

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

Date of Reserve: 7.9.2009
Date of Order: 15th September, 2009

OMP No. 172/2009

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15.09.2009

Mandeep Singh & Anr.

... Petitioners

Through: Mr. Jagjit Singh, Advocate

Versus

Ramesh Kumar & Anr.

... Respondents

Through: Mr. Sushant Kumar, Advocate and
Mr. Abhinav Kumar, Advocate

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

This application has been made under Section 9 of the Arbitration & Conciliation Act, 1996 by the petitioners on the basis of a Shareholders' Agreement entered into between the petitioners and respondent no.1 on 2nd November 2006, which contains an arbitration clause. As per the Shareholder's Agreement, the petitioners had agreed for transferring of their 1,20,000/- equity shares of face value Rs.10/- in favour of the respondent no.1 for sum of

Rs.1,22,00,000/-. Out of this Rs.1,22,00,000/-, 1,01,66,667/- was payable to the first petitioner and Rs.20,33,333/- was payable to the second petitioner. Under the Agreement, this amount was to be paid by respondent to the petitioners in five installments. The first installment was of Rs.18,30,000/-, second installment was of Rs.12,20,000 and third installment was of Rs.30,50,000/-. The agreement provided that petitioners shall resign as Directors of respondent no.2 company after this agreement. The petitioners on receipt of consideration in installments were to release all their rights in the respondent no.2 company in favour of the buyer (respondent no.1) and were also to undertake all such actions as required to handover the operations of the company to the buyer. The petitioners' contention is that after receiving Post Dated Cheques in respect of above consideration, the petitioners resigned as Directors of the company and respondent no.1 gained control over the company to the exclusion of the petitioners. Out of the five installments to be paid, latest by 29.2.2008, cheques in respect of only first two installments got honoured and cheques for remaining three installments fallen due after 31.5.2007 and payable by 29.2.2008 got dishonoured. It is stated that out of total consideration of 1.22 crore, Rs.91.50 lac remained unpaid and the respondent no.1 has shown no inclination to fulfill the agreement therefore, the petitioners were contemplating invoking of arbitration. By this petition under Section 9, the petitioners have prayed to the Court that respondent should be directed to furnish a bank guarantee to the tune of Rs.1.25 crore to the satisfaction of the Registrar General of this Court or an

equivalent amount should be deposited in the name of the petitioners with nationalized bank. It is also prayed that respondent No.1 should be restrained from selling, transferring or alienating any of the assets of the respondent no.2 company and respondent no.1 should be directed to handover the management and control of respondent no.2 company to the petitioners and the status quo ante ie. status at the time of pre execution of shareholders' agreement should be restored.

2. The counsel for the respondent on the other hand has argued that the petitioners were to transfer the shares simultaneously along with receipt of installments and the petitioners failed to transfer number of shares equal to the consideration received in two installments. Since the petitioners had failed to transfer shares proportionate to the amount received, the respondent no.1 was constrained to stop payment of the rest of the installments.

3. Clause 8 of the Shareholders' Agreement provides that in case the Buyer fails to arrange necessary funds required for the clearance of Post Dated Cheques, the Sellers shall have right to take necessary legal proceedings against the Buyer. Clause 11 of the agreement provides for termination of the agreement by either party by giving a 30 days written notice to the other party, on occurrence of event of default.

4. It is apparent that this agreement was a terminable agreement; it could be terminated by either party by giving a notice in case of a default. The

respective claims of the parties are to be decided by the Arbitrator in terms of Clause 13 which provides a dispute resolution mechanism through arbitration.

5. The petitioners in this case have already received an amount of Rs.30,50,000/- and none of the shares in the custody of the petitioners has been transferred to respondent no.1, thus the petitioners have not much at the stake. As far as specific performance of the agreement is concerned, I consider that this Court under Section 9 cannot direct the specific performance of the agreement. Once an agreement stands terminated due to violation of the terms and conditions, the remedy lies in claiming damages by the aggrieved party through arbitration or praying to the Arbitrator for specific performance of the contract.

6. Since the petitioners continue to be shareholders of the company (respondent no.2) the petitioners will be at liberty to exercise their rights in the company in consonance with their shares. The petitioners also have liberty to approach Company Law Board. The petitioners would be entitled to participate as shareholders in the General Body Meetings of the Company and shall have voting rights in proportion to their shares, till the matter between the parties is not settled through arbitration.

With these directions, this petition is disposed of.

September 15, 2009
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SHIV NARAYAN DHINGRA, J.