
(2011) 04 AHC CK 0321

In the Allahabad High Court

Case No : First Appeal From Order No. 342 of 2011

Picasso Digital Media Private Ltd.

APPELLANT

Vs

Vas Knowledge Growth Initiatives Private Ltd.

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2, 2(1), 37(1), 9

Citation : (2011) 04 AHC CK 0321

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Short-counter affidavit filed on behalf of Respondent is taken on record.
2. Heard learned Counsel for the parties and perused the record.
3. Present appeal u/s 37(1)(a) of the Arbitration and Conciliation Act, 1996 has been preferred against the impugned order dated 26.03.2011 passed by the learned District Judge, Lucknow in Regular Suit No. 19 of 2011 in view of agreement entered into between the parties i.e. Picasso Digital Media Private Limited and Mr. Arun Srivastava, Chairman. An application u/s 9 of Arbitration Act was moved on behalf of the Respondent alongwith application for interim relief which was heard and decided by the impugned order restraining the Appellant from terminating the Memorandum of Understanding dated 04.02.2008.
4. While assailing the impugned order, the learned Counsel for the Appellant submits that the Respondent is not the signatory of the agreement, hence the application moved by him is not maintainable and no interim relief could have been granted by learned District Judge, Lucknow.
5. It has been submitted by learned Counsel for the Appellant that even if under the agreement, Sri Arun Srivastava, Chairman, Vas, Knowledge Growth Initiatives Private Limited, B-73, Nirala Nagar, City Lucknow, was having right to

transfer the agreement, it could not be binding on the Appellant unless by some deed or instrument, parties agree for the purpose.

6. Attention has been invited to (h) of Section 2(1) of the Act, which defines the word "party". The word "party" means a party to an arbitration agreement. Admittedly, Respondent is not signatory of the arbitration agreement, hence, prima facie, he may not be a party. However, Sri A.P. Singh Gaur, learned Counsel for Respondent submits that Sri Arun Kumar Srivastava himself in terms of agreement, had transferred the agreement in favour of the Respondent. Hence, he is affected person and shall be deemed to be a party.

7. Keeping in view the provision contained in Clause (h) of Section 2 of the Act, which provides that "party" means signatory of the agreement, learned Counsel for the Appellant has relied upon the judgment of Hon"ble Supreme Court reported in (2004) 3 Supreme Court Cases 155, Firm Ashok Traders and Anr. v. Gurumukh Das Saluja and Ors. where Hon"ble Supreme Court held that right conferred by Section 9 is on a party to an arbitration agreement. District Judge seems to impressed with the fact that Sri

8. Arun Srivastava had transferred the agreement in favour of the Respondent. Hence, he shall be deemed to be a party. Whether by letters or by consensus, a person may be deemed to be a party of an agreement in terms of Clause (h) of Section 2 of the Act is a question which has cropped up for adjudication. Keeping in view the plain reading of Clause (h) of Section 2(1) of the Act, where it has been provided that u/s 9 rights shall be conferred on a party to an arbitration agreement and also in view of the fact that District Judge has not recorded finding precisely as to how non-signatory can be a party to an arbitration agreement, order seems to not sustainable.

9. We are of the view that no interim injunction could have been granted by District Judge while deciding the application for interim relief. The statutory provisions should be read as it is and ordinarily literal interpretation should be given while deciding the issue.

10. In view of above, we feel that District Judge should not have passed the impugned order in the manner as it has been done. In view of the facts and circumstances of the case, we modify the interim order and provide that right of the parties as well as any action taken by the Appellant or Respondent, shall be subject to final out come of application filed u/s 9 of the Arbitration Act. While deciding the application, it shall be open to the District Judge, Lucknow, to take into account the subsequent developments and pass appropriate order. The District Judge, Lucknow is further directed to decide the application filed u/s 9 of the Arbitration Act, expeditiously, may be on the next date or within a period of six weeks from the date of receipt of certified copy of the present order.

11. District Judge, Lucknow shall decide the application independently without being influenced by the observations made in the present order, in accordance with law and on the basis of evidence led by the parties.

12. Subject to above, the appeal is disposed of finally.

13. Let a copy of the order be provided to the learned Counsel for the parties on payment of usual charges by tomorrow.