

(2008) 03 DEL CK 0033
In the Delhi High Court
Case No : OMP No. 196 of 2007

Smt. Kanta Vashist and Others

APPELLANT

Vs

Shri Ashwani Khurana

RESPONDENT

Date of Decision : 04-03-2008

Acts Referred:

Citation : (2008) 03 DEL CK 0033

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

Bench : Single Bench

Advocate : Rajiv Shakdhar and Rakesh Khanna, Rajiv Gard, F. Ahmed, Ashish and Shailja, for the Appellant; Sanjeev Puri and Rohit Puri, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—This application u/s 9 of the Arbitration and Conciliation Act, 1996 has been made by the Petitioners/Applicants during pendency of the arbitration proceedings. The respondent in this case Mr. Ashwani Khurana had filed a suit No. 1641/2001 seeking dissolution of a partnership firm M/s K and Co. and for rendition of accounts. During pendency of the suit the Petitioner had filed Interlocutory applications seeking rendition of accounts from Ashwani Khurana for the year 1992-93 to 1999-2000 in view of a Special Audit Report conducted by M/s Arun Singh and Co., another application for interim injunction restraining Mr. Ashwani Khurana from selling, appropriating or creating third party rights and creating any encumbrances on properties purchased from the alleged siphoned off money by his companies and relatives and third application was under Order 38 Rule 5 for attachment of all the properties purchased by respondent from alleged siphoned off money. These IAs were numbered as 9138, 9139 and 9140 of 2003. It is submitted that after receipt of Special Audit Report, Mr. Ashwani Khurana agreed for disposal of suit and to retire from M/s K and Co. and agreed to refer his claim of goodwill and rendition of accounts to an arbitrator. This Court vide order dated 7th August, 2003 referred the matter for arbitration and appointed a retired judge of this Court as

Arbitrator. This Court also appointed Mr. Anupam Bansal, a Chartered Accountant to go into the accounting aspects including valuation of assets, determination of profit and loss, diversion of funds and directed the Chartered Accountant to give his report to the Arbitrator. The applications No. 9138, 9139 and 9140 of 2003 were dismissed as withdrawn and liberty was given to the applicants to move appropriate application before the Arbitrator.

2. The parties had been appearing before the Arbitrator and proceedings had been going on. During pendency of the proceedings, this application is made to the Court with following prayers:

To preserve and protect the properties which are subject matter of the dispute, direct impleadment of all the 16 companies (details mentioned at page No. 69) and further restrain the respondent/the said 16 companies, their employees, representatives/servants/agents/shareholders in dealing, parting with, transferring, creating any third party rights directly or indirectly in both movable and immovable assets of the companies.

3. In the application, the applicants gave detailed history as to how respondent Mr. Ashwani Khurana was working as CEO of M/s K and Co. and a faith was reposed by every partner in him and how he breached the faith and thereafter wanted to dissolve the firm and sent a notice for dissolution. The remaining four partners did not accept the notice of Dissolution but considered the same as notice of resignation of Mr. Ashwani Khurana and the firm was continued by rest of the four partners, who took over the business of the firm and started managing it and thereafter Mr. Ashwani Khurana filed the suit. It is also submitted that in the Special Audit got conducted by the applicants, it was found that around 100 crores of rupees were siphoned off by Mr. Ashwani Khurana from partnership from M/s K and Co.

4. Mr. Ashwani Khurana in his claim for rendition of account has sought 35% of the movable and immovable assets of the firm and submitted that the value of his share would run in several crores of rupees. An application was made before the Learned Arbitrator by the applicants for securing the amount which may be recoverable from Mr. Ashwani Khurana. Similar application was also made by claimant Mr. Ashwani Khurana and the Learned Arbitrator directed both the parties to furnish security of Rs. 5 crore each. By the present application, the applicants want that this Court should give injunction against 16 companies allegedly created by Mr. Ashwani Khurana and restrain them from disposing of or dealing with their properties. These 16 companies have been named by the applicants in the application and it is stated that these companies are pocket companies of Mr. Ashwani Khurana, Directors and Shareholders were either his family members or his close friends and the properties which belong to these companies were in fact purchased from the funds of the firm, illegally siphoned off and diverted to these companies.

5. It is apparent that the dispute before the Arbitrator is in respect of rendition of

accounts of firm M/s K and Co. There is no specific dispute in respect of any property. An order was passed by this Court and later on by the Learned Arbitrator that the parties to the Arbitration shall maintain status quo in respect of immovable properties of the firm held by them or in their custody. The 16 companies against which the applicants want injunction are not party to the arbitration. On the basis of Special Audit Report, got conducted by the applicants, the 16 companies cannot be made party to the dispute. A request to this effect was made by the applicants earlier also to this Court and this request was turned down earlier. This request was also turned down by the Learned Arbitrator. An appeal against the order of Arbitrator was filed by the applicants and this Court had observed that no appeal against the order of Arbitrator, turning down the request for impleadment of companies, lies. I consider that Section 9 of the Arbitration and Conciliation Act is applicable only inter se between the parties to the Arbitration Agreement. Section 9 cannot be invoked by a party to seek an injunction against someone, who was not a party to the arbitration agreement. 16 companies, even if they are the family companies of Mr. Ashwani Khurana, are separate legal entities. These cannot be considered to be parties only because Mr. Ashwani Khurana is a party to the suit and no injunction can be issued restraining them from dealing with their properties.

6. I, Therefore, find that there is no force in the application of the applicants seeking injunction against the properties of the 16 companies. The injunction against the properties of M/s K and Co. is already there. The application is hereby dismissed.