
(2009) 09 DEL CK 0204

In the Delhi High Court

Case No : OMP No. 354 of 2009 and EA No. 338 of 2009 in Ex. P. No. 60 of 2009

Ram Chandra Krishan Chandra Fantasy and Others

APPELLANT

Vs

Raj Enterprises and Others
 Raj Enterprises and Others

RESPONDENT

Vs Ram Chandra Krishan Chandra Fantasy and Others

Date of Decision : 25-09-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2009) 09 DEL CK 0204

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

Bench : Single Bench

Advocate : Ajay Verma, in OMP No. 354/2009 and M.S. Ahluwalia, in EA No. 338/2009 in Ex. P. No. 60/2009, for the Appellant; M.S. Ahluwalia in OMP No. 354/2009 and Ajay Verma in EA No. 338/2009 in Ex. P. No. 60/2009, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—This application (EA No. 338/2009) u/s 151 CPC has been made by the judgment debtors/Respondents alleging therein that the decree holder has obtained order of possession of property No. F-121 Main Market Rajouri Garden, New Delhi and attachment of movable assets and bank accounts of judgment debtors from the Court on the basis of an award, notice of which was never served upon the judgment debtors and the award was result of collusion between Mr. Ramesh Khanna Arbitrator and the decree holder It is stated by the applicants that the award was patently illegal since the applicants had never appointed or consented to the appointment of Mr. Ramesh Khanna as Arbitrator. Mr. Ramesh Khanna merely acted as a mediator and this role of mediator also came to an end after an agreement was entered between the parties in March" 07. There was no condition that he could revive the proceedings and there was never any statement of claim or defense or evidence before the Arbitrator. The applicants disputed the service of award and the

arbitration proceedings itself.

2. The learned Arbitrator was summoned to the Court along with record and perusal of record would show that Mr. Ramesh Khanna, President of the Main Market Traders Association Rajouri Garden had acted as an Arbitrator between the parties under a written arbitration agreement. The judgment debtor in this case was initially occupying the premises in question on commission basis and commission was being paid to decree holder @ 2% of the net sales value subject to a minimum assured amount. In between judgment debtor had failed in payment of this minimum assured amount because of financial constraints and a dispute started between the parties about payment of commission and it was referred to the Arbitrator.

3. The initial agreement between the parties was termed as a franchise agreement and this agreement contains a clause that if the parties were not able to decide the dispute amicably, the dispute shall be referred to the President of Rajouri Garden Main Market Traders Association under the provision of Arbitration and Conciliation Act. Thus, the plea taken by the applicants that there was no arbitration agreement or Mr. Ramesh Khanna could not be an Arbitrator is belied from the record.

4. Record shows that during pendency of the arbitration proceedings, the parties had entered into a compromise and executed a fresh agreement on 9.3.2007 and it was duly signed by the parties. It was agreed on 9.3.2007 that franchise agreement shall be converted into rent agreement w.e.f. 1.4.2006 and amount of Rs. 2,76,000/- p.m. would be the rent of the premises payable to the decree holder after deduction of TDS. The agreement dated 9.3.2007 also provides that in case of default in payment of rent and arrears of rent the agreement shall come to an end. In the agreement dated 9.3.2007 it was specifically recorded that in view of the settlement between the parties Mr. Ramesh Khanna, the Arbitrator shall close the matter for the time being only and in case the payments were made in terms of the agreement this shall settle the matter.

5. After the agreement was entered into between the parties a copy of this agreement was filed before the Arbitrator and the Arbitrator recorded proceedings in terms of the agreement and these proceedings were signed by both the parties. It was recorded in these proceedings that the proceedings were being adjourned sine die with liberty to revive the proceedings in case of agreement dated 9.3.2007 not being complied with. These proceedings are signed by the parties and their representatives/advocates as well as by the Arbitrator. The plea of judgment debtor that Mr. Ramesh Khanna was not an Arbitrator is contrary to the admitted documents of the judgment debtors. Judgment Debtors' contention that arbitration proceedings had come to an end or that no statement of claims had been filed before the Arbitrator is belied from the record.

6. The Respondent/judgment debtor did not comply with terms of agreement

dated 9.3.2007 and the arbitration proceedings were revived and both the parties appeared before the Arbitrator on 20.10.2008 when the Arbitrator recorded that both the parties had been heard. The presence of Rachit Rastogi partner of judgment debtor firm is recorded and the proceedings are signed by Rachit Rastogi. The Arbitrator fixed the next date of hearing as 24.10.2008. On 24.10.2008, the Arbitrator waited for the Respondent/judgment debtor however, none appeared. The Arbitrator closed the arguments of both the parties and reserved the passing of award. The award was passed by the learned Arbitrator on 1.12.2008. He posted the copies of the award to both the parties on 8.12.2008. The award was posted through courier services. A computerized tracking report of the courier services shows that the award was delivered to both the parties on 10.12.2008 around 1342 hrs. Counsel for the judgment debtor has taken the stand that 10.12.2008 was Wednesday and it was a market closing day therefore, the delivery could not have been made to the judgment debtor on that day. It is also submitted that delivery time as given in the tracking report of Courier Company to decree holder and judgment debtor was same, whereas the address of decree holder was V-276 2nd floor Rajouri Garden and the address of judgment debtor was F-121, Rajouri Garden Main Market. The two premises were situated at some distance and delivery could not have been effected at the same time.

7. I consider that delivery cannot be doubted merely on the basis of time given on the computerized tracking report being the same as it is not known whether deliveryman for two parcels was same or different. These tracking reports are obtained through computer, only to know whether the parcel given to courier services has been delivered or not. If the applicants wanted, they could have obtained a proper delivery receipt from the Courier Company and Courier Company would have given the name of delivery person and would have also shown as to who received the parcel. Normally, when a parcel is delivered by a courier service, the courier boy obtains signatures and also records telephone number. Prima facie, the record shows that the award was sent through courier at the proper address of the judgment debtor. If the judgment debtor wanted this Court to disbelieve the receiving of award, the judgment debtor could have obtained a report from the courier service and would have come to know as to who received the parcel containing award on behalf of the judgment debtor.

8. The plea of the applicants that it was a market closing day also has no force. Markets in Delhi are known more for not following the closing days than following the closing days. If the shop had been closed, the courier service would have recorded the closure of shop on that day and shown delivery on some other day. I, therefore consider that there is no force in the plea of the applicants that the applicants had not received the award. There is no force in other contention raised by the applicants that there was no arbitration agreement etc.. All the contentions of the applicants are belied from the applicants' own documents and the record of the Arbitrator. The applicants participated in the arbitration proceedings, in pursuance of a written arbitration agreement. During the

arbitration proceedings, the applicants also filed application objecting to the Arbitrator's jurisdiction and after entering into a compromise did not abide by the terms of compromise and again appeared before the Arbitrator. The Arbitrator in this case was President of Rajouri Garden Market Association and the applicants were doing business in the same market, the proceedings had been concluded in October, 2008 and it would not have been difficult for the applicants to ask the Arbitrator at any time as to what happened to these proceedings.

I, therefore, consider that this application u/s 151 CPC is not maintainable.

OMP No. 354/2009

For the reasons recorded above, I also find that this petition u/s 34 of the Arbitration and Conciliation Act, 1996 filed by the Petitioner is not maintainable being barred by time. The petition is hereby dismissed.

Ex. P. No. 60/2009

List on 10th December, 2009.