

(2009) 08 DEL CK 0051
In the Delhi High Court
Case No : CS (OS) 1321 of 1993

Madhukar Goel

APPELLANT

Vs

Ms Goel

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 30, 33

Citation : (2009) 08 DEL CK 0051

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Ravi Gupta and Gaurav Gupta, for the Appellant; J.K. Seth and Chetanya Siddharth, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—This petition has been filed by the petitioner u/s 14(2) of the Arbitration Act, 1940 for making the award dated 9th May 1993 as rule of the Court. The award is given by Mr. V.G. Baliga whereby he gave a chart of different properties with his decision as to which property will go to whom and also stated that M.S. Goel shall pay Rs. 80 lac to petitioner.

2. The petitioner in this case is Mr. Madhukar Goel while respondent were Mr. M.S. Goel, Mr. Vipul Goel and Mr. V.G. Baliga. Mr. Vipul Goel is the son of Mr. M.S. Goel. Mr. M.S. Goel died during the proceedings. The objections were filed against the award by Mr. Vipul Goel and Mr. M.S. Goel u/s 30, 33 of Indian Arbitration Act stating therein that the award rendered by Mr. V.G. Baliga was not a valid award. Mr. Baliga was appointed only as a mediator to mediate the disputes between Mr. Madhukar Goel and Mr. M.S. Goel as he was close to the family. Mr. Baliga's award was not an arbitration award, even if it was named as arbitration award. It was actually a mediation award, therefore, not a valid and enforceable arbitration award under Arbitration Act, 1940. It is also submitted by the objections that even as per the arbitrator/mediator, the reference was done to two arbitrators viz. one Mr. Baliga and other Mr. Mahinder Khanna of M/s K.C.

Khanna and Company of Chartered Account. The award was passed only by one arbitrator and not by two arbitrators, as appointed by the parties. The other objection taken is that supposing Mr. Baliga was asked to arbitrate between Mr. Madhukar Goel and Mr. M.S. Goel, he had no jurisdiction to give an award in respect of properties of those persons who were not even parties to the mediation/ arbitration and Mr. Baliga had no jurisdiction or authority to decide or to make an award with respect to the interest, ownership and title of entire body of shareholders of the company Leatheroids Plastic Private Limited (the company, for short) as has been done by him. It is also submitted that Mr. Baliga had no jurisdiction to adjudicate upon the ownership of various properties, movable or immovable, which did not belong to Mr. Madhukar Goel and Mr. M.S. Goel or to decide about the shares and securities of shareholders, wives, sons of Mr. Madhukar Goel and Mr. M.S. Goel, as has been done by him. The award was, therefore, liable to be set aside.

3. Similar are the objections of Mr. Vipul Goel and one Mr. P.C. Malik, who was one of the shareholders in the company and was having 2000 shares and Mr. Baliga had given an award in respect of his shares also.

4. During pendency of proceedings, an objection was taken about the award being an unregistered award. This Court observed that since the award has been given in respect of immovable properties, the award required registration. This Court, therefore, considered that before it could be made a rule of Court, it should be registered and directed for registration of the award.

5. On the basis of objections, this Court framed following issue: Whether the award dated 9th May 1997 is liable to be set aside on the ground disclosed in the objection petition?.

6. It is argued by learned Counsel for the objectors that the award on the face of it is not an award passed by an arbitrator but is an award given by a mediator. There was no reference made to the alleged arbitrator in this case of any specific dispute between the parties. Mr. Baliga was only asked to mediate between Mr. Madhukar Goel and Mr. M.S. Goel since Mr. Baliga was a person known and trusted by both persons. There were some disputes between Mr. Madhukar Goel and Mr. M.S. Goel and they wanted Mr. Baliga to mediate and therefore asked him to do so. During this process of mediation, no specific dispute was referred to Mr. Baliga and Mr. Madhukar Goel and Mr. M.S. Goel wanted Mr. Baliga to make division of their joint businesses. Their businesses involved in large unaccounted money and since Mr. Baliga was a trusted person, they had no fear of any repercussions on disclosing to him about the unaccounted money. It is further submitted that neither Mr. M.S. Goel nor Mr. Madhukar Goel had any authority to ask the mediator to decide about the properties belonging to other persons who had not submitted to mediation of Mr. Baliga. Even if it is assumed that Mr. Baliga was appointed an arbitrator, the reference letter clearly shows that the reference was made by Mr. Madhukar Goel and Mr. M.S. Goel alone qua their disputes but the award shows that the learned arbitrator had by this award adjudicated upon

the properties of several persons who were not even the parties before him and had not referred their disputes to him. Thus, the award was liable to be set aside being contrary to the terms of reference, not being an arbitration award but being a mediation award.

7. Counsel for the petitioner on the other hand argued that Mr. Madhukar Goel and Mr. M.S. Goel represented their respective branch of family in the business/businesses being conducted by two families jointly. The different family members and other persons, having shares in the company, were either nominees of Mr. Madhukar Goel or Mr. M.S. Goel or were their family members holding shares on behalf of Mr. Madhukar Goel or Mr. M.S. Goel. He submitted that a perusal of proceedings would show that Mr. Vipul Goel had participated in the proceedings. One Mr. N.K. Goel had also participated in the proceedings and during the proceedings Mr. Madhukar Goel had clearly authorized Mr. Baliga to go into the issues of the properties about which the award has been passed. Though the properties may have been standing in the names of different persons but those persons were the nominees of Mr. Madhukar Goel and Mr. M.S. Goel, therefore, the two had authority to bring those properties, movable or immovable, within the fold of arbitration. He submitted that Mr. Vipul Goel, son of M.S. Goel was an effective party and he had been appearing before Mr. Baliga as was evident from the proceedings. He cannot now take a stand that he was not a party to the arbitral proceedings. It is further submitted that the award has been acted upon by the parties and only one part of the award i.e. payment of Rs. 80 lac by respondent/objector to the petitioner remained unexecuted/unimplemented otherwise all other properties have been divided in terms of the award and therefore it does not lie in the mouth of respondent to say that the award was invalid because of any of the shareholders not being the party or the award being given beyond jurisdiction. It is submitted that since this Court allowed registration of the award, the award given by the Arbitrator was not a mediation award but in fact was an arbitration award.

8. Mr. Baliga was appointed by letter dated 7th April 1993 signed by Mr. Madhukar Goel and Mr. M.S. Goel both. The said letter reads as under:

To

Shri V.G. Baliga

Camped at New Delhi-110025

We hereby appoint you as a mediator in the matter and disputes arisen amongst us. You are requested to look into this. The information you require in this regard will be furnished by us. Your decision will be binding on us.

New Delhi-85

sd/-

7th April, 1993

M.S. Goel Madhukar Goel

9. From this letter, it is apparent that Mr. Baliga was appointed as a mediator for adjudicating the disputes between Mr. Madhukar Goel and Mr. M.S. Goel. There is another undated letter written to Mr. Baliga and Mr. Mahinder Khanna by Mr. Madhukar Goel and Mr. M.S. Goel which reads as under:

To

Shri V.G. Baliga Shri Mohinder Khanna

Camped at H-96 C.P.

New Delhi-110025 New Delhi 110001

I M.S. Goel r/o 85, Sukhdev Vihar, New Delhi 110025 had been carrying business in the name of M/s Leatheroid Plastics (P) Ltd., along with Shri Madhukar Goel r/o 172 Sukhdev Vihar New Delhi 110025, on equal sharing basis. A good part of our transactions has been unrecorded for various reasons, therefore, differences has been arisen off-late.

You are requested to look into this aspect and advise us for amicable settlement between us. Your decision shall be acceptable and binding on us.

The data required by you in the meeting held on 12.3.1993 at Room, Chelmsford Club, New Delhi are being furnished to you separate.

10. One more letter dated 24th April 1993 was addressed by M.S. Goel to Mr. Baliga and Mr. M.M. Khanna. The first paragraph of the letter reads as under:

We are enclosing all details you had asked us on 18th April 1993 in the matter of arbitration between Shri M.S. Goel and us. Sir, with the details we are furnishing to you, the following notes be considered.

11. Mr. Baliga had also written a letter to Mr. Madhukar Goel and Mr. M.S. Goel on 3rd May, 1993. He only asked for certain records pertaining to Mr. Madhukar Goel and Mr. M.S. Goel and in the end of the letter he noted as under:

The compliance of above be written to Mr. M.M. Khanna of M/s KC Company of Chartered Accountants and who is a co- arbitrator, under invoice to me.

12. From these letters, it appears that initially Mr. Baliga was entrusted with the responsibility to resolve the disputes between M.S. Goel and Madhukar Goel by an amicable method and later on Mr. M.M. Khanna was also associated with him in this task. This becomes clear from the proceedings which had taken place and brought on record by the petitioner. In the gist of proceedings accompanying award dated 9th January 1995 sent to the High Court by Mr. Baliga, Mr. Baliga has written that in view of the complexity of matter, he with the consent of both the parties, availed the services of Mr. Mohinder Khanna, a professional Chartered Accountant who acted as a coordinator. He also recorded that he conducted the joint meetings of all the parties in presence of Mr. Mohinder

Khanna at Chelmsford Club. The brief synopsis of proceedings filed by Mr. Baliga shows that the proceedings were conducted at the office of Mr. Mohinder Khanna as well and secretarial services were availed from M/s Company of Chartered Accountants of Mr. Mohinder Khanna.

13. The award filed by learned arbitrator in the very beginning states that a dispute had arisen between Mr. Madhukar Goel, Mr. M.S. Goel and Mr. Vipul Goel. However, reference made to Mr. Baliga was only by Mr. Madhukar Goel and Mr. M.S. Goel. At no point of time, Mr. Vipul Goel had made a reference to Mr. Baliga. In the next paragraph, Mr. Baliga records that disputes and differences between the parties relate to the businesses carried out under the name and style of the company located at Badarpur and Okhla Industrial Area and as regards businesses, assets and liabilities relating thereto and certain other matters. The award passed by Mr. Baliga shows that he gave an award in respect of farm land at Noida jointly owned by Mr. Madhukar Goel, Mr. M.S. Goel, Mr. Narender Goel and Mr. Atul Goel. Neither Mr. Narender Goel nor Mr. Atul Goel were parties before Mr. Baliga or had made reference to him. He also passed award in respect of property viz. a godown located at Kalkaji, New Delhi which stood in the name of M/s Amar Jyoti Traders. M/s Amar Jyoti Traders was a partnership firm being run by the wives of M.S. Goel and Madhukar Goel as partners. He also passed award in respect of godowns at Baghichi Alauddin. The said godowns belonged to Mr. Vipul Goel, Ms. Sudha Goel and M/s. Surender Sales Corporation. He passed the award in respect of a Nissan Truck which stood in the name of one Mr. S.P. Aggarwal and he also passed award in respect of Surjapur land measuring 3.5 acres which stood in the name of Serva Plastics Industries Private Limited having different shareholders. He also passed award about the entire shareholding of Leatheroids Plastic Private Limited and vested the same in Mr. M.S. Goel or his family members/ nominees although there were 40 shareholders of the company and apart from Mr. Madhukar Goel, Mr. M.S. Goel no one else was a party before the learned Arbitrator. He awarded Badarpur and Okhla Industrial Area units of Mr. M.S. Goel to Mr. Madhukar Goel. Both these units were being run by Leatheroids Plastic Private Limited, which company had around 40 shareholders and one Mr. P.C. Malik was having more shares than Mr. M.S. Goel and the company was not a party to Arbitration proceedings. He also passed the award that shares of the company (LPPL) held in escrow account would stand transferred to Mr. M.S., Goel to such an extent as may be decided by Mr. Baliga based on outstanding liabilities of Mr. M.S. Goel and Mr. Madhukar Goel.

14. It is apparent from the proceedings of Mr. Baliga and from the award that Mr. Baliga was not adjudicating any specific dispute between Mr. M.S. Goel and Mr. Madhukar Goel and he was laying down a settlement between two contenders taking into consideration that all business assets and properties are to be divided in two families headed by M.S. Goel and Madhukar Goel. This settlement could not only be done by mediator Mr. Baliga and not by Arbitrator Mr. Baliga. An Arbitrator has to act within the four walls of reference and had to decide the disputes referred to him. An arbitrator cannot decide about the properties of

other persons who are not parties before him. However, a mediator can act on the authority of family heads to arrive at a settlement between the two families. But that is not so in case of an arbitrator. For an arbitrator to decide the disputes between the parties, each party must be a party to the arbitration agreement and must be a party to the reference irrespective of the fact whether he is a family member or not. The properties standing in the names of wife, sons or other persons who were either Benami or nominees or actual holders cannot be considered as a part of disputes by the arbitrator, unless such a person has given an authority to the arbitrator to adjudicate upon the disputes involving his properties.

15. The basic requirement of an award to be a valid award is that there must be an arbitration agreement between the parties. It is not disputed that there was no arbitration agreement between different shareholders, different persons, and nominees to appoint Mr. Baliga as an arbitrator. Only Mr. M.S. Goel and Mr. Madhukar Goel together had agreed to get their disputes sorted out through mediation of Mr. Baliga and that is why the letter reproduced above was written to Mr. Baliga in this regard. The other letters of Mr. M.S. Goel and Mr. Madhukar Goel and letters written by Mr. Baliga also shows that Mr. Mohinder Khanna was associated with Mr. Baliga for settlement of disputes. Mr. M.S. Goel and Mr. Madhukar Goel had indulged in transactions which were not shown in books of accounts during tenure of their business and the disputes had arisen between the two because of the transactions not shown in the account books. Mr. Baliga was aware of this situation very well and his proceedings reflect that he had personal knowledge of many things and he was permitted to resolve the disputes on the basis of his closeness to the parties and personal knowledge both. In proceedings dated 12th April 1993 Mr. Baliga recorded that, I have been asked to be the sole arbitrator/ mediator as both the families are well known to me and have confirmed faith in me. He refers to letter dated 7th April 1993 to assume this power of mediation/arbitration.

16. In the proceedings dated 18th April 1993, he again records, I have been asked to be the sole arbitrator /mediator by both the families. He further records that he had told the parties that he would be needing help of a professional and he suggested the name of Mr. Mohinder Khanna. In the proceedings, he records, Whatever I have been given to understand is that Mr. Madhukar Goel (MS), aggrieved by non rendering of cash account by Mr. M.S. Goel(MSG) and then counter allegation is that the cash generated from the business is not properly tendered or accounted by Mr. Madhukar Goel. The parties have wanted my mediation to reconcile the personal differences and give my decision and award which will be final and binding on both the parties. Thus, it is clear that both Mr. M.S. Goel and Mr. Madhukar Goel were involved in a number of black money transactions and that is why they wanted help of Mr. Baliga to resolve their disputes through the process of mediation.

17. In the proceedings dated 19th April 1993, he recorded that neither the

parties wanted the traditional method of arriving at a conclusion nor in the circumstances it was possible to decide the issues, disputes and difference because of large segment of financial transactions were not reflected in the books of account of the company.

18. Mr. Baliga also used his personal knowledge and information about the parties business and in the proceedings dated 18th April, 1993 he records that, The parties who know me well and have faith, have no objection if I confirm my plea on certain matters independently from my own source including from other family members. This is also because he was close to other family members and had earlier given an award as a mediator in 1984 also to resolve disputes.

19. From all these proceedings of Mr. Baliga and from the letters written to him by Mr. M.S. Goel and Mr. Madhukar Goel, I consider that Mr. Baliga was in fact appointed as a mediator by Mr. M.S. Goel and Mr. Madhukar Goel so as to resolve the disputes relating to unaccounted money and business about which proper books of accounts were not being maintained and parties were making allegations and counter allegations against each other. During proceedings, however, Mr. M.S. Goel and Mr. Madhukar Goel desired that their business should be separated and Mr. Baliga then considered the entire family business of Mr. M.S. Goel and Mr. Madhukar Goel without involving different shareholders of the company, partners of firms in whose names the properties stood and without any specific reference about the properties gave his award that the parties should separate their businesses and all the properties should be separated between two families. He, therefore, divided their business and properties specifying what should go to each branch of family, how the shares would go and how much money should be paid to one family by the other. I consider that this award cannot be considered as an arbitration award. This award is passed by a mediator and not by an arbitrator under Arbitration Act, 1940. Even if it was assumed that this was an award of an arbitrator, the award is liable to be set aside since none of other shareholders and owners of properties were parties to the arbitration agreement and none of the partner of business whose properties were included in the hotchpotch of award rendered by Mr. Baliga were parties to the arbitration and only Mr. M.S. Goel and Mr. Madhukar Goel were the parties to the arbitration agreement. Mr. Vipul Goel though seemed to have appeared before the Arbitrator, but mere appearance of Mr. Vipul Goel before Mr. Baliga would not have made him a party to the arbitration proceedings, since no reference was made by Mr. Vipul Goel in respect of his properties, his businesses, assets of business in the name of his wife or other companies or the partnership firm. Mr. Baliga could not have presumed that Mr. M.S. Goel had authority to represent each and every shareholder of Leatheroids Plastics Private Limited and each and every partner of other firms whose properties was included neither the proceedings shows that any such authority was produced before Mr. Baliga. Thus, I consider that since all those persons whose properties were included in the award were not even before Mr. Baliga nor they were heard and hence the award is not tenable in the eyes of law.

20. It is submitted by counsel for petitioner that all the properties belonged either to Mr. M.S. Goel or his nominees and Madhukar Goel and his nominees. The nominees were either friends or family members and since the actual owners were Mr. M.S. Goel and Madhukar Goel, they could represent their family members and nominees. In my view, the law is not in support of this contention. A person who is recorded and registered owner of a property cannot be said to be a nominee of any other person without there being a record in this regard. There was no record before Mr. Baliga that the different shareholders were the nominees of Mr. M.S. Goel or they were Benami shareholders or Benami property holders. Even if they were Benami property holders or Benami shareholders in view of the prohibition on Benami transactions made by Benami Transactions (Prohibition) Act, 1988. Mr. M.S. Goel could not have been considered as owner of the properties standing in the name of different persons.

21. I, therefore, consider that this award is not tenable in the eyes of law. It is a mediation award and not an arbitration award in terms of Arbitration Act, 1940. The award cannot be made as a rule of the Court. This petition made by petitioner u/s 14 of the Arbitration Act, 1940 is hereby dismissed. The objections filed by the objector are hereby upheld.

22. The petition stands disposed of. No orders as to costs.