

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

Date of Reserve: 2.4.2009
Date of Order: 16th April, 2009

Arb. A. No. 21/2008

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16.4.2009

Karamshi Jethabhai Somaiya (Delhi) Trust ... Appellant

Through: Mr. Ashwini Mata, Sr. Advocate with
Mr. Rishi Agarwal & Ms. Rohma Hameed, Advs.

Versus

Anant Raj Agencies Pvt. Ltd. & Ors. ... Respondents

Through: Mr. Raman Kapur, Advocate &
Ms. Neha Khera, 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

By this appeal under Section 37 (2) of the Arbitration & Conciliation Act, 1996, the appellant has assailed an order dated 27.3.2008 passed by the learned Arbitrator whereby the learned Arbitrator held that names of respondents no. 2 & 3 be deleted from the array of parties as they had been unnecessarily impleaded by the appellant in its claim.

2. The brief facts relevant for the purpose of deciding this appeal are that the appellant filed a claim petition before the learned Arbitrator against M/s Anant Raj Agencies Pvt. Ltd. and in this claim petition he also made Mr. Anil Sarin and M/s Anant Raj Exports Pvt. Ltd as respondents. Both, Mr. Anil Sarin and M/s Anant Raj Exports Pvt. Ltd filed objections that they were not necessary parties resulting into passing of the above order by the learned Arbitrator. The learned Arbitrator observed that Mr. Anil Sarin was merely a Director of M/s Anant Raj Agencies Pvt. Ltd, the party to the contract, Mr. Anil Sarin could not be impleaded in his individual capacity as a party to the claim as there was no arbitration agreement between the appellant and Mr. Anil Sarin. Similarly, the learned Arbitrator observed that from reading of agreement to sell it was apparent that M/s Anant Raj Exports Pvt. Ltd. was not a party to the agreement neither it was M/s Anant Raj Exports Pvt. Ltd, who had signed the agreement therefore M/s Anant Raj Exports Pvt. Ltd. was not a party to the Arbitration Agreement and even otherwise no relief had been claimed against M/s Anant Raj Exports Pvt. Ltd. therefore the name of M/s Anant Raj Exports Pvt. Ltd. was also deleted.

3. The factual situation is not in dispute. Mr. Anil Sarin had signed the agreement to sell in the capacity of a Director of M/s Anant Raj Agencies Pvt. Ltd. Mr. Anil Sarin in his individual capacity cannot be made a party to the dispute raised by the appellant. Neither, Mr. Anil Sarin in his individual capacity

can be held liable to pay awarded amount, if any, to the appellant. I, therefore consider that the order of the learned Arbitrator deleting the name of Mr. Anil Sarin does not suffer from any infirmity.

4. As far as M/s Anant Raj Agencies Pvt. Ltd. is concerned, a perusal of agreement dated 16.12.2003 would show that this agreement to sell was made between M/s Anant Raj Agencies Pvt. Ltd. and the appellant. In the very first paragraph of the agreement M/s Anant Raj Agencies Pvt. Ltd. has been referred to as 'seller' and appellant has been referred to as 'purchaser' and in the very next paragraph M/s Anant Raj Agencies Pvt. Ltd. has been shown as owner of 6.44 acre of land and other parts of land and the details of different khasra nos. and kila nos. of which M/s Anant Raj Agencies Pvt. Ltd. was the owner have been mentioned. In the body of agreement to sell, the mode of payment of consideration by the purchaser has been mentioned. Clause 2 (a) states that a cheque of Rs.10 lac was paid as part consideration and clause 2(c) states that this amount of Rs.10 lac was paid to M/s Anant Raj Exports Pvt. Ltd. and M/s Anant Raj Exports Pvt. Ltd. would be known as second seller. At the bottom of the agreement a space was provided for signatures on behalf of three parties, one M/s Anant Raj Agencies Pvt. Ltd. through its authorized signatory M/s Anil Sarin; second M/s Anant Raj Exports Pvt. Ltd. through its authorized signatory Mr. Anil Sarin and third being the appellant through its authorized signatory Mr. G.H.Keswani. While signatures of Mr. Anil Sarin appeared against M/s Anant

Raj Agencies Pvt. Ltd. and signatures of Mr. G.H.Keswani appeared against appellant but no signatures appear against M/s Anant Raj Exports Pvt. Ltd. There is no dispute about the fact that this amount of Rs.10 lac was received by M/s Anant Raj Exports Pvt. Ltd. on behalf of M/s Anant Raj Agencies Pvt. Ltd. and not in an independent capacity, M/s Anant Raj Exports Pvt. Ltd. is not the owner of the land and could not have entered into an agreement to sell with the appellant in view of the fact that it was not owner of the land. In the claim petition filed by the appellant, the appellant has asked for a specific performance of agreement to sell in respect of 6.44 acres of land which is owned by M/s Anant Raj Agencies Pvt. Ltd. Specific performance of agreement to sell cannot be ordered against a person, who is not the owner of the property. In the alternative, the appellant has asked for directing respondent to pay market value of the land. Obviously, only the owner of the land can be impleaded as a party for such a claim.

5. In a claim petition made on the basis of a contract between the parties only those persons can be impleaded who are parties to the arbitration agreement and to the contract. Merely by mentioning a third party in the contract, who has not signed the contract, the third party cannot be made liable for the contract. In the present case, in the agreement to sell the name of M/s Anant Raj Exports Pvt. Ltd. is mentioned but M/s Anant Raj Exports Pvt. Limited is not a party to the contract either in the title of the contract or at the place of

signing of the contract. The contract has been signed only on behalf of M/s Anant Raj Agencies Pvt. Ltd. and not on behalf of M/s Anant Raj Exports Pvt. Ltd.. No doubt, the appellant has paid Rs.10 lac to M/s Anant Raj Exports Pvt. Ltd. The appellant is at liberty to recover this amount from M/s Anant Raj Exports Pvt. Ltd. independent of this contract, if it is the case of the appellant that this amount was not for purchase of the land from M/s Anant Raj Agencies Pvt. Ltd. Since, the amount was part of consideration for purchase of land from M/s Anant Raj Agencies Pvt. Ltd. and the receipt of this amount has not been disputed by M/s Anant Raj Agencies Pvt. Ltd. I consider that in the claim petition M/s Anant Raj Exports Pvt. Limited could not have been made as a party and the learned Arbitrator rightly struck off the name of M/s Anant Raj Exports Pvt. Ltd.

I find no force in the appeal. The appeal is hereby dismissed.

April 16, 2009
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SHIV NARAYAN DHINGRA, J.