(2013) 04 DEL CK 0176

In the Delhi High Court

Case No : FAO (OS) 369 of 2012

M/s. Kidarsons Industries Pvt Ltd. and Others APPELLANT

Vs

M/s. Hansa Industries Pvt Ltd. and Others RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Citation : (2013) 8 AD 86

Hon'ble Judges : S. Ravindra Bhat, J;Deepa Sharma, J

Bench : Division Bench

Advocate : V.P. Singh and Sh. Anju Bhattacharya, for the Appellant; Rekha Palli, Sh. D. Verma and Ms. Poonam Singh, for the Respondent

Judgement

S. Ravindra Bhat, J.

C.M. APPL. 13715/2012 (for condonation of delay)

For the reasons mentioned in the application, C.M. Appl. 13715/2012 is allowed.

FAO (OS) 369/2012 & C.M. APPL. 13716/2012 (for stay)

1. The present appeal is directed against an order of the learned Single Judge dated 15.03.2012, disposing I.A. Nos. 14387/2010 and 11703/2011, and also directing the Registry to draw up a final decree. Briefly, the facts are that parties here had engaged in two separate proceedings - a winding-up petition in respect of the company - M/s. Kidarsons Industries Pvt. Ltd. and another suit filed by the latter (M/s. Kidarsons Industries Pvt. Ltd.), claiming injunction against M/s. Hansa Industries Pvt. Ltd. on the ground that the business and commercial activity carried-out could not be carried-out by it. During the pendency of the proceedings, the parties apparently entered into a settlement, on 09.06.1988. Besides other conditions which concerned the business activities of the parties, Clause-14 enabled one of the parties, Sh. Narender Nath Nanda to certain rights. The said condition is extracted below:

14. Shri Narender Nath Nanda will continue to occupy the portion of the property

of the company in which he is at present residing as deemed owner/owner, and the value of such portion will be taken into account for evaluating the assets of the company. The value of such part of the property as is occupied by Shri Narender Nath Nanda will be adjusted in the value of his share.

2. By judgment and order dated 05.02.1993, a learned Single Judge had the occasion to deal with the entire settlement; he sought to put a finality to the disputes by interpreting Clause 14 in a particular manner. The defendant in the suit, M/s. Hansa Industries Pvt. Ltd. represented by N.N. Nanda carried the matter in appeal, FAO(OS) 39/1993, to the Division Bench of this Court. The Division Bench affirmed findings and interpretation of the learned Single Judge, vis-?-vis Clause 14 of the settlement. Eventually the matter was carried in appeal by Special Leave to Supreme Court, which by its judgment and order dated 13.10.2006 Hansa Industries Pvt. Ltd. and Others Vs. Kidarsons Industries Pvt. Ltd., , took into consideration the materials on record as well as the submission of parties and to a limited extent modified the directions of the learned Single Judge, as affirmed by the Division Bench. The relevant extract of the Supreme Court directions are as follows: "21. We, therefore, allow this appeal to the extent indicated below:-

(a) That the judgment and order of the High Court is modified to the extent that Appellant 2, namely, Shri Narendra Nath Nanda shall be allotted the portion of the Golf Links house which was in his occupation on the date of settlement, and the value thereof shall be adjusted against his share. If something remains to be paid even after adjustment, the appellants shall pay such amount within a period of two months from the date of the order of the High Court.

(b) That no deduction shall be made from the value of the assets of the anticipated capital gains tax liability on the hypothetical sale under the settlement. In case a demand of capital gains tax is made by the Tax Authority in future against the respondent Company, the aforesaid Company shall be entitled to challenge the imposition of such tax subject to Appellant 2 providing sufficient funds to the respondent Company for this purpose. In any event, the capital gains tax, if found payable, shall be the liability of the appellants to be discharged by them. They shall furnish an undertaking before the High Court accepting such liability, and shall execute a document creating a charge on the assets allocated to them under the settlement to discharge capital gains tax liability, if found payable.

22. The matter is remitted to the High Court for giving effect to the aforesaid modifications which may involve directing the chartered accountants to make a recalculation on the basis of the directions contained in this judgment, and apportion the assets accordingly.

3. In light of the above order, the matter was relegated to this Court; the Division Bench had occasion to deal with it and after considering the order of the Supreme Court, concluded by its order dated 10.07.2008 that, "the direction

issued by the Supreme Court remanding the matter back to the High Court for giving effect to the directions referred to above would also necessarily imply that the exercise has to be undertaken before the learned Single Judge."

4. After remand, in tune with the directions of the Supreme Court, the report of a Chartered Accountant was apparently called for; the same is on the record. This Court does not wish to discuss the merits of the report since that appears to be the subject matter of the application preferred by the respondent - Sh. N.N. Nanda, before the learned Single Judge (I.A. No. 654/2008). The learned Single Judge, by the impugned order took cue from the two applications filed by the respondent (Sh. N.N. Nanda), complaining that the appellants had not complied with certain directions and held, therefore, that the decree had to be drawn.

5. This Court has extracted directions of the Supreme Court and also noticed the previous order of this Court to underline the fact that the learned Single Judge had to necessarily go into the merits of the contentions of the parties. Concededly, neither the impugned order nor any other order of the learned Single Judge has dealt with the report of the Chartered Accountant. Furthermore, the objections to the report are pending. As to what is the ultimate amount to be paid by Sh. N.N. Nanda to enable him to get portions of the Golf Links property and as to the entitlement of other parties to various assets is subject matter which has to be finally decided before the Judge can record satisfaction. Before completing that process the learned Single Judge could not have directed the Registry to draw a decree as was done in this case.

6. In view of the above discussion, the appeal has to succeed; the matter is remitted to the learned Single Judge for appropriate directions to work-out the right, entitlement and interests of the respective parties, flowing from the directions of the Supreme Court extracted above. The learned Single Judge shall also consider the merits of the report while making his directions in order of the Supreme Court judgment. For the sake of completeness, Exec. Petition No. 187/2012 shall also be taken up and considered and suitable common orders made along with pending applications in CS (OS) 1310/1988. The appeal and its pending application have to succeed. The parties are directed to appear before the concerned learned Single Judge according to roster on 02.05.2013. No costs. The appeal [FAO(OS) 369/2012] and pending application (C.M. Appl. 13716/2012) are allowed in the above terms.

