(2000) 08 DEL CK 0016

In the Delhi High Court

Case No : FAO (OS) . No. 272/99 and CM. 1029 of 2000

Y.K. Khanna APPELLANT

Vs

R.P. Ahuja and Others RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Citation : (2000) 7 AD 1124

Hon'ble Judges : J.B. Goel, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Arun Khosla, Ms. Manisha Singh, Mr. Sanjay Abbot, Mr. Sandeep Sethi, Mr. Rajiv Bansal and Mr. Jay Salva, Mr. Ravinder Sethi, Mr. V. Seshadiri, for BO, for the Appellant;

Judgement

Devinder Gupta, J.—Award made by the sole arbitrator on 11.1.1999 is under challenge in Suit No. 1275/99 pending before learned Single Judge of Court. During pendency of the said suit various orders were passed with regard to sale of property bearing No. A-9/13-C, Vasant Vihar, New Delhi in favor of respondents 1 to 4 in terms of receipt dated 12.5.1997 and for liquidating the amount due and payable to Bank of India. There were some dispute amongst some of the parties as regards the exact amount paid by respondent No.3 that whether it was Rs. 58,00,000/- or less, because of which the property instead of being sold to respondents 1 to 4 was ordered to be auctioned. On 11.8.1999 the impugned order was passed by learned Single Judge for auction of the Vasant Vihar property and for paying of the dues of Bank of India. The said order is under challenge in this appeal by Shri Y.P. Khanna.

2. On 14.9.1999 while issuing notice of show cause in appeal, operation of the impugned order was stayed and on 15.10.1999 a consent order was passed. Under the said consent order all parties agreed that the Vasant Vihar property be sold to respondents 1 to 4 at the agreed price of Rs. 2.95 crores. As admittedly, a sum of Rs. 28,00,000/- had been received and there was a dispute with respect to payment of remaining amount of Rs. 30,00,000/-. It was agreed that

for the present only a sum of Rs. 2.37 crores will be payable by respondents 1 to 4. For the balance amount of Rs. 30,00,000/- an undertaking was given on behalf of respondents 11 and 12, who were present in Court that in the event of it being held in the pending suit or in any other proceedings that respondents 1 to 4 had not paid a sum of Rs. 30,00,000/- they will make good to respondents 8 to 10 their share in the said sum of Rs. 30,00,000/-. Consequently, the parties were required to apply for requisite permission of appropriate authority u/s 269 of the Income Tax Act. On sanction being granted sale deed was required to be executed within a period of two months. Sale deed was to be confirmed by all respondents and the appellant. At the time of execution of sale deed, respondents 1 to 4 were to deposit the balance amount of Rs. 2.37 crores with the Registrar, which amount was to be kept in a nationalised bank for a period of 45 days. Bank of India was given liberty to apply to learned Single Judge for orders.

3. On 7.2.2000 it was stated by learned counsel for the parties that memorandum of understanding as per order dated 15.10.1999 had been signed by all parties. It was also given to understand that parties will apply for permission to the appropriate authority in order to comply with the order dated 15.10.1999. Appeal was accordingly adjourned and C.M. 5432/99 was dismissed as infructuous.

4. On 25.5.2000 another application (CM. 921/2000) was disposed of with consent of the parties directing that Bank of India will hand over and deliver within one week from that date the original title deeds of Vasant Vihar property to respondents 1 to 4 through their counsel to enable them to produce the same before DDA in order to have the property converted from lease hold to free hold. After getting the property converted to free bold requisite sale deed was required to be executed by the appellant and respondents 5 to 21. Parties also agreed that the amount of Rs. 2.37 crores to be paid by respondents 1 to 4 be kept invested in a fixed deposit with Bank of India, Hauz Khas Branch, New Delhi initially for a period of 45 days. It was also made clear that subject to the rights of the parties in appeal, the Bank will continue to have a lien on the balance amount of sale proceeds to be deposited by respondents 1 to 4 qua its dues.

5. After the aforementioned application had been disposed of another application (C.M. 1029/2000) was filed by the appellant praying that out of the sale proceeds to be deposited by respondents 1 to 4 with the Registrar, a sum of Rs. 63.52 lakhs be kept apart and be directed to be made over towards the payment of capital gains tax arising out of the subject transaction. It is stated in the application that in order to have the sale deed registered, the appellant is required to file an application in Form 34-A for a certificate u/s 230A(f) of the Income Tax Act where after the appropriate authority will issue requisite certificate to the effect that no liabilities are outstanding against the transferor under the Income Tax Act and the registration of the sale deed will not prejudicially affect the recovery of any of the taxes due under the provisions of

the Income Tax Act.'' This application has been contested by some of the parties and the Bank, who has asserted that the amount recoverable by Bank of India has since increased from the amount as was mentioned in the impugned order, Therefore, Bank''s lien on the entire amount must continue.

6. Considering the facts and circumstances of the case we are of the view that by the order, which was passed on 15.10.1999 with consent of all parties, virtually the entire appeal stood disposed of. Nothing more survived in the appeal. However, the appeal was kept pending. All further applications would be maintainable before learned single Judge. In any case, in order to give effect to the said order passed on 15.10.1999, the following directions/clarifications are issued:-

i) Parties are and will continue to be bound by their respective undertakings as incorporated in the order dated 15.10.1999 and 25.5.2000.

ii) Appellant and/or respondents 5 to 21 will take all requisite steps in expeditiously moving the requisite application in Form 34-A for a certificate u/s 230A(1) of the Income Tax Act. On requisite certificate being granted by the appropriate authorities, within a period of four weeks thereafter the requisite sale deed will be executed by the appellant and respondents 5 to 21 or their nominee(s) before the Registrar on simultaneously handing over by respondents 1 to 4 the requisite demand draft for Rs. 2.37 crores to be made in the name of the Registrar of this Court as per order dated 15.10.1999. The said amount will be invested by the Registrar with the Bank of India, Haus Khas Branch, New Delhi, initially for a period of 45 days, where after the same will be dealt with as per the directions to be made in the pending.

iii) Sale deed thereafter will be not duly registered in accordance with law.

iv) After the aforesaid balance sale consideration has been deposited and duly invested, it will be open for the Bank of India to apply to learned Single Judge for appropriate orders as regards disbursement of its dues. Out of the balance amount a sum of Rs. 63,00,000/- will be kept apart and will continue to be invested in fixed deposit in order to meet tax liabilities, if any, arising out of sale of the property, for which appropriate orders will be obtained by the parties from learned Single Judge.

With the aforementioned directions, the appeal and miscellaneous application stand disposed of.

