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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 12, 2009

Date of Order: September 01, 2009

+OMP 322/2007

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01.09.2009

L.C. Sharma

...Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Ms. Sahila Lamba,
Advocates

Versus

P.C. Sharma & Ors.

...Respondents

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Sandeep Sharma,
Advocates

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. This petition/application under Section 9 of Arbitration & Conciliation Act, 1996 ("the Act", for short) has been made by the petitioner on the ground that there was a dispute between the parties which the petitioner wanted to raise before the arbitrator and in the meantime, this Court should restrain respondent from encashing or appropriating the amount of Rs.45 lac deposited by the DDA in the registry of this Court. The other prayer made is that the respondent no.8 i.e. PNB, be restrained from making any payment from the account number 036002100012593 in Punjab National Bank, Sarvodaya Enclave Branch, or payment of Rs.45 lac to respondent no.1 to 7.

2. Brief facts relevant for the purpose of deciding this petition are that the

petitioner was a partner in a firm known as Prem Chand Sharma & Company. The initial partnership deed was executed between petitioner and some of the respondents on 9th October 1978. This partnership was renewed and a second partnership deed was executed on 2nd April 1980. There were six persons as partners namely Mr. P.C. Sharma, Mr. Ravi Sharma, Mr. Ramji Lal Sharma, Mr. Lekh Raj Sharma Mr. Ved Prakash Sharma and Mr. Dharamvir Sharma. The petitioner was having 20% shares in the partnership and the partnership was doing the business of construction in the name and style of P.C. Sharma & Company.

3. The award was passed in favour of partnership firm P.C. Sharma & Company by the arbitrator on 16th April 1989 and this award was made a rule of the Court vide order dated 8th November 2005. After the award was made a rule of Court, the partnership firm filed an execution and during execution, petitioner raised an objection that the amount of partnership firm cannot be entirely given to the other partners since he was also one of the partners. When the matter came up before the Division Bench of this Court, the Division Bench observed that adjudication of disputes inter se partners cannot be a subject matter of execution and the petitioner should avail an independent remedy. Thereafter, the petitioner filed this application under Section 9 of the Act on the strength of a partnership deed dated 2nd April 1980, which contained an arbitration clause. In response to the application, the respondents have filed documents along with their reply. It is submitted by respondents that the petitioner retired from the partnership of P.C. Sharma & Company on 1st April, 1982 by virtue of a written retirement deed duly executed between all the contracting partners. The retirement deed did not contain any arbitration clause. Moreover, in terms of retirement deed, the

petitioner had settled all his accounts under the partnership deed and he was not concerned with the partnership after 1st April 1982.

4. The petitioner has not denied execution of retirement deed dated 1st April 1982 but has submitted that this retirement deed was not acted upon and the petitioner has been, even after signing the retirement deed, acting as a partner of the firm. This contention of petitioner has been denied by respondents who had placed on record the subsequent partnership deed entered into between rests of the three partners constituting another partnership firm in the name of P.C. Sharma and Company, executed on 2nd April 1982. This partnership deed was executed among Mr. P.S. Sharma, Mr. Dharamvir Sharma and Mr. Ved Prakash Sharma.

5. The argument of petitioner counsel is that petitioner has been acting as partner even after retirement deed. He relied on certain documents wherein he has shown himself as a partner. I consider that self serving documents created by petitioner cannot be a ground to invoke arbitration clause in a partnership deed which came to an end. Whenever a written contract is executed between the parties, the presumption is that it was acted upon between the parties and the intention of the parties had been clearly stated in the written document. It is also settled law that where a contract is entered into in writing by the parties, any amount of oral evidence contrary to the written contract is not admissible. There is no reason for this Court to believe that despite having executed a retirement deed, the petitioner continued to be a partner in the partnership firm namely P.C. Sharma & Company. The concept of a partner by holding out is applicable only in respect of third parties. If a person holds himself out to be a partner of the partnership firm to

the third parties and third parties bonefide act on his representation in such a case because of his holding out as a partner he is held responsible for the acts done by him in the garb of a partner. The concept of a partner by holding out is not applicable inter se partners and is not applicable for giving benefit to the person who is holding out as a partner even after signing the retirement deed. A person may continue to hold himself out as a partner despite not being a partner under the contract but that would not entitle him to claim benefit of the partnership firm. I, therefore, consider that the petitioner had no case of invocation of the arbitration clause of a partnership deed which was dissolved and a retirement deed was executed, when no arbitration clause is there in the retirement deed. Even otherwise, the petitioner cannot invoke arbitration clause for a dispute which was barred by limitation. The retirement deed was executed on 1st April 1982 and this retirement deed would have to be held as void if the petitioner is to be given the status of a partner. The declaration of retirement deed to be a void document could have been filed within three years of its execution i.e. upto 1985. The petitioner cannot raise a dispute about the voidness of the retirement deed now after 27 years of the execution of the retirement deed. Even otherwise, I find that the petitioner has no prima facie case. The petitioner's contention of acting as a partner even after signing the retirement deed is not tenable.

6. In view of my foregoing discussion, I find no force in this petition. The petition is hereby dismissed. No orders as to costs.

September 01, 2009
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SHIV NARAYAN DHINGRA J.