
(2001) 06 DEL CK 0002

In the Delhi High Court

Case No : OMP. No. 206 of 1998 and IAs. 9380/98 and 3429/99 and OMP No. 70 of 2001 and IA. No. 3597 of 2001

Sh. Ashwani Khanna and Others

APPELLANT

Vs

Sh. P.D. Khanna and Others

RESPONDENT

Date of Decision : 04-06-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 13, 33, 34

Citation : (2001) 06 DEL CK 0002

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. V.K. Mikhija, Mr. Jay Savla, Ms. Reena Bagga, Ms. Meenakshi Ogra and Mr. Rajiv Bansal, for the Appellant; Mr. V.K. Makhija Mr. Sandip Sethi, Mr. Sanjay Jain, Mr. Ashok Bhasin, Mr. Chetan Dutt, Mr. Arun Khosla, Ms. Manisha Singh, Mr. Rajiv Bansal, Mr. Jay Savla, Ms. Reena Bagga and Ms. Meenakshi Ogra, for the Respondent

Judgement

A.K. Sikri, J.—Various petitions are pending in this court which are filed by different parties under different provisions of law. The parties to all these petitions are close relations. They had various business and residential properties in common. These parties which from a large family are for the sake of convenience, put into five groups and are described as Group-A, Group-B, Group-C, Group-D and Group-E. Group-A is headed by Sh.P.D.Khanna. Group-B is headed by Sh.L.R.Khanna, Group-C is headed by Sh.Y.P. Khanna, Group-D pertains to late Sh.O.P.Khanna and is represented by Sh. Ashwani Khanna and Group-E is headed by Sh.P.P.Khanna. Disputes arose among these Groups in respect of various properties. They decided to divide the same and become independent of each other. It may be mentioned that some of the properties were held individually or under partnership firm. However, they decided to put these properties into common hotch-potch. Agreement dated 4th September, 1996 was entered into for settling of the disputes concerning these properties by means of arbitration. The properties were mentioned in Schedule-1 annexed to

this Agreement. Sh.Navin Pal Singh Bhandar 1 was appointed as arbitrator who entered upon reference and commenced arbitration proceedings after issuance of notices to all the parties. While this exercises was on, parties entered into family settlement dated 9th may, 1997. This family settlement, inter alia, records that in the proceedings before the sole arbitrator held on various dates, it was agreed by the acceptable to that suggestions made for distribution of immovable properties among the said Groups-A to E be done i combination of one residential and industrial plot to each Group and any Group deprived of the said combination in the form of property either industrial or residential can be compensated for by offer of other Group properties and or through sale proceeds of left over properties put in joint stock by Agreement dated 4th September, 1996. The parties agreed, as per this settlement, as under:

Residential Industrial -----

1. That Group "A" have cc-17, Kalkaji 22, Okhla received the Extn., Indl. Estate Properties New Delhi. New Delhi, viz. 28, Community Centre, East of Kailash B-258, Okhla Phase-1

2. Group "B" have received the properties viz. 4/7, Kalkaji Q212, O.I.A.N.Delhi Extension, New Delhi 3. Group "C" have received the properties viz. DD-7, Kalkaji D-1, Okhla Indl. Est. New Delhi. New Delhi.

4. Group "D" have received the properties viz. DD-7, Kalkaji 18, Okhla Indl. Est. Extn. New Delhi. New Delhi.

5. Group "E" have received D-820, New C-7/c-8, O.I.A. the properties viz. Friends coly. New Delhi New Delhi. "That the transfer of the aforesaid properties to the representative of the groups as hereinabove mentioned would be in exchange of the properties in possession with the respective groups.

In lieu thereof Group "A" shall in exchange of 212 Okhla Indl. Estate, retain physical possession of:-

i) Residential cc-17, Kalkaji Etc., New Delhi.

ii) Indl. 22, Okhla Indl. Estate, New Delhi plus other group properties.

iii) Exclusive ownership rights of and on 28, Community Centre, East of Kailash, New Delhi against liability of State Bank of India, on A.V. Industries. To group "B" in exchange of DD-7, Kalkaji Extn., New Delhi.

i) 4/7, Kalkaji Extn., New Delhi.

ii) 212. Okhla Indl. Estate, New Delhi plus other group properties.

To Group "C" in exchange of C-7, C-8, Okhla Indl. Area, New Delhi.

i) Portion of DD-7, Kalkaji Extn., new Delhi as per site plan annexed.

ii) D-1, Okhla Indl. Estate, Phase-1, New Delhi plus other group properties.

To Group "D" shall retain portion of DD-7, Kalkaji, New Delhi and also retain 18, Okhla Indl. Area, New Delhi Plus other group properties.

To Group "E" shall in exchange of having vacated 4/7, Kalkaji and D-1, Okhla Indl. Estate, New Delhi.

i) To retain residential 820, New Friends Colony, N. Delhi and have received.

ii) Industrial C-7/C-8, Okhla Indl. Area, New Delhi.

iii) The foundry at Shambhu Dayal Bagh in lieu of 4/7, Kalkaji Extn., New Delhi and other group properties along with Group "A" as per demarcation."

2. This settlement further records the role which remains to be played by the sole arbitrator thereafter. The sole arbitrator proceeded with the matter. However, another Agreement dated 25th July, 1998 was entered into amongst the parties as per which one Sh. Jagdish Sahni was appointed as arbitrator. There is a dispute whether his appointment was in supersession of the earlier arbitrator's appointment. Be as it may, Sh. Navin Pal Singh Bhandari gave and published his award dated 1st January, 1999. The said award is signed on last page by Sh. Navin Pal Singh Bhandari. Below it, Sh. Jagdish Sahni has also appended his signatures after endorsement is made to the effect that it was announced in his presence. This award is challenged by Group-A headed by Sh.P.D.Khanna and Group-B headed by Sh. L.R.Khanna. Both have filed objections u/s 34 of the Arbitration and Conciliation Act, 1996 (for short "Act"). Objections of Group-A are registered as OMP 93/99 and objections of Group-b are registered as OMP 71/99.

3. These objections are pending consideration. It may be mentioned that final hearing in these objections has already been started and the matter is part-heard. Other three Groups have accepted the award. However, Group-E has moved OMP No. 279/99 u/s 1333 of the Act seeking directions to the arbitrator to review/correct/interpret award dated 1st January, 1999 and/or make additional award on the issues raised by this Group in application dated 28th January, 1999.

4. While these objections are pending, various ancillary and incidental proceedings have been initiated. One such OMP viz. OMP No. 206/98 was in fact filed after the settlement and before the pronouncement of the award. This OMP has been filed by Group-D. It essentially pertains to property situated at C-28, Community Centre, East of Kailash, New Delhi(for short "C-28"). As per the family settlement, this property has come to the share of Group-A. Even as per the arbitration award, the property has come to Group-A. The prayer made in the application is that respondents 1 to 16 be restrained from taking possession of this property and Sh. Navin Pal Singh Bhandari, the arbitrator be appointed as Receiver of this property. At the time of filing of the petition, the property was under the tenancy of National Fertilisers Ltd. Therefore, further direction was sought to the effect that National Fertiliser Ltd. be directed to hand over vacant

and peaceful possession to the arbitrator as Receiver till the final award is passed and same is enforced.

5. Other OMP No. is 70/2001. In this OMP filed by the Group-E the prayer made is that amount payable to DDA towards the composition fee for extension in the period of construction of Plot No. C-7, Okhla Industrial Area, Phase-1 (for short "C-7") be paid from the sale proceeds of the Vasant Vihar Property; Group-E be released an amount of Rs.40 lacs. for raising construction over the said plot; and direction be given to other groups to execute power of attorney in favor of Sh. P.P.Khanna in connection with this plot, as agreed in the settlement as well as award.

6. While the arguments on the objection petitions were going on, parties agreed that OMP No. 206/98 and OMP No. 70/2001 be heard as emergent directions are required in these OMPs. Accordingly, these OMPs were heard and are disposed of by this order.

7.OMP No: 206 OF 1998:

8.As aforesaid, prayer in this OMP is for appointment of Sh. Navin Pal Singh Bhandari as Receiver of property no. C-28. This prayer by the petitioner/Group-D proceeds on the basis that when the matter was referred to arbitration of Sh. Bhandari, It was agreed that till he gives the award, he shall be the receiver of all the properties. Thus he became Receiver of the property at C-28. This property is an asset of M/s A.V.Industries, a partnership firm of which Sh. P.D.Khanna (20 per cent) and Sh. Lajpat Rai Khanna(20 per cent) were partners. The partnership came to an end on 27th December, 1998 on the death of Sh. O.P.Khanna. Thereafter, family settlement dated 9th May, 1997 was arrived at. Perusal of arbitration Agreement, family settlement and general power of attorney would show that till the conclusion of the arbitration, the arbitrator was to act as Receiver of this property. It may be stated that when this petition came up for hearing on 14th September, 1998, counsel for arbitrator also appeared in the Court and this court appointed Sh. Navin Pal Singh Bhandari as Receiver for the property in question and authorised him to receive vacant and peaceful possession of the said property from National Fertiliser Ltd. The possession was handed over by National Fertiliser Ltd. to Sh. Bhandari and the possession of the property is thus with Sh. Bhandari as Receiver since then.

9. It has been submitted by the petitioners that since the award is challenged by Group-A, who is to receive this property in term of the award, the possession should not be given to them and should continue to be with the arbitrator as he is to act as Receiver till the award is implemented. It was also submitted that family settlement was of no consequence and when subsequent arbitration Agreement dated 25th July, 1998 was entered into between the parties, this settlement stood superseded. Notwithstanding this family settlement, arbitrator was supposed to decide all disputes relating to all the properties. Reference was made to Minutes dated 6th March, 1997 and 7th March, 1997 in support of this

plea. It was further contended that one residential house and one business property was given to each Group. The property C-28 was the second business property which was to be given to Group-A for which they were bound to contribute Rs.1.34 crores in the common kitty as per the award. Group-A intended to take the property without contributing this amount which was impermissible and dishonest attempt. Sh. V.K. Makhija, learned senior counsel appearing for Group-E supported this stand of the petitioners/Group-D. It was additionally submitted that as per the family settlement or award, each Group was entitled to take assets of the value of Rs.6.56 crores. The properties given to Group-A, namely, one house and one business property were of the value of Rs.6 crores. Value of the property, namely, C-28 was Rs. 2.5 crores. It is because of this reason, Group-A was directed to give Rs. 1.34 crores in the common pool. Out of this amount and the amount to be contributed by Group-B as per the award, certain common creditors were to be paid off and Group-D and Group-E were to receive certain amounts who were given the properties of lesser value. He further submitted that the main concern of Group-A was that the property was lying vacant which could be let out at hefty rent and this rent was being lost. It could be taken care of by allowing the Receiver to let out the property and deposit the amount in the court and ultimately necessary orders in respect of this amount could be passed by the Court. The other concern of the Group-A is to discharge the liability of State Bank of India which was the responsibility of Group-A as per the settlement. Even this could be taken care of by allowing the Receiver to negotiate with the State Bank of India with assistance of Group-A to settle the liabilities of M/s A.V.Industries.

10. Arguing on behalf of the Group-A, and opposing this OMP, Mr. Sandip Sethi submitted that the property C-28 fell in the share of Group-A even dehorse the impugned award. His submission was that as per family settlement, this property had fallen into the share of Group-A. After the dissolution of M/s A.V.Industries, the Dissolution Deed was signed among the partners. Even as per this Dissolution Deed, the property came to the share of Group-A. Group-A had to discharge the liability of State Bank of India. However, in the absence of property coming to Group-A physically it was not possible to settle the amount with the State Bank of India with the result the liability was mounting. It was initially Rs. 36 lacs which had bloated to Rs. 1.6. crores. The State Bank of India had even filed suit for recovery which was pending before the Debt Recovery Tribunal. However, recently the Reserve Bank of India had started amnesty scheme as per which the Group-A could settle the dispute with the State Bank of India by getting substantial concession and relief. This was available only till 30th June, 2001. Group-A did not want this opportunity to be slipped away. It would be to the detriment of all. This property, namely, C-28 was otherwise also lying vacant and locked. Water and electricity connection had been disconnected for non-payment of the charges. Not only its condition was deteriorating, Group-A was losing rental every month which was enormous. The loss already every month which was enormous. The loss already suffered on this account in last 2/3 years

was immense. It was also submitted that when the property had come to the share of the Group-A as per the family settlement or as per Dissolution Deed or even as per the impugned award, there was no reason to appoint somebody else as Receiver and deny that possession thereof to Group-A. The arbitrator, after the award, had become functus officio. Therefore, even balance of convenience was in favor of Group-A as the prayer made in the OMP for appointing arbitrator as Receiver was not in the interest of any Group[and rather was acting adversely to the interest of Group-A as well as others. It was submitted that the valuation of properties referred to by learned senior counsel Mr. V.K. Makhija, appearing for Group-E are irrelevant for the family settlement. The said valuations are those given in the award dated 1st January, 1999. Those are not the valuations on the basis whereof the family settlement was arrived at. This is clear, inter alia, from the proceedings of arbitration dated 8th January, 1997 which records valuation of certain properties and formed the basis of settlement signed on 9th May, 1997. The said proceedings record value of D-1, Okhla Industrial Area, Phase-1 at Rs. 5 crores while in the award, the valuation of the said property is Rs.3.5 crores. Likewise, the house at Kalkaji Extension bearing No. CC-17 is valued at Rs.4.75 crores in the said proceedings, while in the award it is valued at Rs.3.50 crores. Also property bearing No.4/7, Kalkaji Extension is recorded in the said proceedings at Rs. 2.25 crores while the same is valued in the award at Rs. 1.40 crores. Similarly, the property bearing No. 212, Okhla Industrial Estate, New Delhi is valued at Rs.6.20 crores in the settlement while in the award it is recorded at Rs.5.30. crores. Clearly there is a world of difference between the valuations in the proceedings leading to the settlement and the valuation in the award. The learned counsel further submitted that the settlement has been substantially acted upon. All Groups except Group-E have shifted out of the properties allotted to other groups under the settlement. Even Group-E during arbitration proceedings gave letter of possession for the said property, but has since dishonestly resiled there from. But for the said property, the various shifting, deliveries of possession and movements have taken place. He also submitted that as per the settlement, the property at A-9/13-C, Vasant Vihar has been sold and again in furtherance of the settlement, liabilities of Bank of India have been discharged. Significantly, the said discharge is to the benefit only of the Group-D. They have acquiesced in the said payment of liability under the settlement and, are Therefore, not entitled to any orders in the present proceedings.

11. It may be mentioned that in so far as Group-B and Group-c are concerned, they have not opposed this OMP and unequivocally supported Group-A. They have no objection if the property C-28 is delivered to Group-A.

12. I am mention that the opposing counsel had argued on the validity and legal effect of family settlement as well as the impugned award. However, I am not dealing with these aspects because these arguments have bearing on the final outcome of the objections filed to the impugned award and any expression/ opinion at this stage may not be appropriate.

13. The admitted position which emerges from the aforesaid discussion may be recapitulated as under:

i) The liability of State Bank of India is to be discharged. As Per settlement/ Dissolution Deed it falls on Group-A. Because of non-discharge of the liability, the said liability is increasing day by day and has already multiplied manifold. Group-A has got an opportunity to settle the liability of the bank at much lesser amount in view of Reserve Bank of India's scheme which is available for utilisation only up to 30th June, 2001.

ii) The property C-28, after it was evicted by National Fertilisers Ltd., is lying locked and vacant. There is no denying the fact this property would fetch substantial rent. There is already a loss of rent during all this period. This has worked to disadvantage of all persons. had this property been let out and considerable amount by way of rent earned, this money coming to Group-A or in the pool could have even solved the pending disputes. It is because most of the properties have exchanged hands as per settlement and/or award and only few edges remain to be rounded. In fact it may be mentioned that there is no dispute about the distribution of the properties. Group-A and Group-B have filed the objections challenging the award as per which they are called upon to pay Rs.1.34 crores and Rs.36 lacks respectively. The accrual of significant amount of rent for all this period would have ameliorated the situation and assuaged the feelings.

iii) Be as it may, it is not in the interest of any of the parties that the property should be lying vacant.

14. The only question, Therefore, which needs to be determined is as to whether. Sh.Navin Pal Singh Bhandari Should be allowed to let out the property and settle the matter with State Bank of India with the assistance of Group-A or whether it is the Group-A who should be allowed to do these jobs. C-28 has come to the share of Group-A by means of Family settlement as well as dissolution deed or even as per impugned award, I see no reason why possession of the property should not be handed over to Group-A. Even if the objections of the Group-A to the arbitration award are ultimately dismissed, the Group-A will have to pay a sum of Rs.1.34 crores. However, Group-A is also going to settle the liability of State Bank of India which is very substantial. Moreover, Group-A can always be put to certain terms while handing over possession of this property. I see no justified grounds in continuing the possession of this property in the hands of arbitrator as Receiver. I also see not much substance or force in the suggestion of Mr. V.K.Makhija, that Sh.Bhandari as Receiver should let out the property or deal with the State Bank of India. When the property has to ultimately come to Group-A, whether its objections to the award are sustained or dismissed, it would be more appropriate to allow this Group to deal with this property. In such mattes relating to family disputes, approach should be to create conducive environment so that the lost trust in each other is regained and it may pave way to happy ending. This can be achieved, to some extent atleast, by handing over

the property in question to Group-A and at the same time imposing certain conditions to safeguard the interest of other Groups. This is yet additional and portentous facet which persuades the court to take this particular stance.

15. This OMP is accordingly dismissed and interim order appointing Sh.Bhandari as Receiver is vacated. Sh. Bhandari is directed to hand over possession of the property to Group-A consisting of Sh.P.D. Khanna & ors. However, this would be subject to following conditions.

a) Sh.P.D. Khanna shall take the possession of the property as Receiver till the final determination of the objections to the award.

b) He shall be entitled to let out the property and the rent received from the property would be kept by him a separate account.

c) He shall submit the quarterly statement of account of rent received and expenditure incurred.

d) He shall give an undertaking that he shall comply with the final directions that may be passed in respect of this property while deciding the objections. This of course would be subject to his right to appeal, if any, against such direction if Group-A feels that the directions are adverse to its interest.

e) Group-A shall be entitled and rather under obligation to negotiate and settle the dispute with the State Bank of India and liquidate liability of M/s A.V.Industries and after the settlement, the Group-A shall inform about the term of said settlement of this court.

16. OMP and IAs. 9380/98 & 3429/99 stand disposed of.

17. OMP NO. 70 OF 2001:

18. In this OMP, following prayers are made:

1) Direct that the amount payable to the DDA towards composition fees for extension in the period of construction of plot C-7 be paid by means of banker's cheque in favor of the DDA from the sale proceeds of A-9/13 Vasant Vihar property.

b2) direct that an amount of Rs. 40 lacs be released to the applicants/respondents 11 to 14 herein for raising construction in meeting the incidental expenses of construction on the plot c-7, Okhla Industrial Area, phase-1.

3) direct the partners of the firm Okhla Ice and Food Products, namely, Y.P.Khanna, Ashok Khanna and Lajpat Rai Khanna and the legal heirs of the deceased partner Sh.O.P.Khanna to execute a power of attorney in favor of the petitioner No.1, Sh. P.P.Khanna to act as the attorney of the said Shri. Y.P.Khanna, Ashok Khanna, Lajpat Rai Khanna and the legal heirs of Sh. O.P.Khanna to represent them for all intents and purposes before the DDA, MCD and other Govt. authorities in connection with the said plot No. C-7 and the construction thereof.

19. This petition filed by Group-E is based on the averments that construction over the plot has to be made by 30th June, 2001 and if it is not done, DDA may cancel the lease of the plot i.e. C-7. According to the Group-E a sum of Rs. 12,55,156/- has to be paid to DDA and slum of Rs.40 lacs is needed for raising the construction. It is stated that as per the award Group-E is entitled to get Rs.1.6 crores, and Therefore, there should not be any objection by other Groups to the aforesaid course i.e. if the Group-E gets this money from the proceeds of the sale of A-9/13-C, Vasant Vihar property. During the arguments Mr. Makhija, learned senior counsel submitted that even if Rs. 15 lacs is given for construction that would suffice as to save the plot from being cancelled, even minimum construction would do.

20. Replying to this argument, Mr. Arun Khosla, learned counsel representing Group-C submitted that he has no objection to the prayers being allowed. However, he pointed out that as per the settlement or the award property at C-7 which has come to the share of Group-C is still being occupied by Group-E whereas all the properties as per the settlement/award have exchanged hands. Thus if Group-E was constructing this property at C-7, in fairness, possession of the property at D-1 Okhla Industrial Area should be handed over to Group-C. In fact it must be stated to the credit of Mr. Khosla that he had given some proposal which could substantially settle almost the entire disputes between the parties which is the subject matter and atleast agreed order could be passed in both these OMPs. However, on the next date of hearing, Group-E took somersault and submitted that they were not pressing prayers(a)&(b) of this petition and they had decided to pay the dues of DDA as well as raise the construction from their own resources. In so far as prayer (c) of this OMP concerned, all the parties have agreed, at the bar, to execute necessary power of attorney in favor of Sh. P.P.Khanna in connection with plot No. C-7. Some of the Groups have already executed this power of attorney. The Groups which have not executed the same, shall do so within one week. No further orders are required in this OMP which is accordingly disposed of.

21.OMP and is stand disposed of.

22. There is yet another matter where some directions are needed. Property at A-9/13-c, Vasant Vihar was sold under the orders of this Court. This property, although thrown in the common hotchpotch, was in the name of persons belonging to Group-C. Capital gain tax on this property has to be paid. It was to be paid, according to Mr. Khosla representing Group-C, by 31st March, 2001 and non-payment thereof is incurring interest at the rate of 2 per cent per month. Although there was some dispute as to whether the property gain tax is to be paid by 31st March, 2001 or by 31st July, 2001 there is no denial that this income tax liability has to be discharged from the sale proceeds of A-9/13-C, Vasant Vihar Property. The Group-C shall, Therefore, be entitled to withdraw the money payable to Income Tax Department on account of capital gain tax on the sale of property at A-9/13-C, Vasant Vihar, New Delhi and deposit with Income

Tax authorities. The Group-C shall, however, submit the necessary documents evidencing the payment made to the Income Tax Department on this account.

23. Copy of this order be placed in OMP No.70 of 2001.

24. duty to counsel.