

(2009) 11 DEL CK 0089

In the Delhi High Court

Case No : I.A. No"s. 4675 and 4978/09 and Criminal M.A. No"s. 70, 3692 and 5869 of 2009 in O.M.P. 136/08

Montreaux Resorts Pvt. Ltd.

APPELLANT

Vs

Sonia Khosla and Others

RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 17

Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1), 195(4), 340, 340(1)

Citation : (2009) 11 DEL CK 0089

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

Bench : Single Bench

Advocate : P. Nagesh and Anand M. Mishra, for the Appellant; Party-in-Person, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.

IA 4675/2009

1. This application has been made by the applicant for restoration of CrI. M.A. 3692/2009. In view of the submissions made therein, the application is allowed and the CrI. M.A. 3692/2009 is hereby restored to its original number.

CrI. M.A. 3692/2009

1. This application u/s 340 Cr.P.C. has been made by the applicant for prosecuting the non applicant for perjury and other related offences against justice allegedly committed by the non applicant before the Arbitral Tribunal on the ground that the non applicant made numerous false statements in an application u/s 17 of the Arbitration & Conciliation Act, 1996 made by the non applicant before the Arbitral Tribunal on 9th April, 2008. Section 340 of Criminal Procedure Code reads as under:

340. Procedure in cases mentioned in Section 195.

(1) When upon an application made to it in this behalf or otherwise any court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) Record a finding to that effect;

(b) Make a complaint thereof in writing;

(c) Send it to a Magistrate of the first class having jurisdiction;

(d) Take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) Bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a court by Sub-section (1) in respect of an offence may, in any case where that court has neither made a complaint under Sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the court to which such former court is subordinate within the meaning of Sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed,-

(a) Where the court making the complaint is a High Court, by such officer of the court as the court may appoint;

(b) In any other case, by the presiding officer of the court.

(4) In this section, "court" has the same meaning as in Section 195.

2. A perusal of Section 340(1) Cr.P.C. reveals that an application made under this provision can be entertained by a Court in relation to proceedings pending before that Court itself in respect of documents produced or given in evidence in the proceedings of that Court. There is no denial of that fact that no proceedings are pending before this Court. The applicant has filed this application in view of Section 340(2) of Cr.P.C. which gives jurisdiction to a superior Court to exercise powers u/s 340(2) Cr.P.C., under certain circumstances, in respect of subordinate courts.

3. I consider that the present application made u/s 340(2) Cr.P.C would be maintainable only in case the Arbitral Tribunal is held to be a Court subordinate to the High Court since the High Court can take cognizance of the offences mentioned u/s 195 Cr.P.C only if the arbitral tribunal is considered subordinate to the High Court. I consider that the subordination as envisaged u/s 340(2) Cr.P.C.

is not merely a judicial subordination, but necessarily means administrative subordination where the High Court has powers of superintendence including a power to direct the tribunal under it to carry out its orders and to exercise powers of holding inquiries against the members of Tribunal with a view to take disciplinary action for administration of justice. Mere judicial subordination in the sense that the Court can hear objections against an award given by the Arbitral Tribunal would not convert an arbitral tribunal into a subordinate court of the High Court. An arbitral tribunal is appointed by the parties under an arbitration agreement or in case of failure of the parties, it is appointed by the High Court u/s 11 of the Arbitration & Conciliation Act or under other provisions of the Arbitration & Conciliation Act. Under no stretch of imagination an arbitral tribunal can be considered as subordinate to the High Court. Moreover, an arbitral tribunal does not have features of a Court itself.

4. The Supreme Court in Manohar Lal Vs. Vinesh Anand and Others, after considering the entire case law had come to conclusion that an arbitral tribunal cannot be construed to be a Court within the meaning of Section 195 of Cr.P.C as such Section 340 Cr.P.C. would not be applicable in proceedings before the arbitrator. 5. I, therefore, consider that the present application u/s 340 Cr.P.C is not maintainable at all and liable to be dismissed. The same is accordingly dismissed.

IA 4978 of 2009 and Crl. M.A. Nos. 5869 & 70 of 2009

In view of my findings in Crl.M.A. 3692 of 2009, the above applications stand dismissed having become infructuous.