
(2004) 11 DEL CK 0122

In the Delhi High Court

Case No : IA No. 6785 of 2004 in OMP No. 284 of 2004

Jitendra Singh Chhabra

APPELLANT

Vs

Rajeev Taneja

RESPONDENT

Date of Decision : 09-11-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Contract Act, 1872 — Section 27

Citation : (2005) 1 CTLJ 46

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Sanjeev Saraswat and Nitin Gupta, for the Appellant; Meenakshi Arora, R.B. Phoolan and Anshul Singhal, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This is an application u/s 151 CPC for vacation of the interim order dated 3rd September, 2004 restraining respondent his relatives from carrying on the business of providing placement services similar to that of the partnership firm M/s Creations E. Services. The relevant clause which now governs the relationship between the parties is to be found in the Addendum to the original contract which read as under:-

"1. Further to clause 22 in the deed of partnership dated August 21, 2003, it is understood and agreed between the parties that the party of the second part shall not engage in a similar business, directly or indirectly through any of his relatives including but not restricted to Ms. Payal Taneja, during the continuation of the partnership or within 3 months of his leaving the partnership firm. However, it is understood and agreed that the part of the first part is currently carrying on placement as a proprietor of Candor services and as a partner in other firms who are engaged in a similar business, at different places and that no such conditions shall apply to him. The party of the first part is free to enter into further partners/franchise agreements/ joint ventures etc to further his business

interests."

2. It is not in dispute that the respondent evinced the intention of discontinuing the partnership on 20th August, 2004 by stating that the partnership was to be discontinued with immediate effect. Thus if clause 22 is operative though the counsel for the petitioner contended otherwise, this period will come to end on 19th November, 2004. The learned counsel for the respondent has contended that clause signed by the husband cannot bind the wife or the relative though the question of relative is academic in this petition as no relative is involved. The interim order as per the respondent's counsel's plea operates against the wife also. There was no warrant in law and according to the counsel for an order against the wife in respect of the contractual obligations of the husband.

3. It is not in dispute that the contract provides that the respondent's wife shall be engaged in conducting the affairs of the business of placement services and in fact the respondent's wife actually worked for the partnership business. The amounts of the profits to be shared were dependent on the fact that work for the partnership was done by her and profits were thus to be shared 50% each by the petitioner and the respondent due to the wife's work for the partnership. The learned counsel for the applicant/respondent Ms. Meenakshi Arora contended that if there is an interim order against the wife also, there would be restraint of trade as contemplated u/s 27 of the Contract Act which reads as under:-

"27. Agreement in restraint of trade, void - Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void."

4. In this connection, learned counsel for the respondent has relied upon a judgment of Hon'ble Supreme Court in M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, The relevant portion of which is reproduced below:-

"31. If the negative stipulation contained in paragraph 14 of the 1993 Agreement is considered in the light of the observations in Esso Petroleum Co. Ltd., it will be found that the 1993 Agreement is an agreement for grant of franchise by Coca Cola to GBC to manufacture, bottle, sell and distribute the various beverages for which the trade marks were acquired by Coca Cola. The 1993 Agreement is thus a commercial agreement whereunder both the parties have undertaken obligations for promoting the trade in beverages for their mutual benefit. The purpose underlying paragraph 14 of the said agreement is to promote the trade and the negative stipulation under challenge seeks to achieve the said purpose by requiring GBC to wholeheartedly apply to promoting the sale of the products of Coca Cola. In that context, it is also relevant to mention that the said negative stipulation operates only during the period the agreement is in operation because of the express use of the words "during the subsistence of this agreement including the period of one year as contemplated in paragraph 21" in paragraph 14. Except in cases where the contract is wholly one sided, normally the doctrine

of restraint of trade is not attracted in cases where the restriction is to operate during the period the contract is subsisting and it applies in respect of a restriction which operates after the termination of the contract. It has been so held by this Court in N.S. Golikari wherein it has been said: (SCR p. 389)

"The result of the above discussion is that considerations against respective covenants are different in cases where the restriction is to apply during the period after the termination of the contract than those in cases where it is to operate during the period of the contract. Negative covenants operative during the period of the contract of employment when the employee is bound to serve his employer exclusively are generally not regarded as restraint of trade and Therefore do not fall u/s 27 of the Contract Act. A negative covenant that the employee would not engage himself in a trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not Therefore a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one sided as in the case of W.H. Milstead and Son Ltd."

.....

33. Shri Shanti Bhushan has submitted that these observations must be confined only to contracts of employment and that this principle does not apply to other contracts. We are unable to agree. We find no rational basis for confining this principle to a contract for employment and excluding its application to other contracts. The underlying principle governing contracts in restraint and less favorable view in respect of a covenant entered into between an employer and an employee as compared to a covenant between a vendor and a purchaser or partnership agreements....."

5. The above extract clearly shows that the Hon"ble Supreme Court did contemplate the existence of a situation where the inhibition against a contract imposing restraint of trade could be attracted even in cases of business rivalry other than employment agreements. Furthermore the contract is neither unconscionable nor excessively harsh or unreasonable. I have perused the contract and found that it is not one sided and it is clear that the Hon"ble Supreme Court had in fact held that restriction could operate even after the termination of the contract.

6. A further fact which is also taken into account that the wife though not a party to the contract is no stranger but was in fact a person who worked in the business in the partnership and enhanced thus the share of the partnership profits favorably in favor of her husband. In this view of the matter the plea of the learned counsel for the respondent that a wife was a mere innocent bystander is not sustainable and indeed inequitable. Accordingly, the application stands dismissed.

7. It is, however, made clear that the interim order enforcing the restraint as per the addendum was to continue for three months beyond the date of termination

indicated by the contract and since the notice was given on 20th August, 2004 by the respondent the interim order putting the restraint on the respondent as per amended clause 22 of the contract, will cease after three months from the date of notice i.e. on 19th November, 2004.

OMP No. 284/2004

List the matter on 10th December, 2004 on the question of appointment of the Arbitrator.