

(2005) 07 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : Arbitration Case No. 27 of 2005

Jasvinder Singh	Vs	APPELLANT
Jai Inder Pal Singh		RESPONDENT

Date of Decision : 01-07-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Partnership Act, 1932 — Section 53

Citation : (2005) 2 ShimLC 387

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : R.L Sood and Ajay Kumar and Vikas Chandel, for the Appellant;
Pankaj Jain and Alok Ranjan, for the Respondent

Judgement

V.M. Jain, J.—The Petitioner filed the present petition u/s 9 of the Arbitration and Conciliation Act, 1996, against the Respondent for the grant of ad interim relief by restraining the Respondent from carrying the business of M/S Sanjeevan Hospital Mandi, exclusively or from using the name, goodwill or assets/property of the erstwhile partnership from M/S Sanjeevan Hospital until the affairs of the firm has been completely wound up in accordance with the provisions of the Indian Partnership Act, 1932 and further restraining the Respondent from selling, transferring or changing the nature of the property or assets of the erstwhile firm M/S Sanjeevan Hospital.

2. As per the allegations in the petition, both the parties were partners of the partnership firm under the name and style of M/S Sanjeevan Hospital, which came into existence on 1.12.1992, which was followed by a supplementary agreement dated 14.12.1992 and thereafter, a fresh partnership deed was executed on 23.8.1993? Subsequently, two new partners were added on 1.4.1994 and subsequently, one of those partners retired from the firm on 1.9.199 and subsequently on 10.7.2003 the other partner also retired from the partnership and thereafter, only the Petitioner and Respondent remained the

partners of the said firm. It was alleged that the share of the Respondent was 75%, while that of the Petitioner was 25% in the said partnership. It was alleged that doubts and differences started between the two partners, as a result of which, various correspondences were exchanged between the parties and ultimately on 27.12.2004, the Respondent served a notice upon the Petitioner dissolving the partnership firm with effect from 1.4.2005 and the Petitioner had sent replies to the said notice, whereupon the Respondent sent a reply. It was alleged that the Respondent also issued a public notice in newspaper with regard to the dissolution of the partnership firm. It was further alleged that as per Clause xvi of the partnership deed dated 10.7.2003, in respect of the reconstituted firm, all the disputes relating to the partnership business between the parties etc. were to be referred to the arbitrations of two independent persons to be appointed by consensus. It was alleged that in pursuance thereof, the Petitioner had served a notice upon the Respondent on 10.5.2005 calling upon him to give consent for appointment of Arbitrators to adjudicate the dispute between the parties and that so far, the Respondent had not given his consent for appointment of the Arbitrators. The Petitioner filed the copies of the balance sheet of the firm from 1992 onwards upto 31.3.2004 along with the petition. It was further alleged that the firm was paying rent in respect of the premises in which the said hospital was being run by the partnership firm. It was alleged that various equipment etc. installed in the said hospital was the property of the firm. It was alleged that after the dissolution of the firm, the Respondent was illegally and without the consent of the Petitioner running the business of dissolved firm under the same name and style and was utilizing the aforesaid property and equipment of the firm including the goodwill of the firm. It was alleged that under the law till the entire affairs of the firm were completely wound up in accordance with the provisions of Indian Partnership Act, the Respondent was not entitled to use the goodwill/ name, property, assets etc. of the firm exclusively for his benefit and was not entitled to claim himself to be the sole proprietor of the said firm after its dissolution. It was further alleged that on the facts and circumstances of the present case, the Respondent was liable to be restrained by way of interim injunction order from doing so till the time affairs of the firm were wound up. It was accordingly, prayed that the Respondent be restrained from utilising the name or assets, goodwill and property of the firm exclusively for himself to the detriment of the Petitioner until the affairs of the firm had been completely wound up. It was further alleged that the Respondent be also restrained from transferring or alienating the property of the firm in any manner whatsoever. In the alternative, it was prayed that a receiver may be appointed in respect of the property/assets of the firm to take control and to run the business of the firm till it is wound up.

3. In the reply filed by the Respondent, various preliminary objections were taken including the plea that the Petitioner had over withdrawn approximately a sum of Rs. 15 Lacs over a period of last 12 years. On merits, it was alleged that the Petitioner had accepted his share to be 25% in the various partnership etc.

signed by him. Various averments regarding dissolution of the partnership firm w.e.f. 1.4.2005 were also admitted and also with regard to service of notice for giving consent for appointment of arbitrators. It was further alleged that the Petitioner was an Advocate by qualification and was looking after the accounting and administration jobs of the hospital known as Sanjeevan Hospital, whereas the Respondent being a reputed and experienced Doctor for the last 30 years had taken over the change of the hospital after the dissolution of the firm on 31.3.2005 and the Petitioner had not even bothered to look after the administrative work entrusted to him and had totally mismanaged the accounting part. It was alleged that the Respondent was presently running the hospital in a very smooth way and presently 200 patients are visiting the hospital daily, there are 25 indoor bed for the patients 25 delivery cases are being handled every month and 70 employees are working in the hospital alongwith six consultant doctors. It was alleged that the medicines worth Rs. 15 Lac were lying as stock in trade having the dates of expiry and in case these medicines were not utilized, the hospital would suffer huge loss. It was alleged that Rs. 2.75 Lacs is being paid as salary to the employees every month and Rs. 30 Lacs is payable as on date by the hospital to the employees towards the amount of gratuity. It was alleged that the various loans from the bank had been taken for which the Respondent had mortgaged his property. It was further alleged that any disturbance created by the Petitioner in the smooth running of this medical institution will defeat the very purpose of the service to the public at large. It was alleged that under these circumstances, if the work of the hospital is closed down, not only the Respondent but the general public visiting patients besides employees including the doctors would suffer irreparable loss.

4. The Petitioner filed rejoinder to the above said reply controverting allegations contained in the written reply and reiterated the stand taken up in the petition. It was admitted that the Petitioner was looking after the accounting and administration job of the partnership firm and had not interfered with the medical domain of the Respondent and that after 31.3.2005 the Respondent started interfering with the discharge of the duties by the Petitioner.

5. I have heard the learned Counsel for the parties and have gone through the record carefully.

6. The learned Counsel for the Petitioner has submitted that the present petition u/s 9 of the Arbitration and Conciliation Act, 1996 was maintainable for interim measure even before the arbitration proceedings take place. He has further submitted that admittedly the partnership firm stands dissolved and u/s 53 of the Indian Partnership Act, 1932, after a firm is dissolved every partner in the absence of a contract between the partners to the contrary is competent to restrain any other partner from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up. He has further submitted that in the present case, admittedly, the affairs of the firm have not been completely wound

up and as such, it is a fit case where the Respondent may be restrained from carrying on the business in the name of the firm M/S Sanjeevan Hospital and from, utilizing the assets of the firm for his own benefit. In the alternative, it has been submitted that a receiver may be appointed to carry on the business of the firm and to keep accounts etc. On the other hand, the learned Counsel for the Respondent has submitted that the partnership firm was running the Sanjeevan Hospital and after the dissolution of the firm w.e.f. 1.4.2005, the Respondent who himself is a doctor having 30 years of experience is running the same. It has been submitted that in case the said hospital is allowed to be closed, the patients who are visiting the hospital, various employees and doctors working therein would suffer irreparable loss. It has further been submitted that the Respondent is prepared to compensate the Petitioner by paying reasonable amount to him. It has further been submitted that the Respondent would properly maintain the accounts and as such, no case for appointing receiver was made out.

7. Undoubtedly, the present petition u/s 9 of the Arbitration and Conciliation Act, 1996, would be maintainable even before the arbitration proceedings as provided u/s 9 of the said Act. Furthermore, there can be no dispute with regard to the provisions of Section 53 of the Indian Partnership Act, 1932, which authorizes every partner after a firm is dissolved to restrain any other partner from carrying on a similar business in the firm's name or from utilizing the assets of the firm for his own benefit until the affairs of the firm have been completely wound up. Admittedly, the partnership firm which was running the hospital business under the name and style of M/S Sanjeevan Hospital stood dissolved w.e.f. 1.4.2005. Admittedly, the Petitioner is not running the said hospital, whereas w.e.f. 1.4.2005, the Respondent is running the said hospital. So far, the arbitrators have not been appointed and the matter is still on the consultation stage. The question that comes up for consideration is as to whether on the facts and circumstances of the present case, the Respondent should be restrained from running the Sanjeevan Hospital by utilizing the firm's name and utilizing the assets of the firm even though the affairs of the firm have not been completely wound up and whether any other solution can be found out whereby the Petitioner may be compensated and the hospital known as Sanjeevan Hospital is also not closed down and is allowed to function, even without appointing a receiver.

8. As referred to above, the partnership was running the hospital known as Sanjeevan Hospital. As per the allegations made in the reply filed by the Respondent presently 200 patients are visiting the hospital daily and there are 25 indoor beds for the patients and 25 delivery cases were being handled by the doctors every month and 70 employees were working in the hospital alongwith six consultant doctors. Medicines worth Rs. 15 lacs were lying as stock in trade and were likely to expire, if these are not utilized. Besides that Rs. 2.75 lacs were being paid as salary to the employees every month and the said hospital is required to pay Rs. 30 lacs to the employees towards gratuity. Taking all these facts into consideration in my opinion no useful purpose would be served in

closing down the said hospital known as Sanjivan Hospital, till the affairs of the firm were completely wound up as this would cause loss to the general public, the patients who are visiting the hospital and the employees who are working therein. A judicial notice can be taken of the fact that already there is dearth of medical facilities in this part of the country and in case a running hospital which is visited by about 200 patients every day and Respondent is catering to the needs of 25 indoor beds for patients besides 25 delivery cases being handled by the doctors every month, the same would cause loss to the public. Under these circumstances, in my opinion, it is a fit case where instead of closing down the hospital till the affairs of the firm are completely wound up, some other solution may be found so that the Petitioner may also not suffer and the hospital known as Sanjeevan hospital is not closed down.

9. Admittedly, the Petitioner was looking after the administration and the accounts of the Sanjeevan Hospital. The Petitioner himself has filed the copies of the trading and profit and loss account for the year ending 31.3.2004 in respect of M/s Sanjeevan Hospital Mandi. As per the said trading and profit and loss account for the year ending 31.3.2004, there was book profit amounting to Rs. 14,53,546.26 paise for the period from 11.7.2003 to 31.3.2004 and besides that there was book profit amounting to Rs. 9,94,115.93 paise for the period ending 10.7.2003. In this manner the total book profit for the period from 1.4.2003 to 31.3.2004 would come to Rs. 24,47,662.00 for one year ending on 31.3.2004. Admittedly the Petitioner had 1/4 share in the said hospital as he was a partner to the extent of 25%, while the Respondent was a partner in the said firm to the extent of 75%. The trading and profit and loss account for the year ending 31.3.2005 has not been filed either by the Petitioner or by the Respondent. Thus the book profit for the year ending 31.3.2004 can be made the basis for assessing the earning of the firm M/s Sanjeevan Hospital. If the book profit of the firm is taken at Rs. 24 lacs per annum approximately, the share of the Petitioner would come to Rs. 6 lacs per annum being 25% of the same i.e. Rs. 50,000/- p.m. In my opinion, as an interim measure a direction can be given to the Respondent to pay a sum of Rs. 50,000/- per month to the Petitioner w.e.f. 1.4.2005 since the Respondent was utilizing the firm name and assets of the firm for his own benefit to the exclusion of the Petitioner even though the affairs of the firm have not been completely wound up. In my opinion, this would compensate the Petitioner as the Respondent is running the hospital to the exclusion of the Respondent w.e.f. 1.4.2005.

10. So far as appointment of Receiver is concerned, in my opinion, at this stage no case is made out for the appointment of a Receiver especially when the matter is still at the initial stage and so far the Arbitrators have not been appointed. As and when the Arbitrators are appointed and the matter is before the Arbitrators, the Arbitrators would always be competent to pass appropriate orders in this regard, if the circumstances so warrant. However, at this stage, in my opinion, instead of appointing a Receiver, necessary instructions can be given to the Respondent to faithfully keep the account so that the same be rendered at

the appropriate stage.

For the reasons recorded above, the present petition is disposed of with a direction to the Respondent to pay a sum of Rs. 50,000/- p.m. to the Petitioner w.e.f. 1.4.2005 for having utilised the firm name and the assets of the firm without the affairs of the firm have not been completely wound up. Besides the said amount of Rs. 50,000/- p.m. the Petitioner would be entitled to claim rent and interest etc. as was being done before the dissolution of the firm. It is further made clear that this is only an interim arrangement and would be subject to the final decision of the Arbitrators and in accordance with the arbitration clause and the terms and conditions of the Partnership Deed(s). and would be subject to adjustment accordingly. It is further made clear that till the affairs of the firm are completely wound up neither party shall alienate of the firm property in any manner whatsoever. However, this would also be subject to the final decision of the arbitration proceeding.