
(2009) 04 DEL CK 0275
In the Delhi High Court
Case No : OMP No. 321 of 2008

Sh. Balraj Bedi and Others	Vs	APPELLANT
Sh. Brij Lal Bedi and Others		RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 9

Citation : (2009) 04 DEL CK 0275

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Dilip Singh and Abhishek Dhawaj Singh, for the Appellant; Mahender Rana, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—This petition u/s 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the ?Act?) was filed on behalf of the petitioners on 5th May, 2008.

2. It is submitted that the Petitioner No. 1 and Petitioner No. 2 are the son and wife of Respondent No. 1 respectively. Petitioner No. 3 is the son of Petitioner No. 1. Respondent No. 2 is the wife of pre- deceased son of Respondent No. 1. Respondent Nos. 3 and 4 are sons of Respondent No. 2 and Respondent Nos. 4 and 5 are the daughters-in-law of the same.

3. Respondent No. 7 is the son-in-law of Respondent No. 1 and the pre-appointed arbitrator. Respondent No. 7 is alleged to be an interested party of the Family Settlement as he is the brother-in-law of Petitioner No. 1 and his wife will be a beneficiary of the Family Settlement dated 16th June, 2006.

4. The Petitioners allege that their signatures were obtained on the Family Settlement by force and undue influence exercised by the father of Petitioner No. 1 (who is Respondent No. 1) and Respondent No. 7 by virtue of being the elders of the family.

5. The Petitioners submit that while the said Family Settlement was being drafted, they specifically asked that the property No. B-90 Gujarawalan Town, Delhi should not be made part of the settlement as the same was the self-acquired property of the Petitioner No. 1 and under his proprietorship but the same has been mentioned as a family business in the said settlement. Therefore, the Petitioners rescinded the said settlement and communicated the same to the Respondents.

6. The Petitioners further allege that there were no conflicts existing at the time when the Family Settlement was prepared, hence there was no need of preparing the same but it was only done to cause disadvantage and loss to the petitioners. The terms of the said Family Settlement dated 16th June, 2006 have been referred by the petitioner during the course of hearing.

7. The Petitioners sent two legal notices dated 16th February, 2007 and 3rd March, 2007 whereby Respondent No. 7 allegedly threatened the Petitioners to carry out their part of the Family Settlement. The said legal notices have been filed by the Petitioners.

8. The Petitioners submit that they sent a notice to the Respondents requesting to appoint some other person in place of Respondent No. 7 as Arbitrator.

9. The Petitioners have suggested the names of Mr. Naresh Malhotra and Mr. Pradeep Tuli as Arbitrators and have asked the Respondents to choose one of the two. The said two persons are allegedly not related to the family but are known to both the Respondents and the Petitioners.

10. The following prayers have been made in the petition against the respondents that he should:

a. Be restrained from alienating in any way any property which is the subject matter of the Family Settlement before the completion of arbitration proceedings.

b. Be directed to produce the original copy of the Family Settlement before the Hon'ble court.

11. This petition has been opposed by respondents 1 to 6 on various grounds including (a) that the Petitioners are guilty of concealment of material facts as the petitioners have not disclosed before this Court that the Family Settlement has been substantially acted upon; (b) that the Petitioners performed many acts for its due enforcement; (c) that petitioners signed and executed various documents as Executants and (d) that Petitioners also signed/executed various documents as witness which were executed in furtherance of Family Settlement and were registered with the statutory authorities.

12. It is further contended that the petitioners are trying to grab the property, subject matter of the Family Settlement dated 16th June, 2006 by committing blatant breach of the terms and conditions set out in the Family Settlement and in view thereof, the ex parte ad interim injunction is liable to be vacated and the

main petition filed by the Petitioners is an abuse of the process of the court and deserves to be dismissed.

13. The respondents have also mentioned the details of the properties in the Family Settlement which also includes the details wherein the said family settlement has been acted upon by the petitioners after 16th June, 2006. In para 4 of the reply, the said details are given as under:

I. Property bearing No. B-104, Gujaranwala Town, Part-I, Delhi (Described as Item No. A in the Family Settlement dated 16.6.2006).

(a) This property was owned and possessed by Smt. Sudarshan Kumari Bedi W/o Shri Brij Lal Bedi, Respondent No. 1.

(b) During her life time, Smt. Sudarshan Kumari Bedi executed and left behind her last Will and Testament dated 8.9.1994 bequeathing property bearing No. B-104, Gujaranwala Town Part I, Delhi in favour of her husband Brij Lal Bedi, Respondent No. 1 herein for ever and absolutely and to the exclusion of all others.

(c) To the aforesaid Will dated 8.9.1994 Petitioner No. 1, Balraj Bedi, was one of the Witness.

(d) Respondent No. 1/Brij Lal Bedi, got the said property conveyed by DDA in his favour vide registered Conveyance Deed dated 8.3.2001 and Respondent No. 1/Brij Lal Bedi vide registered Conveyance Deed got the grant of Revisionary Interest of the Vendor (Preet Pal Singh Uppal) in his favour in consideration for a sum of Rs. 39,295/- and became the registered purchaser of all the Revisionary Interest in the said property from the DDA.

(e) Respondent No. 1/Brij Lal Bedi, gifted vide registered Gift Deed dated 5.1.2007 in favour of Smt. Radha Rani Bedi (Daughter-in-law), wife of his deceased son Shyam Sunder Bedi. And according to Family Settlement dated 16.6.2006 the property now vest in favour of Smt. Radha Rani and the Family Settlement to the aforesaid purpose has been duly affirmed, confirmed, acknowledge, acted upon to the admitted notice and knowledge of the Petitioners and the aforesaid material facts have been withheld and not disclosed mala fide by the Petitioners from this Hon'ble Court and the Petitioners have no right, title or interest of any nature whatsoever in property bearing No. B-104, Gujaranwala Town Part-I, Delhi in any manner whatsoever in view of Family Settlement dated 16.6.2006.

II Property bearing No. A-135, Gujaranwala Town Part I, Delhi (Described as Item No. C in the Family Settlement Dated 16.6.2006):

(a) Original owner was Sardar Singh Uppal. Property comprises of Ground Floor, First Floor and Second Floor with terrace right.

(b) The owner, Sardar Singh Uppal executed three Agreements to Sell dated 16.3.2000 vis-a-vis (i) Ground Floor in favour of Smt. Pravin Bedi, Respondent

No. 4 (ii) First Floor in favour of Smt. Radha Rani Bedi/Respondent No. 2 and (iii) Second Floor with terrace right in favour of Smt. Sneha Bedi/Respondent No. 5.

(c) besides execution of three Agreements to Sell dated 16.3.2000, Sardar Singh Uppal executed various documents, namely, Indemnity Bond, Special Power of Attorneys, General Power of Attorney, Affidavits, Will, Receipt, Possession Letter and Agreement for Arbitration.

(d) Sardar Singh Uppal executed three Special Power of Attorneys in favour of Petitioner No. 1/Balraj Bedi, in respect of Ground Floor, First Floor and Second Floor with terrace rights of property bearing No.A-135, Gujranwala Town part I, Delhi empowering him to sell the Ground Floor, First Floor and Second Floor with terrace rights in favour of the purchasers and to further sign Sale Deed and got the same registered before the Sub Registrar, Delhi to admit execution thereof and to do all other acts, deeds and things which are necessary for getting the sale Deed registered with the Sub Registrar, Delhi. The Special Power of Attorneys was irrevocable.

(e) Joginder Singh Uppal" S/o Sardar Singh Uppal, executed three registered Special Power of Attorneys in favour of Balraj Bedi, Petitioner No. 1 herein duly authorizing and empowering him to execute and sign Conveyance Deed, to enter into Agreement to apply to DDA for conversion, to sell the Ground Floor, First Floor and Second Floor with Terrace rights, to execute Sale Deeds thereof, to hand over possession, to get the Sale Deed registered with the competent registered authority.

(f) Pursuant to this registered Special Power of Attorneys dated 16.3.2004, DDA executed a registered Conveyance Deed on 13.6.2000 in favour of Balraj Bedi.

(g) That Petitioner No. 1, Balraj Bedi, executed three registered Sale Deeds dated 24.11.2006 vis a vis Ground Floor in favour of Pravin Bedi, First Floor in favour of Smt. Radha Rani Bedi and Second Floor with terrace rights in favour of Smt. Sneha Bedi.

(h) As per Family Settlement dated 16.6.2006 this property which has been described as Item No. C in the Family Settlement has to ultimately go in favour of Respondent No. 1/Brij Lal Bedi and Brij Lal Bedi/Respondent No. I has no grievance of any nature whatsoever of the said properties standing in the name of three vendees as per the registered Sale Deed dated 24.11.2006. Moreover, the petitioners as per the Family Settlement dated 16.6.2000 have no right, title or interest in the said property and have no cause to be aggrieved in any manner whatsoever to claim any share in the said property in view of the Family Settlement dated 16.6.2006. Petitioner No. 1 is estopped by his conduct and taking steps pursuant to and in furtherance of the family Settlement dated 16.6.2006 by acting upon three registered Special Power of Attorneys, executed in his favour by the erstwhile owner pursuant to which registered Conveyance Deed dated 13.6.2000 was executed in his favour and based upon the registered Conveyance Deed in his favour and acting as Special Power of Attorney holder of

the owner Sardar Singh Uppal and in furtherance of three Agreements to Sell dated 16.3.2000 executed three registered Sale Deeds dated 24.11.2006 in favour of Respondent Nos. 2, 4 and 5 respectively.

(i) The petitioners have no right, title or interest of any nature whatsoever in the said property in view of Family Settlement dated 16.6.2006 and even otherwise, Respondent No. 2, 4 and 5 being registered owners in possession of their respective portion of property bearing No. A-135, Gujranwala Town Part I, and Delhi.

III. Property bearing no. B-90, Gujranwala Town, Delhi (Described as Item No. B in Family Settlement dated 16.6.2006):

(a) The property was owned by Petitioner No. 1/Balraj Bedi.

(b) As per Family Settlement, the said property fell to the share of Balraj Bedi and Balraj Bedi continues to be the owner. Family Settlement acted upon.

IV. Shop at B-1, Model Town, Delhi (Described as Item No. D-1 of the Family Settlement dated 16.6.2006):

(a) This property was owned by Smt. Radha Rani/Respondent No. 2 and Smt. Achla Rani/Petitioner No. 2 in equal share.

V. Shop at property No. F-14/34, Model Town, Delhi (Described as Item No. D-2 in Family Settlement dated 16.6.2006):

(a) The original owner Pradeep Bedi/Respondent No. 3 and Balraj Bedi/Petitioner No. 1 in equal shares.

(b) According to Family Settlement dated 16.6.2006 the aforesaid" two properties were to be settled by way of lottery between the four owners on the further condition that whichever party upon lottery gets shop at Item No. D-2 shall be entitled to get further a sum of Rs. 20 Lacs from the owners who will get property described at Item No. D-1.

(c) Upon lottery properly at item No. D-1 went to the share of Smt. Radha Rani/Respondent No. 2 and property described at Item No. D-2 upon lottery went to the share of Balraj Bedi.

(d) Family Settlement dated 16.6.2006 was fully acted upon wherein a registered Sale Deed dated 7.11.2006 was executed by Smt. Achla Rani Bedi/Petitioner No. 2 in favour of Smt. Sneha Bedi/Respondent No. 5 whereby her share in one shop bearing private No. 3 on Lower Ground Floor of the area of 12 feet x 75 feet approx. of property No. B-1, Model Town Delhi was sold to Smt. Sneha Bedi pursuant to and in furtherance of the family settlement dated 16.6.2006 and (sic) vide registered Sale Deed selling his on Nov, 2006 Pradeep Kumar Bedi, executed a Sale Deed selling his share in shop described as Item No. D-2 in the Family Settlement dated 16.6.2006 in favour of Achala Bedi wife of Balraj Bedi. With the simultaneous execution of two registered sale deeds thereby making

Respondent group as one absolute owner of property described at Item No. D-1 and D-2 respectively, the Petitioners duly acknowledged, confirmed, affirmed who have received Rs. 20 Lacs., from the Respondents No. 2 and 3 and after acknowledging to have received Rs. 20 Lacs., Smt. Achla Bedi wife of Balraj Bedi executed the Sale Deed of her share in the property fallen to the share of Smt. Radha Rani Bedi in accordance with the family settlement dated 16.6.2006 and the petitioners herein are falsely claiming to have not received Rs. 20 Lacs., since the same is wholly an afterthought coupled with malafide intentions to extract more money from the Respondent by taking recourse of making mis-statements, misrepresentations based on falsehood and concoction. The execution the sale deed by the Petitioner No. 2 wife of Petitioner No. 1 in favour of Respondent No. 2 would belie the falsity of the frivolous claim of the Petitioners of not receiving a sum of Rs. 20 Lacs., from the Respondent since after the receipt of Rs. 20 Lacs, that the Petitioner No. 2 executed registered Sale Deed in favour of Respondent No. 2 for the total satisfaction, execution and implementation of the terms and conditions set out in the family settlement dated 16.6.2006. The petitioners are estopped from raising false, frivolous, vexatious, untenable, concocted claims which are belied by the execution of registered documents of sale.

VI Godown at Alipore described as Item No. E of Family Settlement dated 16.6.2006:

(a) Owners are Smt. Sneha Bedi/Respondent No. 5 and Smt. Neetika Bedi/Respondent No. 6.

(b) According to Family Settlement dated 16.6.2006 this property goes in favour of Petitioner No. 1/Balraj Bedi and Respondent No. 2/Smt. Radha Rani, in equal shares.

(c) Original documents of title are in power and possession of Balraj Bedi/Petitioner No. 1 herein.

(d) Despite repeated reminders Balraj Bedi refused to hand over the original papers to the Respondent for effecting transfers pursuant to the Family Settlement dated 16.6.2006. Respondent No. 2 were ready and willing and are still ready and willing to perform their part of the Family Settlement dated 16.6.2006 but in the absence of original documents the same could not be executed.

VII. Land at Narela described at Item No. F in Family Settlement dated 16.6.2006:

(a) Original owners, Smt. Radha Rani, Respondent No. 2 and Smt. Achla Rani/Petitioner.

(b) According to Family Settlement dated 16.6.2006 40% will be retained by Smt. Radha Rani, Respondent No. 2 and 40% will be retained by Smt. Achla Rani/Petitioner No. 2 and the remaining 20% will go to Brij Lal Bedi/Respondent No. 1. Original documents of title in power and possession of Balraj Bedi. Despite

repeated reminders Balraj Bedi has not hand over the original papers. The Petitioner No. 2 Smt. Achla Rani is refusing to transfer her 10% share in the said property in favour of Brij Lal Bedi while Respondent No. 2 is willing to transfer her 10% share in favour of Brij Lal Bedi but for want of original papers the same could not be done. Even otherwise according to Family Settlement dated 16.6.2006 is withholding 10% share more and is liable to transfer the same in favour of Respondent No. 1 and the Petitioners cannot be aggrieved at all of non implementation of the Family Settlement dated 16.6.2006 since they have to transfer their 10% share in favour of the Respondent and not vice-versa.

VIII. Property No. 4410 - 4415, Katra Bagla, Nai Sarak, Delhi 110 006 described at Item No. G in Family Settlement dated 16.6.1006:

(a) Undivided 3/6th share in the name of Smt. Radha Rani/Respondent No. 2.

(b) Undivided 2/6th share in the name of Brij Lal Bedi/Respondent No. 1.

(c) Undivided 1/6th share in the name of Balraj Bedi/Petitioner No. 1.

IX. Tenancy right of property No. 1580 - 1581, Nai Sarak, Delhi - 110006:

(a) Owner of tenancy right in the name of Brij Lal Bedi/Respondent No. 1.

(b) Partnership firm - Mis. Shyam Sunder Balraj Kumar Bedi running a partnership business with two partners Shyam Sunder Bedi and Balraj Kumar Bedi, two sons of Brij Lal Bedi.

(c) Upon the death of Shyam Sunder Bedi, the firm was running under the proprietorship of Balraj Bedi/Petitioner No. 1.

(d) Pursuant to settlement talks and amicable settlement arrived at between the parties the Memorandum of Family Settlement dated 19.1.2007 was arrived at between the parties and reduced into writing whereby property No. 1580 - 1581, Nai Sarak, Delhi - 6 came to the share of Pradeep Kumar Bedi I Respondent No. 3 and Pravin Kumar Bedi I Respondent No. 4 and necessary transfer would be effected in their name by Balraj Bedi/Petitioner No. 1.

(e) Pursuant to Family Settlement dated 19.1.1007 Balraj Kumar Bedi/Petitioner No. 1 closed his proprietorship firm with an undertaking of payment of all taxes on or before 19.1.2007 to be paid by Balraj Kumar Bedi, with further undertaking and confirming that Pradeep Kumar Bedi and Pravin Kumar Bedi shall be entitled to get the tenancy rights of the said property transfer in their names or in their nominees name and further entitled to get ownership right in their names, if any.

(f) Pursuant to Memorandum of Family Settlement dated 19.1.2007, Respondents No. 3 and 4 are in actual physical constructive possession of property bearing No. 1580- 1581, Nai Sarak, Delhi-6 and their names have been recorded before the Statutory Authority.

(g) Simultaneously for due execution and implementation of the Memorandum of Family Settlement dated 19.1.2007, the Respondent No. 1/Brij Lal Bedi released

his 2/6th share in the property No. 4410-4415, Katra Bagla, Delhi- 6 vide Relinquishment Deed dated 19.1.2007 and simultaneously Smt. Radha Rani released her undivided 3/6th share of the property bearing No. 4410-4415, Katra Bagla, Delhi-6 in favour of Balraj Bedi/Petitioner and accordingly Memorandum of Family Settlement dated 19.1.2007 was fully acted upon by the petitioners respectively and property described at Item No. 5 in the Family Settlement dated 16.6.2006 has been fully acted upon and nothing remains to be done.

X. Three shops at Derawala Nagar, Delhi described at Item No .H in Family Settlement dated 16.6.2006:

(a) Shop No. A now purchased by Balraj Bedi/Petitioner No. 1 and Pradeep Bedi was his General Power of Attorney.

(b) Shop No. B belonged to Pravin Bedi/Respondent No. 3 and Bipin Bedi/Petitioner No. 3.

(c) Shop C belongs to Pradeep Bedi/Respondent No. 3 and Bipin Bedi/Petitioner No. 3.

(d) According to Family Settlement dated 16.6.2006 priority was given to Respondent No. 1 Brij Lal Bedi to choose any shop out of A, Band C and accordingly priority was exercised by Respondent No. 1/Brij Lal Bedi by making the choice of Shop No. B pursuant to which both co- owners Bipin Bedi and Praveen Bedi/Respondent No. 4, and the Petitioner No. 3 executed Sale Deed dated 10.11.2006 in favour of Brij Lal Bedi/Respondent No. 1 in which Petitioner Balraj Bedi was a witness.

(e) Pursuant to Family Settlement dated 16.6.2006, Shop No. A and C were put to lottery and lottery, Shop No. A went to the share of Balraj Bedi/Petitioner No. 1 and Shop No. C went to the share of Pradeep Bedi/Respondent No. 3 and other co-owners Bipin Bedi/Petitioner No. 3 executed Sale Deed dated 22.11.2006 in favour of Pradeep Bedi in which Balraj Bedi/Petitioner No. 1 signed as a witness. Property described at Item No. H was fully acted upon in accordance with Family Settlement dated 16.6.2006 and nothing more is required. Shop No. A was transferred by a Registered Sale Deed in favour of Pradeep Bedi as GP A in favour of Balraj Bedi as per the Family Settlement dated 16.6.2006.

(f) The allegations set out in para 180f the petition are belied by execution of Sale Deeds by the Petitioners in favour of Respondent pursuant to and in furtherance of the Family Settlement dated 16.6.2006 which was fully acted upon and wherein Petitioner No. 1 has signed those Sale Deeds as a witness is estopped precluding from raising frivolous, untenable, vexatious claim in the said property.

XI Property at Surat bearing No. 4/1764, Begam Pura, Nawab Wadi, described as Item No. 1 in Family Settlement dated 16.6.2006:

(a) Present Owner Pradeep Kumar Bedi/Respondent No. 3.

(b) According to Family Settlement dated 16.6.2006 this property has fallen to the share of Brij Lal Bedi/Respondent No. 1 in addition to the payment of Rs. 6 Lacs. In the process of implementation, the Petitioners have no right, title or interest of any nature whatsoever in the said property and according to Family settlement dated 16.6.2006 have no claim in the said property and therefore, are not all can be aggrieved of its pendency of implementation to the above.

14. On merits, it is stated by the respondents that the petitioners having agreed in the Memorandum of settlement to appoint Mr. Vijay Kumar Wahi as the sole arbitrator to adjudicate upon the disputes or differences of opinion with reference to the interpretation of the settlement or implementation of the Memorandum of Family Settlement, there is no question of challenging the said appointment of the arbitrator as per well established law. It is further argued by learned Counsel for the respondents that the petitioners have a remedy under the law in case the petitioners apprehend that the arbitrator is biased and for the said purpose, the petitioners could move an application before the arbitrator. Since the Family Settlement has already been executed and acted upon by the petitioners, the present petition is highly misconceived and is liable to be dismissed with costs.

15. The only question for consideration of this Court is whether it is a fit case where the interim order granted by this Court on 9th June, 2008 should continue or not.

16. After having gone through the pleadings and documents, I feel that the family settlement is duly signed by all the parties and substantially acted upon coupled with the fact that the petitioners have filed an application u/s 11 of the Act for appointment of arbitrator which is pending disposal. As and when the arbitrator will be appointed, all the issues raised by the parties will be decided by the arbitrator on merit. It is not prudent to decide the question of validity of family settlement on merit otherwise it may prejudice either of the parties in view of the allegations and counter allegations raised by them. Thus, the ex parte ad interim order granted on 9th June, 2008 cannot continue and the same is vacated. The petitioners have failed to make out a prime facie case in their favour. For the reasons stated above, balance of convenience also lies in favour of the respondents. In case the interim order will continue, the respondent will suffer irreparable loss and injury. The main petition u/s 9 of the Act is also disposed of with these directions.

17. The arbitrator when appointed shall be within his rights and power to consider and go into the entire gamut of disputes and effectively adjudicate upon the disputes between the parties. It is made clear that the observations made in this order are tentative and the same will not bind the Arbitral Tribunal.

18. As a result, the petition is dismissed with costs of Rs. 20,000/- to be paid by the petitioners to the respondents within four weeks from today. A copy of this order be given dasti to the parties under the signatures of Court Master.