

(1991) 03 DEL CK 0038
In the Delhi High Court
Case No : S. No. 788A of 1985

Sh. Shori Lal Monga and others

APPELLANT

Vs

Sh. Manmohan Lal Monga and others

RESPONDENT

Date of Decision : 08-03-1991

Acts Referred:

Citation : AIR 1991 Delhi 271 : (1991) 44 DLT 111

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : Sh. S.N. Marwah and S.N. Gupta, for the Appellant; Suresh Singh, for the Respondent

Judgement

1. The facts emerging in this case are that Shri Shori Lal Monga, his sons S/Shri Man Mohan Lal Monga, Krishan Kumar Monga, Anil Kumar Monga, Avinash Kumar Monga, Ratna Monga, Madhu Monga and Veena Monga later three ladies being daughters in law of Shori Lal Monga executed an arbitration agreement dated 4-7in the following words:

"Whereas disputes have arisen between the parties of this deed and they are desirous of referring their disputes to the arbitrator under the provisions of the Arbitration Act. The matters in difference between the parties are their shares with regard to the assets and liabilities of the following:

1. M/s. Shori Lal and Sons, shop No. V-5 and X 70, Loha Mandi, Naraina, New Delhi. Shop No. 257, Loha Mandi, Ghaziabad.
2. Plot No. 3/18, Rajinder Nagar, Ghaziabad .
3. H. No. 1676/77 Kucha Dabhani Rai, Daryagang.
4. H. No. 11113, East Punjabi Bagh, Delhi-26.
5. Plot No. 15, East Avenue-, Punjabi Bagh, Delhi.
6. Factories of plot No. A-80, Wazir Pura, Industrial Area, Delhi-I.

7. Bank account.

8. Dealing with M / /s. Steel Authority of India, Tata Iron and Syndicate Co., Indian Iron and Steel Co.

9. M / s. Krishan Kumar Bros.

10. M/s. Monga Industries, 11/ 13, Punjabi Bagh, Delhi.

That the parties being interested hereby mutually agree that the matters in difference with regard to their respective shares in the assets and liabilities between them be referred to the sole arbitration of Sh. Parma Lal s/o Sh. Natha Mal, 14/9, East Punjabi Bagh, New Delhi and agree to appoint him as Arbitrator as agreed upon between themselves.

That the parties to this deed also agree that the aforesaid matters of difference are referred for determination to the above Arbitrator Sh. Parma Lal and the parties agree that his decision in the matter shall be final and binding upon them and the shall make an award to this effect to which the parties agree that the Award shall be binding upon them. The award shall be made in writing.

Executants (signed by all

the parties)

The parties aforesaid executed another memorandum dated 23rd October 1983 to the following effect:

"In furtherance of our agreement dated 4-7-83, we further agree that the differences between the parties with respect to their inter se disputes where money is given by a firm or partners and taken by any of the partners is also hereby referred to the arbitration of the named arbitrator Sh. Panna Lal."

2. The proceedings before the Arbitrator indicate that the wives of S/Shri Krishan Kumar, Man Mohan Lal and Avinash authorised their respective husbands to appear in the proceedings before the learned Arbitrator on their behalf. The Arbitrator directed the parties to file their respective claims from time to time. S/ Shri Shori Lal, M. M. Monga, Anil Kumar, Avinash Monga, Reena Monga and Madhu Monga filed their letters dated 21-12-84 before the arbitrator saying that their claims were under preparation and were not yet complete. Therefore, they requested further two weeks. KK Monga vide letter dated 2-1-85 requested the arbitrator to allow him to file his claim and that of his wife on 25-1-85. The proceedings of 21-12-84 signed by the arbitrator permitted the parties to file their claim on 4-1-85 at 11 a.m. The discussions then took place on 5-1-85, but since KK Monga was absent, the hearing was adjourned for discussions with him. The proceedings do not indicate the date of adjournment. However, it is then further recorded that KK Monga came in the evening of 5-1-85 and extension for filing the claim was granted to him up to 25-1-85. The award dated 4-4-1985 shows that Krishna Kumar filed his claim on 24-1-85, It is also apparent from the proceedings of 9-11-83 that the proceedings were being recorded by Pt. Maharaj

Kishan, Advocate at the instance of the parties and they accepted the same to be correct.

3. The application u/s 14(2) of the Arbitration Act (hereinafter referred as the Act) is signed by Sh. Suresh Singh, Advocate wherein he said that he had been requested and authorised to file the original stamped award made by the Arbitrator together with records of the arbitration proceedings in this Court u/s 14(2) of the Act. He had also been directed by the Arbitrator to ensure that the records and the proceedings are put in a sealed cover to avoid any possibility of tampering with the original proceedings. It then appears that the matter was listed before the Registrar on 13-5-1985. None was present on behalf of the Arbitrator or the parties on that date. The Award along with the proceedings was ordered to be taken on record. Notice was issued. to the parties. On 17-5-1985, the parties put in appearance through their counsel S/Sh. S. N. Marwaha and M. L. Varma. Objections were filed on 18-5-1985 on behalf of S/Shri Shori Lal Monga, Man Mohan Lal Monga. Avinash Monga and Anil Kumar Monga (IA 2906/87) and by way of further objections by them on 16-7-85 in is 3530/85. Smt. Madhu Monga wife of Sh. Man Mohan Lal Monga filed objections being is No. 3602/85 on 8-7-85. The objections in is 2906 / 85 briefly, are that they were not served with any copy of the award or with any notice of filing of the award in this Court, that the award was the handy work of manipulation by Krishan Kumar Monga (In short KKM) and his wife Smt. Ratna Monga in collusion with the arbitrator, that after February, 1984 the proceedings were abandoned by the Arbitrator and common steps were taken for calling upon him to proceed with the reference and decide the disputes, compelling Sh. Man Mohan Lal Monga to file an application u/s 20 of the Arbitration Act which was registered as Suit No. 1106A/84. Even otherwise most of the proceedings were recorded by the Arbitrator in a register. Instead of filing that register, the Arbitrator has torn a leaf from it and filed the same withholding rest of the proceedings. Objectors were previously not aware of the close association of the Arbitrator with KKM who were dining and drinking together in evenings daily and even going outside Delhi together. His wife Ratna Monga is stated to be the real grand daughter of the Arbitrator's, sister. KKM during the arbitration proceedings had given in writing that the compensation due to Shori Lal and soon from two parties were to be transferred in favor of Monga Industries and so on. The award is stated to have been prepared by the Advocate of KKM and the Arbitrator is alleged to have merely signed the same.

4. In short the award is stated to be bad because:

(a) It is not registered u/s 17 of the Registration Act while it purports or operates to create declare, assign, limit and extinguish the right, title and interest of the value of Rs. 100/- and upwards to and in immovable property.

(b) It is beyond the scope of the Arbitration agreement.

(c) Arbitrator refused to act on 9-3-1985 in writing on account of which he lost

jurisdiction to make an award.

(d) The Arbitrator made himself unfit to act as such in the light of episode of 30-3 -85, that is, the last meeting in the house of the cousin sister of objectors 3 to 5 and KKM where abuses were hurled by him on Shori Lal, Objector-1.

(e) The claim of KKM was accepted by the Arbitrator in the absence of all other parties on 24-1-85.

(f) The Arbitrator did not bother to secure the claim of all the parties. He also did not record any evidence and matter could not have been disposed of without recording the evidence.

(g) The Arbitrator has not applied his mind and has wrongly recited at a number of places that the parties have agreed.

(h) Fastening of liability on Shori Lal for payment of Rs. 5,80,000/- for the benefit of KKM was not the subject matter of any dispute. The Arbitrator also seems to have practically gifted a sum of Rs. 1,25,000/- to KKM without any right. No such claim as aforesaid was made -even by KKM.

(i) The Arbitrator has not determined the legal rights of the parties and has acted only as a conciliator to bestow all benefits on KKM.

(j)The Arbitrator has mis conducted himself by not giving copies of the award to the objectors.

(k) The Arbitrator has given goodwill of Shod Lai and sons to KKM without jurisdiction.

(l) The Award has been improperly procured by KKM on account of relationship of his wife with the Arbitrator by bribing the Arbitrator.

(m) The Arbitrator had been discussing the matter with KKM behind the back of the Objectors.

(n) It has been manipulated by KKM and his wife in collusion with the Arbitrator.

(o) It is insufficiently stamped, was riot made in time and is ante dated.

(p) The division of plots Y-5 and X-70 is not permissible by DDA and it could result in cancellation of lease by DDA.

(q) The Arbitrator did not give anything to Mrs. Madhu Monga and Mrs. Reena Monga. Some matters included in the Award were not even the subject matter of Arbitration agreement. So the Award is without application of mind.

(r) The award says that certain decisions have been given as agreed to by the parties, whereas no such admissions or concessions were made by the objector.

(s) The Arbitrator mis conducted him self and the proceedings and even deprived the founder of the business and disabled him from carrying on business.

(t) That there are errors of law and facts apparent on the face of the Award. He had tendered his resignation on 9-3-1985 and thereafter he did not fix any date.

(u) If the Objectors had known the close relationship between the Arbitrator and KKM, they would never have agreed to his arbitration.

5. Almost similar objections were repeated in is No. 3530/ 85 except that some more details of the objections already taken up were given. For instance the Arbitrator told the Objectors including Mrs. Madhu Monga not to engage any counsel while he himself engaged a counsel, Pt. Maharaj Kishan at the instance of the parties. Then it is also stated that top portion of page 7 and bottom portion of page 6 of the proceedings before the Arbitrator appear to have been cut off. Proceedings of 18-1-84 do not bear signatures of the Arbitrator. Different ink appears to be used on the same date and the entire writing shown at page 7 below the signatures of the parties has been inserted without the knowledge of the Objectors. Para 33 of this objection petition narrates the details of the account of Shri Lal & Sons produced before the Arbitrator, and the Award in favor of KKM is stated to be even beyond what was claimed by him. The Arbitrator is also alleged to have withheld some record as alleged in para 6 of the application. Although proceedings stood concluded before the Arbitrator on 5-1-85, the statement of claim of KKM and his wife-dated 24-1-85 was filed on 25-1-85 in the absence of the objectors. The detailed history of the various business firms of the joint family are then given in these objections. It is alleged that the founder of these concerns i.e. father of the parties Shri Shori Lal Monga has been deprived of the business altogether including the goodwill by making a direction that the business will be deemed as dissolved with effect from 4-7-1983.

6. The third set of objections has been filed by Smt. Madhu Monga wife of Sh. Man Mohanlal Monga vide is No. 3602/85. She has adopted the objections filed by others as alleged in para 1 of the application itself. She has, thereafter practically repeated the objections by others.

7. Replies to all these objection petitions have been filed on behalf of KKM and his wife Smt. Ratna Monga controverting the objections. Suffice it to say that the award has been supported on their behalf, and that it was not insufficiently stamped or ante-dated or was without application of mind.

8. Following issues were framed:

1. Whether the award in question is insufficiently stamped? If so to what effect? OPO

2. Whether the award in question is compulsorily register able? If so to what effect? OPO

3. Whether any part of the award is beyond the scope of reference as contained in arbitration agreement dated July 4, 1983? If so to what effect? OPO.

4. Whether the award has been made within time? If not to what effect? OPO

5. Whether there was any memorandum dated October 23, 1983 enlarging the scope of the arbitration agreement dated July 4, 1983? If so whether the award is within the scope of that memorandum? OPO

6. Whether the award is liable to be set aside on account of objections contained in is Nos. 3530/85, 3602/85 and 2906/85 or any one of them? OPP

7. Whether any of the objection petitions is barred by time? OPR.

8. Whether the arbitrator has mis conducted him self or the proceedings as mentioned in the objection petition? OPO

9. Whether the arbitrator determined all the questions referred for his adjudication? If not, whether the award is liable to be remitted back to the arbitrator? OPO

9. I have heard learned counsel for the parties and have carefully perused the record of this case as well as the arbitration proceedings. I would first like to take up Issue No. 8.

Issue No. 8.

10. The allegations regarding the misconduct of the arbitrator are briefly contained in paras 5 and 6 of is 2906/ 85. It is stated that the Arbitrator had held the arbitration proceedings for some days up to February 1984 and thereafter abandoned the proceedings and no steps were taken by him to proceed with the reference. Its result was that after waiting for a long period one of the parties namely Manmohan Monga filed an application under S. 20 of the Act registered as Suit No. 1106-A/84, for filing the arbitration agreement and referring the disputes to an arbitrator. But during those proceedings it became apparent that the matter had already been referred to the Arbitrator and, Therefore, the non-objector moved an application under S. 28 of the Act registered as OMP 112/ 84 for extending the time for making the award by the arbitrator. Vide order-dated 6-12-84 Hon"ble Mr. Justice D. P. Wadhwa extended time by 4 months from that date for the award being made by the Arbitrator. The parties then appeared before the Arbitrator on 14-1284 as directed, whereupon the Arbitrator told them that they need not engage any counsel because the matter was very limited in scope amongst near relations. He further told them that the previous proceedings would be deemed to have not taken place at all and he would proceed afresh only to decide the disputes covered by the arbitration agreement dated 4-7-83. He, Therefore, directed the parties to file their claims and after receipt of replies, he promised to record evidence and hear the parties. The record of the arbitration proceedings, however, now reveals that the Arbitrator had withheld the filing of complete record in a mala fide and dishonest manner and produced the record only up to 5-1-85 although there were sittings after that date also and specifically on 9-3-1985 during the course of which the Arbitrator showed his inability to proceed with the Arbitration. He also made it clear that he would not make any award because the parties did not

agree to mutually settle the matter in spite of his best efforts. He also agreed to return the papers. A sitting took place on Ram Navami day i.e. on 30-3-85 at the residence of Smt. Ramesh wife of Shyam Sunder who happens to be cousin sister of the parties. There a quarrel took place and even abuses were exchanged between the Arbitrator and Shori Lal objector 1. The Arbitrator then left the place threatening to take revenge as he had been insulted.

11. In reply to these allegations, it is stated by KKM and his wife that proceedings were never abandoned at all. Some of the objectors in a mala fide manner moved an application under S. 20 of the Act wherein this Court directed the parties to appear before the Arbitrator. Other allegations contained in para 5 were denied. The allegations in para 6 were also denied. Visit to the house of Smt. Ramesh was admitted. However, allegations regarding exchange of any abuses or threat given by the Arbitrator were denied. It was also denied if the Arbitrator had asked the parties not to engage counsel or that the previous proceedings would be considered as having not taken place at all and that the proceedings would be started afresh.

12. In this respect it will be pertinent to refer to the proceedings before the Arbitrator. Page 1 of the proceedings does not mention any date as to when the proceedings commenced before the Arbitrator. However, it is recorded that the parties appeared before the Arbitrator at 9/ 14. Punjabi Bagh, New Delhi. The Arbitrator directed the parties to file their respective claims as per their entitlements before him on 21-8-83 at the aforesaid Punjabi Bagh address either individually or collectively. The proceedings bear the signatures of the parties and Therefore, it may be presumed that these proceedings took place on any date before 21-8-83. The second page is a record of the proceedings dated 28-10-83. It is not explained in these proceedings whether any proceedings took place on 21-8-83 as directed by the Arbitrator. However, after recording the presence of the proceedings, it is mentioned that the parties were directed to file their respective claims in respect of the disputes referred to the Arbitrator either individually or collectively on 30-10-83 at 3.00 p.m. The third page purports to be the record of proceedings of 31-10-83. Again there was a direction to file the claims on 7-11-83 at 4.00 p.m. at the shop of M/ s. Nathu Mal & Sons, Chandni Chowk, Delhi. The claims were not filed even on that date and so the proceedings were adjourned to 9-11-83. There appears to be an agreement between the parties on 9-11-83 that the proceedings will be recorded by Sh. Maharaj Kishan, Advocate. The claims, however, were still not filed and there was a direction to the parties to give a copy of the accounts to the Arbitrator. The matter was adjourned to 15-11-83. On 15-11-83, a joint statement of S/Shri Shori Lal, Manmohan and Anil Monga was recorded according to which they said that their shares be kept together and be separated from the share of KMM and Avinash Monga. The most material part of the proceedings which has relevance to this issue is one recorded on 18-1-84 wherein it is recorded," the parties have agreed to the separation of shares in the property. Now only accounts are to be settled. To come up on it is not mentioned in the proceedings of 18-1-84 as to

for which date the proceedings were adjourned. Then below this are the proceedings of 16-2-84. It is recorded, that parties as before were present and that they will be informed about the award. The proceedings of 18-1-84 or 16-2-84 recorded on page 6 are not signed by the Arbitrator. Then page 7 purports to contain the various shares, which are stated to have been allotted to the parties in the various properties held by them. A reference to the above proceedings, there fore, would indicate that according to the Arbitrator the parties had agreed to the separation of their shares as detailed on page 7. Thereafter the parties were not informed of the award by the Arbitrator. The proceedings thereafter were held before the Arbitrator only on 14-12-84 wherein it is recorded: "In accordance with the orders passed by the Delhi High Court on 6-12-84 (received by me on 14-12-84) regarding arbitration in respect of the following members of the parties, I summoned them and asked them to file their claims in respect of each other on 21-12-84 at 5.00 p.m." These proceedings are then signed by the Arbitrator as well as the parties. One thing, which is not understandable from the narration of the above proceedings is that if the parties had actually agreed to the apportionment of their share in the various properties held by them on 18-1-84, why the Arbitrator then called upon them to file their claims in respect of each other on 21-12-84. When the claims were not submitted on 21-12-84, it was again directed by the Arbitrator that in view of the request of the parties for two weeks extension for the submissions of the claims, the same might be filed up to 4-1-85. I am of the view that if actually an agreement had been arrived at between the parties for apportionment of their respective shares as recorded in the proceedings dated 18-1-84 question of the Arbitrator again calling upon them to file their claims would not have arisen. Therefore, the irresistible conclusion is that either there was actually no agreement between the parties for apportionment of their shares as stated in the proceedings dated 18-1-84 or the arbitrator at the instance of the parties had abandoned that agreement. It is explained that the Arbitrator might have directed the parties to file their respective claims in the light of the orders passed by this Court on 6-12-84, which extended the time by four months to enable the Arbitrator to file the Award. No such inference is deducible from the order-dated 6-12-84. For coming to this conclusion, I have also perused the record of OMP 112/84, which was an application under S. 28 of the Arbitration Act praying for extension of time. There was actually no opposition to that application as recorded in the order itself and, Therefore, time was extended by four months and the parties were directed to appear on 14-12-84 at 11.00 a.m. before the Arbitrator. In almost every material clause of the Award dated 4-4-85, the Arbitrator has stated that all the parties had agreed to the distribution proposed in the Award. Prior to 18-1-84, the purported date of the agreement of the parties, the Arbitrator admits in the Award itself and it also appears from the proceedings that no claims were filed by either of the parties before the Arbitrator. Therefore, the possibility of the Arbitrator having practically abandoned the proceedings after February 1984 cannot be ruled out. He did not take any step in the proceedings after that date and became active only when an

order of the High Court was served upon him. As already stated the arbitration pro- must have commenced from some date prior to 21-8-83. The last proceedings before the Arbitrator before receiving direction from this Court are recorded on 16-2-84. Therefore, a period of more than 4 months, which is the statutory period for giving the award, had already passed. If an agreement had been reached between the parties for the apportionment of their shares. I do not understand any reason why the Arbitrator was not able to make and publish the award within a reasonable period up to 16-2-84. Since the behavior of the Arbitrator after receipt of orders from the High Court extending time by four months became incoherent and inconsistent the possibility of his having given threat to the objectors after exchange of hot words at i he residence of Mr. Ramesh also cannot be ruled out because except a bare denial of the incident. Although meeting is admitted, no counter version is given.

13. There is no doubt that great sanctity must be attached to the decisions of an arbitrator in whom the parties repose full confidence. But if the circumstances suggest that the arbitrator has made a record of proceedings, which is not explainable except without causing a grave suspicion on his bona fides, no sanctity can be attached to such an award. The High Court in MOP 112/84 did not give any directions that the Arbitrator will start proceedings de novo. Therefore, the allegations made by the objectors that the award has been improperly procured by KKM and his wife seems to be correct. It may be remembered that it is a dispute between the father, his sons and daughters in law. In this dispute all the family members except KMM and his wife have filed objections. It is only KKM and his wife who have supported the award. It is not denied that the Arbitrator is very closely related to the wife of KKM. Therefore, in view of the fact that the conduct of the Arbitrator is not above board and he seems to be guilty of grave incoherence and inconsistencies, the award cannot be sustained.

14. Another circumstance against the propriety of the award is that the Arbitrator on 21-12-84 directed the parties to file their claims on 4-1-85. The proceedings, however, took place only on 5-1-85 when KKM was absent. It is recorded that discussions were held and the matter was adjourned for discussion with KKM. But no date is indicated to which the matter was adjourned for discussions with KKM. It was only in the evening of 5-1-85 that KKM went to the Arbitrator and discussed the matter with him in the absence of all other parties. The Arbitrator granted extension of time for filing the claim to KKM up to 25-1-85. The record does not suggest if this fact was brought to the notice of the objectors at any point of time. Moreover, if the arbitrator wanted to act upon the so called agreement of the parties dated 18-1-84, it is beyond comprehension as to what discussions were held by him with the objectors on 5-1-85 and with KKM in the evening of 5-1-85. Therefore, I am. of the view that the arbitrator in this case is proved to have misconducted himself and the proceedings and the award have been improperly procured by KKM and his wife. Issue is accordingly decided.

Issue No. 7

15. During the course of oral arguments this issue regarding limitation was not pressed.

16. I am of the view that since it stands proved on record that the Arbitrator misconducted himself and the proceedings and the award seem to have been improperly procured from him, it is needless to enter into discussion on other issues, which have become redundant.

16A. the objections are, Therefore, allowed and the award is set aside. In the circumstances the parties are left to bear their own costs. The arbitration proceedings shall be kept in sealed cover.

17. Order accordingly.