

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

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OMP No.483/2009

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Date of decision:24.08.2009

....Petitioner

MANAK CHAND JAIN

Through: Mr.R.K. Jain, Advocate.

Versus

LOVE JAIN & OTHERS

... Respondents

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. This petition under Section 34 of the Arbitration Act 1996 with respect to arbitral award dated 04.05.2009 is for consideration for admission.

2. The arbitrator has been impleaded as respondent No.3. The arbitrator is not required to be so impleaded in these proceedings. The name of respondent No.3 is struck off from array of parties.

3. One of the claims of the petitioner before the Arbitrator was for possession of shop no. 1168/8, Kucha Mahajani, Chandni Chowk, Delhi – 6. The Arbitrator has held the petitioner to be the owner of the said shop and entitled to possession of the same. In fact, it is stated “claim for possession of the shop is decided in favour of the

claimant". In spite of the said claim of the petitioner having been allowed, objection are preferred with respect thereto also. It is contended that the Arbitrator has, in the last line of the award, stated "claim and counter claim are rejected. The parties are directed to bear their own cost of the proceedings". It is thus contended that in spite of having allowed the claim for possession in the earlier paragraph, in the final paragraph of the award the claim for possession has also be dismissed. In fact an application under Section 33 of the Act is also stated to have been preferred before the Arbitrator in this regard and which was disposed of by the Arbitrator vide order dated 21.05.2009. The Arbitrator has clarified that the last paragraph of the award is concerned with the claim no. 5 of the claimant (petitioner) and counter-claim No.2 of the respondent no. 2 and counter-claim No.3 of the respondent no. 3 and has further clarified that the last paragraph aforesaid relates to the said claim/counter-claim only. Notwithstanding the aforesaid clarification by the Arbitrator, the petitioner has still taken objection thereto. The counsel for the petitioner has contended that in the absence of the Arbitrator passing any direction against the respondents for delivery of possession, the award is bad.

4. The language as described in the schedule to the CPC as to the decrees of the court does not apply to the arbitral award. In my view, the award is clear that the Arbitrator has allowed the claim for possession. The remedy of the petitioner is by way of execution and not by way of this petition.

5. The next objection is taken to the award qua mesne profits. The petitioner had claimed mesne profits at the rate of Rs. 20,000/- per month. The Arbitrator has awarded mesne profits @ Rs. 5000/-

per month. The Arbitrator while awarding mesne profits at the said rate has considered the fact that in the area where the said shop is situated, the system of pagri is prevalent and thus the rate of rent of neighbouring shops is very less. The Arbitrator has also relied upon the suggestion of the petitioner himself in the cross-examination of the respondent, inter-alia, to the effect that the rate of rent of the said shop was Rs. 5000/- per month. The Arbitrator has not found any basis of the claim of the petitioner @ Rs. 20,000/- per month.

6. The argument of the counsel for the petitioner is that the Arbitrator has not appreciated the evidence led by the petitioner. This court in the exercise of jurisdiction under Section 34 is not to appraise the evidence or to go into the question of insufficiency or sufficiency of the evidence for the conclusion arrived at by the Arbitrator. Even otherwise, nothing contrary to the substantial law can be pointed out with respect to the said award.

7. The counsel for the petitioner has lastly contended that the award dismissing the claim of the petitioner for rendition of account is bad. Disputes and differences, inter-alia, had arisen out of a partnership deed between the parties. It is the petitioner who had issued the notice of dissolution of partnership. The Arbitrator has held that the partnership stood dissolved with effect from 29.04.2006.

8. While the petitioner had claimed the relief of accounts and for recovery of amount found due thereon, the respondents had made a claim for recovery of Rs. 3,55,624.52 from the petitioner as amount due as per the accounts of the partnership. The Arbitrator found that the respondents were taking active part in the partnership business

and the petitioner being elder brother of respondents used to withdraw the moneys from the account. The Arbitrator also found that though the petitioner claimed his 50% share in the partnership but nothing has been said by the petitioner in his examination in chief on question of rendition of accounts and nothing could be elicited by the petitioner from the cross-examination of the respondents also. It was also found that account books had not been filed by the parties.

9. The Arbitrator on the basis of total oral and documentary evidence on record held that there was nothing to justify the entry in the balance sheet of the firm produced by the respondents showing the sum of Rs. 3,55,624.52 as due from the petitioner; that the petitioner was having separate business and the business of the partnership subject matter of the dispute was started by the petitioner with his two younger brothers, probably with good intention to settle them; in the absence of other evidence on the record by the petitioner of his investment in the business, it could not be said as to how much amount was due to the petitioner from the respondent; there was no evidence about the stock of partnership and no evidence with respect to the assets of partnership, or the stock in hand. The Arbitrator has held that both parties having not produced any evidence, it could not be decided as to how much amount, if any, was due to the petitioner. Thus, the claim of the petitioner as well as of the respondents in this regard was rejected.

10. The counsel for the petitioner has firstly argued that the Arbitrator ought to have first passed a decree/award for rendition of accounts and appointed a Commissioner in this regard. This

contention of the counsel is not found acceptable. The Arbitrator is not bound to follow the procedure as prescribed in the CPC. From a reading of the award, it is clear that the Arbitrator gave ample opportunities to the petitioner to establish by evidence as to the amount, if any, due to him on dissolution of the partnership but the petitioner failed to lead any evidence in this regard. Thus the arbitrator dealt not only with the aspect of liability for rendering accounts but also of accounts. The counsel for the petitioner also does not contravene this. Neither in the petition nor in arguments even, any instance whatsoever of evidence if any from which such amount due could be determined has been cited. The counsel for petitioner has urged that the Arbitrator has held that it was the respondents who were carrying on business and keeping accounts; since they have failed to produce accounts, adverse inference ought to have been drawn and the version of the petitioner of the sum of Rs. 25 lacs being due to him ought to have been accepted.

11. I have asked during the hearing from the counsel for the petitioner whether the petitioner had taken any steps whatsoever of proving stocks or transactions of the business by summoning the income tax, sales tax record or any party with whom the firm may have transacted the business, to show any amount was due to him. The answer is in negative. In the absence of the same, it cannot be said that the award is contrary to any substantial law or the public policy, inter-alia on which ground alone the award can be set aside under the Arbitration Act 1996.

12. The counsel for the petitioner has contended that it was a term of the partnership deed that on dissolution, the accounts shall be rendered. It is urged that the petitioner had also issued notice to the

respondents to produce the accounts. However, the said contention also does not prevail with him. The only purpose of giving a notice is that the petitioner could thereafter lead evidence aliunde to show the amounts due to him. The petitioner having admittedly not led such evidence cannot call upon this court to interfere in the award, in any manner whatsoever.

13. No ground is found to issue the notice of the petition. Dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**August 24th, 2009
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