

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

+ **EFA (OS) No. 19 of 2009**

Date of Decision : May 18, 2009

SHRI RAVI AGGARWAL Appellant
Through: Mr. Sanjeev Palli, Advocate

Versus

SHRI ANIL JAGOTA Respondent
Through: Mr. Girish Aggarwal, Advocate
For the respondent/caveator.

CORAM :

**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA**

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

SANJAY KISHAN KAUL, J. (ORAL)

Caveat No. 42/2009 in EFA(OS) No. 19/2009

Learned counsel for the respondent/caveator has entered appearance, thus the caveat stands discharged.

**CM APPL. No. 7178/2009 (Exemption) in EFA(OS)
No. 19/2009**

Allowed subject to just exceptions.

+ EFA (OS) No. 19/2009

1. The present appeal in fact raises an interesting question of law as to how a settlement recorded in a private mediation should be enforceable.

2. The factual matrix of the case is set out. The parties were partners in M/s. Plywood Traders. There were some disputes and the matter was taken up for mediation by one Mr.Virender Taneja, who was known to both the parties. A settlement was arrived at between the parties.

3. The appellant filed a petition under Section 8 read with Section 11 of the Arbitration and Conciliation Act on the ground that certain disputes had arisen between the parties and on account of there being an arbitration clause in the Partnership Deed, reference should be made to an arbitrator. The respondent took a preliminary objection that the disputes between the parties stood resolved in a private mediation where the mediator has been jointly appointed by the parties and thus nothing remained to be adjudicated. Respondent also took a stand that he has no objection if the settlement is implemented and acted upon. In fact the stand in those proceedings of the respondent was that the settlement had already been acted upon though this position was disputed by the appellant. The appellant also stated that he had no objection if the settlement was acted upon. The learned Single Judge thus by an order dated 25.10.2005, found that there was no need to appoint an arbitrator and in case the plea of the appellant was that “the

settlement/award had not been implemented fully”, it was open to seek enforcement thereof by resorting to appropriate legal proceedings.

4. The appellant thereafter proceeded to file an execution petition seeking enforcement of the settlement. This execution petition has been held to be not maintainable in terms of the impugned order dated 26.03.2009. The reason for the same is that the parties had settled their disputes through a mediator and the Court had not appointed either an arbitrator or mediator. No decree had been passed in terms of Section 2(2) of the Civil Procedure Code which could be executable. We may notice that though the stand of the appellant was that the settlement arrived at between the parties was in the nature of an arbitral award and executable. The learned Single Judge found that no award had been passed by any arbitrator under the said Act.

5. Learned counsel for the appellant drew our attention to the provisions of Section 30 of the said Act in support of his case that even a settlement mutually arrived at in arbitration between the parties is enforceable and can be executed as a decree. The said provision reads as under:

“30. Settlement. – (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.

(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.”

6. We are unable to accept the submission of the learned counsel for the appellant for the reason that sub-section (1) of Section 30 of the said Act provides for a duly constituted arbitral Tribunal to encourage settlement. In case such a settlement is arrived at, the settlement is to be recorded in the form of an arbitral award on agreed terms. It is then only that the award becomes executable. Thus, it is not the settlement *per se* which is executable but an award made by a duly constituted Arbitral Tribunal based on a settlement which is executable. The facts of the present case show that no Arbitral Tribunal was constituted but undoubtedly a third party was put in the picture to arrive at a settlement who only acted as a mediator.

7. Learned counsel has also drawn our attention to the provisions of Sections 73 and 74 of the said Act which read as under:

“73. Settlement agreement. – (1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After

receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

74. Status and effect of settlement agreement.
– The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.”

8. The said provisions fall in Part III of the said Act dealing with conciliation. Conciliation proceedings had to be initiated in terms of Section 62 of the said Act. The settlement agreement envisaged under Section 73 of the said Act has to be one which is in pursuance to a duly constituted conciliation proceedings as per Section 62 of the said Act. If such a settlement comes about then that settlement is enforceable as an arbitral award in terms of Section 74 of the said Act. The legislature in its wisdom has not considered it appropriate to provide for a mediation settlement privately arrived at to be enforced as a decree *de hors* Part III of the said Act.

9. The result of the aforesaid is that though there is a valid settlement arrived at between the parties in mediation proceedings, which is undisputed by both the parties, the question is of implementation of that settlement and thus it partakes the character of a private agreement which is sought to be enforced by one of the parties alleging a breach while the other party is alleging due compliance.

10. We are thus of the considered view that the remedy of execution is not available to the appellant. The appellant has been endeavouring to seek different remedies under provisions of the said Act but will have to initiate appropriate legal proceedings in accordance with law for seeking enforcement of the settlement in the form of a private agreement.

11. Learned counsel for the appellant states that in view of his bona fide endeavour to seek enforcement of the settlement agreement and the legal proceedings initiated in pursuance thereto the period of limitation for enforcement of that agreement should be extended. This is a matter to be examined by the Court where such proceedings are initiated, if any.

12. The appeal is dismissed with the aforesaid observations.

SANJAY KISHAN KAUL, J.

MAY 18, 2009
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SUDERSHAN KUMAR MISRA, J.