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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: July 24, 2009
Date of Order: July 31, 2009

+Arb. Appeal 25/2008

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Gagandeep Singh
Through: Mr. Jagjit Singh, Advocate

31.07.2009
...Appellant

Versus

Ravinder Kaur & Anr.
Through: Mr. J.S. Bhasin and Ms. Rashmi Priya, Advocates

...Respondents

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 under Section 37(2) of the Arbitration & Conciliation Act, 1996 ("the Act" for short) has been preferred by the appellant against the order of learned Arbitrator passed on an application under Section 17 of the Act.

2. The parties had a dispute in respect of division of partnership firm which had two places of business at Ajmal Khan Road, New Delhi, one was at 15-A, Ground Floor, WEA, Ajmal Khan Road and the other was at the basement of 15-A/26, WEA, Ajmal Khan Road. After disputes arose, under directions of this Court both the parties were appointed receivers of the respective shops in their occupation now i.e. one of the ground floors and the other of the basement. The parties had also a dispute in respect of trademark "Klick". Both the parties started using the same trademark "Klick"

and a suit in respect of the said trademark is also pending between the parties about the right to use the trademark "Klick". However, no interim injunction has been granted in favour of either of the parties giving exclusive right to use the trademark "Klick". The result is that both the parties are having same business using same trademark, one at the main road at ground floor and the other at the basement in a lane. The dispute between the parties regarding partnership and its assets were referred to the arbitrator and is pending before the arbitrator. An application was made by petitioner before the Arbitrator that the respondent, whose shop was in the basement in side lane, should be restrained from posting one of his persons/employees at the mouth of the lane near the shop of the appellant, indicating that the business having trademark "Klick" was going on in the lane.

3. In order to decide this application of the petitioner, the learned arbitrator went to the business place in presence of both the parties along with their respective counsels. He found that the respondent had fixed a make shift signboard outside the lane in a flowerpot indicating the trademark and name of the shop and an arrow was pointing towards the basement shop. The flower pot was being put on a gutter cover of the lane and it was around 10-11 ft. away from the ground floor shop, though it was somewhat toward the entry of the ground floor shop. One boy was standing with his hand on the signboard. The allegations of the appellant was that the said boy or other employee/agent of respondent used to divert the customers of ground floor shop towards the basement either by gestures or by moving his hand and it sometimes lead to clash between the two parties. Learned arbitrator found that there was no electricity poll or telephone poll outside the gali/lane on which the signboard could be fixed. He also found that many shopkeepers

had put their signboards on telephone polls and electricity polls indicating the shop in the lanes. He also found that the applicant/appellant has also put a signboard in front of his shop, above the footpath. It was an admitted case that the trademark "Klick" was earlier registered in the name of respondent Mr. Jagbir Singh and later on in the name of father of the applicant and Jagbir Singh. The learned Arbitrator made efforts for settlement. A meeting was held on 25th September 2008 in presence of the arbitrator. After this meeting Mr. Gagandeep Singh and Mr. Jasbir Singh [on behalf of his wife Ms. Ravinder Kaur] made a joint statement before the Arbitrator that they will not install a new signboard in respect of their shops and will maintain status quo as on the date of inspection till the order was passed on pending applications. On the basis of this joint statement and inspection, learned arbitrator passed an order that the parties shall maintain status quo in respect of boards.

4. The learned counsel for the appellant stated that the order of learned arbitrator was bad since the quarrel used to take place between the parties because of board having been placed in front of the shop of appellant and the appellants' customers used to be attracted by respondents' agent and, therefore, this Court should allow the appeal of appellant and respondent should be restrained from putting signboard at the corner of the lane.

5. The impugned order was passed by the learned Arbitrator on the basis of joint statement made by the parties before him that they shall maintain status quo and no new signboard shall be installed. It is not in dispute that the respondent had not installed any new board and only one board indicating the shop of respondent was being maintained at the corner of lane. It is also not disputed that the appellant had also put the signboard outside

his shop on the pavement. Since the shop of the appellant is on the ground floor on the main road, appellant is obviously having an advantage of the direct approach of the customers to his shop while the shop of respondent is inside the lane and may not even be noticed by the customers using the trademark "Klick". That seems to be reason that the respondent was compelled to put a signboard on the corner of the lane which indicates that he had also a shop and was entitled to use the trademark "Klick" and is in the same business, till the matter was not settled between the parties through legal proceedings.

6. I find that there was no infirmity in the order passed by learned arbitrator who directed the parties to maintain status quo. The appeal is hereby dismissed being without any merits.

July 31, 2009
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SHIV NARAYAN DHINGRA J.