counsel for the appellant 3(b) and the respondents submit that the main dispute, which was part of the award, has since been settled. In terms of the settlement, the respondents would be entitled to 100% of the shareholding of the said Company. It is submitted that as far as the amounts are concerned, 74% of the said amounts have been disbursed to the other branches, which is not in dispute. As far as the balance amounts lying-in-deposit are concerned, the appellant No. 3(b) would be entitled to half, i.e. 50% of the same (or 13.282%). As far as the residual amount after disbursement of 13.282% to the appellant 3(b) is concerned, the same would be decided in accordance with law.

9. In the light of the above, it is hereby directed that the appellant 3(b) would be entitled to withdraw the amounts deposited by the respondents to the extent of his individual share holding, i.e. 13.282%. As far as the balance relating to the estate of Shri Trilochan Singh is concerned, the same would be decided in accordance with law by the learned Single Judge who in terms of the previous portion of this order would be recording the formal decree and after hearing counsel for the parties proceeding to effectuate the terms of the settlement on deposit (together with interest accrued on it).

10. The rents deposited by the respondents from time to time shall be released to them by the Registry along with accrued interest. CM 16459/2012 & 5914/2013 are disposed off in terms of this order.

11. It is open to the parties to make such contentions as are available in law to

them before the learned Single Judge. The appeal and applications are disposed off in terms of this order.

