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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: July 10, 2009
Date of Order: July 15, 2009

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15.07.2009

Jaswinder Singh Bhatia

...Petitioner

Through: Ms. Gurmeet Kaur and Mr. P.S. Guindi, Advocates

Versus

Nirmaljeet Kaur Bhatia

...Respondent

Through: Mr. Naresh C. Sharma and Mr. Arvind Gupta, Advocates

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

1. This petition under Section 9 of the Arbitration & Conciliation Act, 1996 ("the Act", for short) has been made by the petitioner praying inter alia that respondent should be restrained from carrying on her new venture Bhatia Sales Company.

2. It is submitted by the petitioner that that the petitioner and respondent had a partnership agreement dated 30th June 2003 for running a partnership firm in the name of Bhatia Sales Corporation at B-9, Community Centre, Naraina. This firm had been carrying on the business of paints, hardware, sanitary goods, welding materials and mill stores etc. The partnership deed provided that only by mutual consent, a partner could start a new business or open a new branch or change the name and nature of business. It is submitted that earlier respondent's husband was the partner in the

partnership and after death of her husband, she became the partner. The shop No.B-9 where the business was being run was under the tenancy of the partnership firm. The petitioner had come to know from some reliable sources that sons of respondent namely Shri Tajinder Singh Bhatia and Shri Tarandeep Singh Bhatia purchased the said property from the owner and they, in collusion with the respondent floated another firm in the name and style of 'Bhatia Sales Company' with an intention of dispossessing the petitioner from the property and finish the business of partnership firm namely 'Bhatia Sales Corporation'. The trade being carried by Bhatia Sales Company was similar as being carried out by Bhatia Sales Corporation.

3. It is submitted by learned counsel for petitioner that petitioner had filed a civil suit against respondent and her sons seeking an injunction against them from running the business in the name of 'Bhatia Sales Company' at the business premises of the firm. However, the suit was withdrawn with liberty to file appropriate petition before the appropriate forum. Petitioner, therefore, filed the present application under Section 9 relying on arbitration clause.

4. In response to this petition, it is submitted by respondent that petitioner has concealed material facts from the Court. The petitioner and her husband were earlier in joint business. However, on 22nd March 1993, by mutual consent, the parties had separated from the business and the petitioner started running business of paints, hardware, sanitary goods separately at plot No.9, Shop No.2 Community Centre, Naraina Vihar, in the name of New Delhi Paints whereas respondent's husband started his business in the name and style of Bhatia Sales Corporation. Since the tenancy of the premises was in the name of the partnership firm, both parties continued to

sign the partnership deed so that the case of sub tenancy was not made out by the landlord. The husband of respondent expired on 24th June 2003 and thereafter parties again renewed the papers of the partnership deed only for this purpose. The sons or the husband, however, negotiated with the owner of shop No.B-9, Shopping Centre for purchase of the property and they purchased the shop from the owner. After her sons purchased the shop from the owner, they constituted a separate partnership firm in the name of 'Bhatia Sales Company' and started their own business at the shop purchased by them. The respondent placed on record the partnership deed between her two sons, the title deed of the shop in the name of her sons and the deed/family settlement showing separation of business.

5. It is apparent from the documents placed on record by the respondent that 'Bhatia Sales Compan'y was a different partnership with which respondent had nothing to do. It was a partnership firm started by her two sons. Presuming that Bhatia Sales Corporation was a partnership firm of respondent and petitioner, this could not have placed a restraint on the sons of respondent in starting another partnership firm. If the petitioner had any vested rights in the name 'Bhatia Sales Corporation', the petitioner could have filed a suit for IPR against sons of respondent. A petition under Section 9 of the Act for restraining the operation of 'Bhatia Sales Company', owned by the sons of respondent is not maintainable.

6. It is also noteworthy that the petitioner had sent a notice to respondent for invocation of the arbitration clause. This notice was duly replied by the respondent. However, petitioner thereafter did not invoke the arbitration clause neither the arbitrator was appointed nor it is mentioned that any step

is taken or is going to be taken for appointment of an arbitrator for settlement of disputes. The notice served by petitioner upon respondent on 7th February 2009 also shows that the business operation of Bhatia Sales Corporation was being managed by respondent alone since it was alleged in the notice that it was respondent who was in possession of books of accounts, cash book, trading account, profit and loss account, balance sheet etc. The petitioner had not placed on record any document showing that the petitioner had received any part of the profits from Bhatia Sales Corporation neither petitioner had placed on record his own income tax returns or his own income details showing that he was receiving any profits from Bhatia Sales Corporation. It is also clear that petitioner himself was doing business in the name of New Delhi Paints. Had there been a partnership in existence restraining partners from pursuing the same business, petitioner would not have been able to run separate business in the name of New Delhi Paints. Under these circumstances, I consider that this petition under Section 9 made by the petitioner is a frivolous petition and is hereby dismissed with cost of Rs.20,000/-.

July 15, 2009
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SHIV NARAYAN DHINGRA J.