

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: March 03, 2009
Date of Order: March 26, 2009

+ Ex.P. 45/2006

%

26.03.2009

Ravi Aggarwal

...Decree Holder

Through: Mr. Maheshwar Dayal, Sr. Adv. with Mr. Girish and Mr. C. Mittal, Advocates

Versus

Anil Jagota

...Judgment Debtor

Through: Mr. Sanjeev Ralli, 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

1. This execution petition has been filed by the petitioner for execution of decree and order dated 25th October 2005.
2. A perusal of the order dated 25th October 2005 would show that the petitioner had filed an application under Section 8 read with Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of an Arbitrator on the ground that certain disputes inter se parties need to be adjudicated upon by means of arbitration in view of arbitration clause existing in the partnership deed between the parties.
3. In response to this petition, the respondent had taken the objections that there was no dispute inter se parties and the disputes between the parties were already settled by the mediator mutually appointed by the

parties and the copy of the settlement arrived at through mediator was annexed with the reply. Counsel for the respondent submitted that he had no objection if this settlement arrived at between the parties through the mediator was acted upon. The respondent in fact submitted that the settlement had already been acted upon which fact was disputed by the applicant. However, counsel for the petitioner/applicant accepted the position that the disputes between the parties stand settled in terms of the settlement arrived at before the mediator. In view of these submissions made by the applicant's counsel, this Court observed that there was no need for appointment of an arbitrator as the disputes inter se parties have already been settled and the settlement/award were on record as Annexure A and B. This Court gave liberty to the petitioner to take recourse to appropriate legal remedy/ proceedings in case this settlement/ award was not implemented.

4. On the basis of this order, the petitioner has filed this execution alleging therein that the settlement arrived at between the parties was in the nature of an Arbitration award and executable since it has not been implemented by the respondent.

5. The relevant portion of settlement, as filed by the applicant, reads as under:

"Agreement of partition /dissolution of M/s the Plywood Traders Patparganj, Opp. Radhu Place, Delhi-92

1. *"A portion holder will pay the sum of Rs.50,000/- to the holder of "B" portion. A portion has been allotted in the name of Anil Jagota, B portion will be taken by Shri Ravi Aggarwal and Mr. Anil Jagota will pay the sum of Rs.1,50,000/- (Rupees One Lac Fifty Thousand Only) in lieu of front portion.*

2.”

6. The agreement also provides for how the movable assets and stocks are to be distributed. The agreement provided that execution of the documents will be the responsibility of both the partners and practical /physical possession deal will be done on 11th June 2000 on payment of the plot.

7. It is quite obvious that the parties settled their disputes through an inter-mediator. This Court had not appointed the arbitrator and even while disposing the application under Section 11 of the Arbitration and Conciliation Act, this Court observed that the parties had already settled their disputes mutually. Thus, no decree was passed by this Court in terms of Section 2 (2) of the CPC which could be got executed through this Court. A bare reading of Section 2(2) of the said Act would show that a decree has the following essential elements, which were missing in this case:

1. There should be an adjudication;
2. The adjudication should determine the rights of the parties regarding the matter in controversy.
3. The adjudication should be in a suit and adjudication should be formal and conclusive so far as that Court is concerned.

8. No doubt, an award passed by an arbitrator under the Arbitration and Conciliation Act, 1996 can be got executed like a decree when it becomes final. However, the order passed by this Court observing, inter alia, that the parties have settled their claims inter se through an inter-mediator is not an

award passed by the arbitrator nor is the adjudication done by this Court of the disputes inter se parties. The order passed by this Court only reflects that the parties had already settled their disputes and there was no need to refer the disputes to an Arbitrator.

9. In view of the foregoing facts, I consider that the agreement arrived at between the parties through an inter-mediator is not an executable decree passed by this Court and therefore no execution would lie. I find no force in this petition. The petition is hereby dismissed.

March 26, 2009
rd

SHIV NARAYAN DHINGRA J.