

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: August 12, 2009

Date of Order: October 30, 2009

+ OMP No.491/03

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30.10.2009

RAKESH BALA ANEJA AND ORS.

.... Petitioner

Through : Mr. J.P.Sengh, Sr. Adv. with
Mr. Manoj Saxena, Adv.

Versus

J.S. SOOD AND ORS.

.... Respondents

Through: Mr. Sandeep Sethi, Sr. Adv. with
Mr. Gulshan Rai Bajaj & Mr. Nishant Dutta, Adv.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

By this petition, the petitioner has assailed validity of award dated 14th/23rd August, 2003 passed by Mr. J. S. Sood, sole Arbitrator on various grounds.

2. The facts relevant for purpose of deciding this petition are that Sh. S.C.Aneja and Smt. Sushil Bajaj had entered into a collaboration agreement on 5th January, 1983. The collaboration agreement contained following arbitration clause:-

“11. That in case of any dispute/objection arising out of, touching or in any manner connected with the agreement above mentioned, the same shall be referred to the Sole Arbitration of Shri J.S. Sood, Managing Director, Great Arts Pvt Ltd., Film Distributors, Jogdhian Building, Chandni Chowk, Film Colony, Delhi whose decision shall be binding and final on the parties.

It is specifically made clear that both the parties have complete faith in his honesty and integrity and he is known to both of them.”

3. Smt. Sushil Bajaj filed a claim before the Arbitrator against Sh S.C.Aneja, predecessor in interest of the present petitioners, alleging therein that Sh.S.C.Aneja who had entered into a collaboration agreement with her on 5th January, 1983, was allotted a commercial land bearing no.P-2, Sector-5, Noida measuring about 850 sq. yards for construction and running of a temporary cinema. On allotment of land, Sh.S.C.Aneja was not in a position to pay the amount as demanded by Noida authority and he approached claimant and entered into a collaboration agreement dated 5th January, 1983 with the claimant for purpose of making payment of the allotment money to Noida authority as well as for raising the construction and running the cinema thereon. In pursuance of the agreement claimant paid money to the Noida authority and invested about Rs.20 lakh on the construction of the temporary cinema and thereafter started running the cinema. In the year 1986 administration of Noida authority agreed to allot more land to Sh.S.C.Aneja for purpose of cinema. Sh.S.C.Aneja wanted claimant to invest another sum of Rs.30 lakhs (26 lakhs as allotment value and Rs.4 lakhs as penalty etc.) for the same. Claimant and her husband Sh.Inderjeet Bajaj agreed to do so and another agreement dated 10th January, 1987 was entered into between Sh. Inderjeet Bajaj and Sh.S.C.Aneja whereby Sh. Inderjeet Bajaj agreed to invest Rs.30 lakhs in due course of time. The investment was made by paying Rs.14 lakhs in cash which was remitted to Noida authority and for balance amount of Rs.16 lakhs, a bank guarantee was given to ensure payment of Rs.1 lakh per month by claimant's husband, Sh. Inderjeet Bajaj. Thus claimant and her husband together invested a sum of Rs.50 lakhs in the

cinema plot which is now known as 'Alka cinema' for construction as well as running the cinema and Sh.S.C.Aneja had not spent any amount. The cinema was being managed and run by claimant and her husband in accordance with the agreement. The parties had also created a private limited company in the name of 'S. C. Aneja Theaters Pvt. Ltd.' in which Sh. S.C.Aneja was one of the director and remaining 3 directors were Smt.Sushil Bajaj (claimant), Sh.Inderjeet Bajaj (claimant's husband) and Sh.Sanjay Bajaj (a family member of the claimant). Sh. Inderjeet Bajaj was the managing director of the company and Noida authority was requested to transfer the allotment of cinema plot to this company. As per article of association of this company Sh. S. C. Aneja was to hold 25% of the share capital of the company and balance was to be held by the family of Smt. Sushil Bajaj and her husband.

4. The claimant submitted that while claimant was running Alka cinema as per the agreement upto 1st April, 1998 when suddenly on the night, 2nd April, 1998, Sh. S. C. Aneja with the help of one inspector Bal Sharma and other police official broke open the locks of the building, abused and manhandled the representatives and employees of claimant, kept them in illegal custody throughout night and obtained their signatures on blank papers. The officials and employees of claimant were allowed to leave, only on the next morning and the cinema was forcibly occupied by Sh.S.C.Aneja.

5. It is only after this forcible occupation of cinema by Sh.S.C.Aneja with the help of local police that the claimant invoked arbitration clause and filed claim before the Arbitrator named in the agreement between the parties.

6. Sh.S.C.Aneja filed counter claim in his defence before the Arbitrator. He stated that he had never executed agreement dated 5th January, 1983 and

the agreement did not bear his genuine and original signatures and was a forged document. He further submitted that even if the document was not held as a fabricated document, the license of the cinema plot allotted to him could not be assigned and he could not legally assign his rights under Cinematography Act to an outsider. He submitted that Clause 8(b) of the license agreement prohibited direct or indirect transferring, assigning, selling, encumbering or parting with his interest without consent of the grantor, i.e., Noida authority.

7. Mr. S.C. Aneja did not challenge the claims of the claimant about investment made by the claimant or her husband in construction of the cinema or in payment to Noida authority and submitted that the existing site of the cinema was allotted with the stipulation that it would not be sublet, transferred without prior permission of the Chief Executive Officer of Noida authority. Thus, the agreement entered into between the claimant and himself was a void agreement and was not binding on him. He contended that handing over of the possession and management and control of the cinema to Sh. Inderjeet Bajaj was in total contravention of the terms of the license agreement dated 12th March, 1982 and allotment letter dated 18th February, 1986. He also contended he had been in possession of cinema premises as sole owner of cinema since 21.3.81 till date.

8. During proceedings Sh.S.C.Aneja died and his legal heirs, i.e., the present petitioners were substituted in his place.

9. The learned Arbitrator after considering the entire evidence produced by both the sides came to conclusion that the allegations made by the petitioner's husband i.e. Sh.S.C.Aneja and by the petitioners about the agreement being forged were false. He also turned down the objections

against his own jurisdiction. On the basis of evidence and considering the letters written by Sh.S.C.Aneja to Noida authority regarding constitution of 'S.C.Aneja Theaters Pvt. Ltd.' and request made by him to transfer the cinema running license in the name of this company and transfer the plot in the name of this company, concluded that the entire stand of Sh.S.C.Aneja and his legal heirs was false. He came to conclusion that it was claimant Smt. Sushila Bajaj and her family members who had invested money and both the agreements dated 5th January, 1983 and subsequent agreement dated 10th January, 1987 were validly executed agreements.

10. He also concluded that it was claimant who was in possession of 'Alka cinema' by virtue of the two agreements and it was the claimant who had been running the cinema till 1st April, 1998 and Sh. S.C.Aneja, deceitfully & mischievously took the possession of the cinema and removed the claimant from the cinema in an illegal manner on 2nd April, 1998. Thus the claimant was justified in claiming back the possession of the 'Alka cinema'. He held that the claimant was entitled to all the benefits of collaboration agreement. He therefore gave an award directing the respondents to hand over the possession of cinema to the claimant and to observe the terms and conditions of the agreement. He held that since 2nd April, 1998 upto the date of award or till the possession was handed over to the claimant, the respondents were liable to render the true accounts of the income and directed the respondents, i.e., the present petitioners to render accounts of Alka cinema for this period and directed them to give effect to the collaboration agreement in future.

11. The petitioners in this petition under Section 34 had narrated her version of the facts and the different proceedings which continued in between the parties or otherwise and assailed the award on following grounds:

- I. Because the Award given by Shri J.S.Sood the sole Arbitrator is wholly illegal as the same is based on so called Arbitration agreement which is not valid in law and thus the Award is illegal.
- II. Because even otherwise neither the petitioner was given proper information and notice about the Arbitration proceedings and therefore the entire Arbitration proceedings before Shri J.S.Sood the so called sole Arbitrator was illegal and bad in law.
- III. Because Shri Indrajeet Bajaj himself filed a suit in Civil Court Ghaziabad in the name of M/S S.C. Aneja Theatre Pvt. Ltd. and M/S. S.C. Aneja Theatre Pvt. Ltd. was a different entity and as such was having no value and having any connection with the property of ALKA Cinema.
- IV. Because in the instant case the Stand taken by the Noida Authorities clearly shows that M/S S.C. Aneja Theaters Pvt. Ltd. was having legal entity and thus the action of the Arbitrator in giving an award covering the personal property of Shri. S.C. Aneja namely Alka Cinema was purely illegal and arbitrary action of the Arbitrator.
- V. Because in the instant case the Award was not only against the public policy but was also against the admission of the Opposite party as well as the record of the called forged Arbitration agreement.
- VI. Because the instant case as per own showing of the respondents the company M/S.S.C. Aneja Theaters Private Limited never came into existence and it is only a paper creation and more so the property of Alka Cinema was the proprietorship property of Shri S.C. Aneja and now of M/s. Alka Cinema Pvt. Ltd.”

12. The respondent in its response to the objections has contended that none of the grounds raised by the petitioner are covered under Section 34 of the Arbitration and Conciliation Act or otherwise right for rejection of the petition.

13. In **DDA vs. R.S.Sharma & Company, New Delhi** JT 2008 (9) SC 362 Supreme court had summarized the principles which emerged from different decisions of the Supreme Court in respect of the grounds available to an objector for setting aside an award and observed.

“From the above decisions, the following principles emerge:

(a) An Award, which is

(i) contrary to substantive provisions of law; or

(ii) the provisions of the Arbitration and Conciliation Act, 1996; or

(iii) against the terms of the respective contract; or

(iv) patently illegal, or

(v) prejudicial to the rights of the parties, is open to interference by the Court under Section 34(2) of the Act.

(b) Award could be set aside if it is contrary to :

(a) fundamental policy of Indian Law; or

(b) the interest of India, or

(c) justice or morality:

(c)The Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.

(d) It is open to the Court to consider whether the Award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.”

14. The contention of the petitioner that the sole Arbitrator, Sh.J.S.Sood had no jurisdiction since the Arbitration agreement was not valid in law and the entire agreement dated 5th January, 1983 was a forged agreement does not stand scrutiny of law. It is settled law that this Court does not sit in appeal over the judgment of the Arbitrator and cannot re-appreciate the evidence and come to a different conclusion on facts. The learned Arbitrator in this case has considered the contention raised by the petitioner about the agreement being forged and after considering entire evidence including evidence of Two experts and considering the different letters written by Sh. S.C. Aneja himself to Noida authority and other authorities in pursuance of the agreements, held

the agreements to be valid and genuine. This Court cannot form another opinion on the basis of the same evidence, from what had been formed by the learned Arbitrator. This ground taken by the petitioner for assailing the award is therefore liable to be rejected.

15. The second ground taken by petitioners on the face of it is a baseless ground. Sh. S.C.Aneja was given repeated notices by the Arbitrator and he proceeded with the matter only after Sh. S.C.Aneja put appearance and filed his counter claim-cum-reply to the claim of the claimant. He participated in the proceedings before the Arbitrator. After his death, the summons were sent to his LRs. LRs were served and they joined proceedings along with their Advocate and participated in the proceedings. They also produced their witness and gave list of witnesses. This shows that the petitioner's husband Sh.S.C.Aneja and the petitioner were having notice and were given full opportunity by the Arbitrator during the arbitration proceedings. This allegation is malafide, fake & baseless and does not stand the scrutiny of law.

16. The third ground raised by the petitioner has no bearing on the validity of the award. Filing of a suit by Sh.Inderjeet Bajaj in Ghaziabad in the name of 'S.C.Aneja Theater Pvt. Ltd.' a company and a separate entity, has nothing to do with the award. This objection is a baseless objection.

17. The fourth objection taken by the petitioners that 'Alka Cinema' being the personal property of Sh.S.C.Aneja, could not have been subject matter of award is again a baseless objection. It was Sh.S.C.Aneja who entered into a collaboration agreement with the claimant in respect of the property allotted in his personal name. Therefore the Arbitrator was fully justified in considering 'Alka Cinema' as the subject matter of the arbitration agreement. Even if 'S. C. Aneja Theaters Pvt. Ltd.' was a legal entity and a correspondence had

been made with Noida authority to transfer 'Alka Cinema' in the name of 'S.C.Aneja Theaters Pvt. Ltd.', that would not have prevented learned Arbitrator from considering 'Alka cinema' as the subject matter of the dispute.

18. The plea taken by the petitioners in ground no.6 is contrary to the plea taken by the petitioners in ground no.4. While on one hand it is stated 'S.C.Aneja Theaters Pvt. Ltd.' was a separate legal entity and on the other hand plea taken is that 'S.C. Aneja, Theaters Pvt. Ltd.' never came into existence and was only a paper creation.

19. During arguments, counsel for the petitioner submitted that since the license of the plot was granted in favour of the Sh. S. C. Aneja on a condition that it could not be further assigned, the agreement dated 05.01.1983 itself was void and contrary to public policy and the award was liable to set aside on the ground that it was contrary to public policy. He relied upon ***Ocean Investment and Finance Pvt. Ltd. and others vs. Union of India*** 40 (1990) DLT 225. The order in Ocean Investment case (Supra) was passed by this court on an application under Order 39 Rule 1 & 2 wherein this Court while dealing with the application under Order 39 Rule 1 & 2 CPC, observed that where the delivery of the possession by the allottee to the prospective purchaser was in contravention of lease deed, it was against public policy and the prospective purchaser in possession of such a land cannot be permitted under law to challenge the cancellation of the sanction of building plan originally granted by the DDA to the allottee as it would put premium on the illegal acts of the plaintiff. This judgment has to be understood in the context of policy of DDA to allot one plot of land only to a person that also only if the person had no other residential property in Delhi. There being housing problem in Delhi, in order to see that the people do not further sell the plots

allotted to them for residence, DDA used to put this condition that the plot would not be further sold and in that context the Court observed that further transfer of leased property was against policy of DDA that the plot could not be sold and the Court observed that the prospective purchaser cannot be permitted in law to challenge the cancellation of sanction of building plan. This judgment would not be applicable to the award of the Arbitrator since the Arbitrator has not prohibited Noida authority from taking action against any party for violation of the terms of lease. The Arbitrator has only adjudicated the dispute between the petitioner and the respondent in respect of a commercial transaction entered into between the two. What would be the consequences of violation of the license deed issued by Noida authority is for Noida authority to consider. There is no bar against Noida authority in proceedings in accordance with law for violation of the terms of the license because of this award.

20. In ***Vishwa Nath Sharma vs. Shyam Shaker Goela & Anr.*** 2007(10) SCC 595, Supreme Court observed:-

“12. The Privy Council in *Motilal v. Nanhelal* laid down that if the vendor had agreed to sell the property which can be transferred only with the sanction of some government authority, the court has jurisdiction to order the vendor to apply to the authority within a specified period, and if the sanction is forthcoming, to convey to the purchaser within a certain time. This proposition of law was followed in *Chandnee Widya Vati Madden v. Dr. C.L. Katial* and *R.C. Chandiok v. Chuni Lal Sabharwal*. The Privy Council in *Motilal* case also laid down that there is always an implied covenant on the part of the vendor to do all things necessary to effect transfer of the property regarding which he has agreed to sell the same to the vendee. Permission from the Land and Development Officer is not a condition precedent for grant of decree for specific performance. The High Court relied upon the decisions in *Chandnee Widya Vati Madden v. Dr. C.L. Katial* and *Bhim Singhji v. Union of India* to substantiate the conclusion. In *Chandnee Widya* this Court conformed the decision of the Punjab and Haryana High court holding that if the chief Commissioner ultimately

refused to grant the sanction to the sale, the plaintiff may not be able to enforce the decree for specific performance of the contract but that was not a bar to the court passing a decree for that relief. The same is the position in the recent case. If after the grant of the decree of specific performance of the contract, the Land and Development Officer refused to grant permission for sale, the decree holder may not be in a position to enforce the decree but it cannot be held that such a permission is a condition precedent for passing a decree for specific performance of the contract.

13. In R.S. Chandiok v. Chuni Lal Sabharwal it was held that proper form of decree in a case like the instant one would be to direct specific performance of the contract between the defendant and the plaintiff and to direct the subsequent transferee to join in the conveyance so as to pass on the title residing in him. This is because Defendant 2, son of Defendant 1 cannot take the stand that he was a transferee without notice. Admittedly he is the son of Defendant 1. The view in R.C. chandiok was a reiteration of earlier view in Durga Prasad v. Deep Chand. This Court has repeatedly held that the decree can be passed and the sanction can be obtained for transfer of immovable property and the decree in such a case would be in the way the High Court has directed. [See Motilal Jain v. Ramdasi Devi, Nirmala Anand v. Advent Corpn. (P) Ltd., HPA International v. Bhagwandas Fateh Chand Daswani and Aniglase Yohannan v. Ramlatha.]”

21. Considering the above legal position, I find no force in this ground.
22. The petitioner has not raised any valid ground for assailing the award. I find no force in the petition. The petition is hereby dismissed.

October 30, 2009
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SHIV NARAYAN DHINGRA J.