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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: September 09, 2009

Date of Order: October 22, 2009

+Arb. Appeal 16/2009

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22.10.2009

Vinay Tuli & Anr.

...Appellant

Through: Mr. S.C. Singhal with Mr. S.R. Sharma, Advocates

Versus

Vijay Tuli & Ors.

...Respondents

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. Darpan Wadhwa, Advocates

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 appeal has been preferred by the appellant under Section 37 of the Arbitration & Conciliation Act, 1996 against an order dated 9th July 2009 passed by the learned Arbitrator allowing an application of respondent for deleting the reference made regarding M/s Alok International in the appellant's reply and confining the arbitration proceedings only to the affairs of M/s Mayur International.

2. Brief facts relevant for the purpose of deciding this appeal are that disputes arose between partners of M/s Mayur International of which claimant claimed a share of 50% and respondents were shareholders to the balance 50% shares. There was an arbitration clause in the partnership deed. By an order dated 6th January 2009, this Court on an application under Section 11 of

the Arbitration & Conciliation Act, 1996, appointed a sole arbitrator to adjudicate the disputes between the partners of partnership firm M/s Mayur International. Before the arbitrator, the appellant (respondent before the arbitrator) filed reply-cum-counterclaim and in this counterclaim raised disputes in relation to the assets of the firm M/s Alok International. The respondent (claimant before the Arbitrator) made an application under Section 16 before the Arbitrator to delete the reference qua M/s Alok International stating that the claim made by appellant in respect of M/s Alok International were beyond the scope of arbitration proceedings. This application of respondent was allowed and hence this appeal.

3. The appellant's contentions before this Court are the same as the appellant had raised before the arbitrator. All these contentions have been dealt with by the learned arbitrator at length and the learned arbitrator after referring to the judgments cited by the appellant has come to conclusion that since no reference was made in respect of M/s Alok International and M/s Alok International was previously admitted by the appellant as an independent entity in the proceedings before the Provident Fund Authorities and M/s Alok International was a proprietary concern of HUF, being not a part of M/s Mayur International could not be the subject matter of arbitration proceedings before the arbitrator.

4. The appellant has contended that the partner of M/s Mayur Intentional had been working for M/s Alok International also. The appellant (respondent no.1 before the arbitrator) had been signing the cheques on behalf of M/s Alok International. All concerns including M/s Mayur International were family concerns and as such learned arbitrator was duty bound to lift the veil and

find out as to in what manner M/s Alok International was functioning and since M/s Alok International was conducting exactly the same business from the same premises, same telephone numbers, fax, computers, stocks, staff and inasmuch as Shri Vinay Tuli was also a signatory in bank account of M/s Alok International, therefore it was not a separate entity and the arbitrator must pierce the veil concerning the affairs of M/s Alok International and consider it as a part of the arbitration reference since M/s Alok International was a part and parcel of M/s Mayur International.

5. I consider that this argument of appellant must fail. A person can have many business ventures. There is no restriction on a person on becoming partner of several firms and owning proprietorship firms simultaneously as well as being a director of the companies and member of HUF. A person can enter into a contract with different persons in different capacities for the purpose of business. Where a person has entered into a partnership deed with other partners and the partnership deed contained an arbitration clause, if the dispute of partnership firm is referred to an arbitrator that would not mean that every other business activity of the person would become subject matter of arbitration. In order to invoke arbitration agreement, it is necessary that there should be an arbitration agreement between the parties. In the present case, M/s Mayur International was the partnership firm of which the appellant and respondent were the partners. M/s Alok International is a proprietorship owned by HUF. M/s Alok International is not a partner of M/s Mayur International nor is the HUF a partner of M/s Mayur Intentional. Merely because respondent, apart from being a partner of M/s Mayur Intentional, is also a Karta of HUF it would not bring M/s Alok International within the fold of partnership firm, nor signing of cheques by appellant or the joint use of the

premises or telephone or fax number by the partnership firm and M/s Alok International would fuse the identity of M/s Mayur International and M/s Alok International and convert M/s Alok International as a partner of M/s Mayur International. Moreover, a person cannot be allowed to reprobate and aprobate according to his convenience. The learned arbitrator has extensively quoted the stand taken by the appellant before the Provident Fund Authorities where the appellant had given a detailed rejoinder to the Provident Fund Authorities explaining how M/s Mayur International and Tuli International and M/s Alok International were three independent and separate entities. He had given in detail the structure of the three business entities and their independent establishment. He had resisted tooth and nail the effort of P.F. Inspector to count three entities as one for the purpose of provident fund. The appellant now cannot be allowed to have liberty to change the stand according to his convenience and take the stand that M/s Alok International was a part and parcel of M/s Mayur Intentional.

6. In view of my foregoing discussion, I find no force in this appeal. The appeal is hereby dismissed.

October 22, 2009
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SHIV NARAYAN DHINGRA J.