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HIGH COURT OF DELHI: NEW DELHI

Judgment reserved on : 03.08.2011

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Judgment pronounced on: 23.09.2011

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OMP No.188/2011

M/S HIGH END

..... Petitioner

Through: Mr. K.K. Sabharwal, Adv.

Versus

MR MANAV GANGWANI AND ANOTHER

..... Respondents

Through: Mr. Arjun Mahajan, Adv. with
Mr. Sushil Shukla and Mr Anmol
Chandan, Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996, praying that the arbitration award dated 24.11.2010 passed by respondent No.2 be set aside.
2. Brief facts of the case are that by order dated 09.10.2007 this court had appointed the respondent No.2 as the Sole Arbitrator in Arbitration Petition No.123 of 2007 titled Manav Gangwani vs. M/s High End and

directed that the arbitration proceedings be commenced only after 01.12.2007 so that any settlement if possible may be facilitated. In compliance of the order dated 09.10.2007 the respondent No.2 sent the notice dated 13.03.2008 to the parties through their counsels for 27.03.2008. The parties to the present petition appeared before the arbitrator/respondent No.2, the statement of claim and the counter claim, reply and rejoinder etc. were filed, various documents were produced and oral evidence was also adduced. The petitioner examined four witnesses namely Mr. Hemant Bhasin, attorney of the petitioner, Mr. Anil Sharma, chartered accountant, Ms. Poonam Khullar and Mr. K.K. Khandelwal, a hand-writing expert whereas the respondent examined himself as a witness.

3. In his statement of claim the respondent No.1 pleaded that he is a leading fashion designer in India and that the petitioner is an entrepreneur and exporter in home furnishings and that in December 2005 the petitioner approached the respondent No.1 asking for an exclusive license in India to display and use his name under the name and style of “Home Couture by Manav Ganagwani”, in respect of development and marketing of the business of home furnishings and home accessories. And that after discussing the terms and conditions the agreement dated 07.02.2006 was entered into between the parties.

4. Further it was alleged by the respondent No.1 that in the terms of

the agreement dated 07.02.2006 the petitioner paid non-refundable amount of Rs.10,00,000/-to the respondent No.1 but did not pay any monthly royalty which was to be paid after a lapse of 90 days from the date of signing of the agreement and due to this reason the respondent suffered heavy losses as he could not enter into a similar agreement with any other person on account of exclusivity of the agreement. It was also stated that the respondent No.1 had served a legal notice dated 07.12.2006 upon the petitioner, terminating the agreement dated 07.02.2006 and demanding payment on account of breaches committed by the petitioner. The petitioner sent its reply dated 21.12.2006 and the respondent sent a rejoinder on 28.12.2006. The respondent No.1 filed four claims for various amounts.

5. The petitioner filed its written statement denying all the allegations of respondent No.1 and pleaded that the respondent No.1 pretended to be an experienced fashion designer of home furnishings but, the petitioner came to know that the respondent No.1 did not have any experience or status in the home furnishings and gift item market. Further, it was stated by the petitioner that believing and trusting the false claims of respondent No.1, the petitioner made a substantial investment towards label specific business expenses and at the instance of respondent No.1 the petitioner even got two shops /stores on rent adjoining the store of the respondent No.1 for very high rent, the location for which was selected by

respondent No.1. But, soon after the signing of the agreement the respondent No1 got busy preparing for his first fashion show. According to the petitioner, the respondent No.1 did not deserve any relief as he failed to perform his part of the contract and deceived the petitioner by holding that he is an expert in home furnishings.

6. The grievance of the petitioner is that after having examined the claims, counter-claims and submissions of the parties and the documents and evidence produced, the Arbitrator/respondent No.2 passed the award dated 24.11.2010 whereby the petitioner herein was directed to pay a sum of Rs.7,00,000/- to respondent No.1 towards claim No.1 and a sum of Rs.50,000/- towards the cost of arbitration. Thus, the petitioner was directed to pay a total sum of Rs.7,50,000/- to the respondent No.1 and it also directed that the respondent No.1 would also be entitled to simple interest @ 9% per annum on Rs.7,00,000/- from 27.03.2008 i.e. the date of arbitration proceedings till the date of payment of the said amount. As far as cost of arbitration of Rs.50,000/- is concerned, which was initially paid by respondent No.1, the same has been deposited by the petitioner with the Registrar General of this Court in terms of order dated 01.06.2011.

7. Being aggrieved by the said award, the petitioner filed the instant petition. According to the petitioner, the impugned award is liable to be set aside as the learned arbitrator ignored the fact that the designer had granted

exclusive license to the proprietor to use the label, namely “Home Couture by Manav Gangwani” and it was inclusive of service such as necessary information and content as may be required to set-up the business to market the home furnishings range designed by the proprietor for a period of 5 years with a lock in period of three years. Further, Rs. 10,00,000/- were also paid towards the signing amount. Thus, when the designer has unilaterally terminated the agreement he should refund the money paid to him by the proprietor as he has only allowed the use of the said “label” for a period of only 7 months.

8. Further, it is stated by the petitioner, that the learned arbitrator allowed the claim of Rs.7,00,000/- towards royalty for 7 months on the ground that no communication was made by the proprietor in writing as provided in the agreement but ignored the fact that as per clause 4(d) of the agreement, the designer was to provide complete support for promotion and marketing the “label” but the designer did not provide any support whatsoever and at no stage any evidence was produced to establish that the designer fulfilled his obligation under clause 4(d) of the agreement.

9. It is also stated by the petitioner that the learned arbitrator did not appreciate the fact that in his cross-examination the respondent No.1 himself admitted the fact that he has not entered into any agreement either prior or after the present agreement for use of the label. Further, as per the evidence

submitted by the respondent No.1 in terms of the income tax returns , his net income is shown as Rs.3,11,000/- and Rs.4,10,000/- in the year 2004, which clearly shows that his income was even less than Rs.35,000/- per month in the year 2005, this shows that even before the signing of the agreement he had an intention to cheat the petitioner because it beats the logic of demanding signing amount which is over two times his earlier income and close to three times his monthly income as royalty. Further, it is stated that during the cross-examination it was pointed out that there was a huge difference in the monthly rentals of the shops arranged by the respondent No.1 for himself and for the petitioner, the petitioner had to pay Rs.175/- per sq. ft. whereas the respondent himself was paying only Rs.95/- per sq. ft. per month.

10. As per the petitioner, it had to suffer heavy financial losses due to the acts of the respondent No.1, who failed to perform his part of the performances. It is also stated that the respondent No.1 lied under oath by disowning his own hand written note wherein he had asked for gifts worth Rs. 5,50,000/-. However, the hand-writing expert's report and his affidavit, confirms the fact that the said list was written by the respondent No.1. The petitioner has also submitted that the learned arbitrator has directed the petitioner to pay the interest @ 9% per annum on Rs.7,00,000/- from 27.03.2008 i.e. the date of arbitration proceedings till the date of payment of

the said amount, but, there is no provision for payment of interest in the agreement.

11. Before the Arbitrator, the respondent No.1 raised the following four claims:

“Claim No.1 – That the petitioner claims Rs.7,00,000/- (Rupees Seven Lakhs only) or 5% of the turnover of the Respondent, whichever is higher towards the royalty amount for the period of 7th December 2006 as per the terms of the agreement dated 07.02.2006.

Claim No.2 – That the petitioner claims Rs.50,00,000/- (Rupees Fifty Lakhs only) towards loss of business.

Claim No.3 – That the petitioner claims Rs.5,00,00,000/- (Rupees Five Crore Only) from the respondent on account of breach of contract, harassment, loss of reputation and damages.

Claim No.4 – The petitioner claims the cost of the litigations and the proceedings to the attended before the court and the arbitral tribunal from the Respondent.”

12. The claims 2 and 3 of the respondent No.1 were rejected by the arbitrator. The award has not been challenged by the respondent No.1. In so far as the claim No.1 for Rs.7 lac towards royalty for the period 07.05.2006 to 07.12.2006 in terms of agreement is concerned, arbitrator has referred to agreement in this regard. The contention of the petitioner before the arbitrator was that the respondent No.1 had not provided any service and no communication was exchanged between the parties after execution of the agreement and therefore, the respondent No.1 was not entitled for the royalty claim. It is the admitted position that the petitioner did not examine herself

who was the proprietor as a witness. On the other hand, her husband who was the attorney on her behalf appeared as a witness. As there was a written contract executed between the parties and execution of the agreement is not denied by the petitioner and in view of the specific clause in the agreement, the arbitrator awarded a sum of Rs.7 lac in favour of the respondent No.1 towards the royalty amount for the period period 07.05.2006 to 07.12.2006 as per terms of the agreement dated 7.2.2006. Similarly, in claim No.4 a sum of Rs.50,000/- was awarded by the arbitrator, which has now been deposited by the petitioner with the Registrar General of this Court.

13. The petitioner also filed four counter claims before the arbitrator. The petitioner claimed Rs.1,00,34,404/- along with interest @ 24% per annum being investment, commitment, including rental, security deposit, maintenance charges advances etc. The agreement provides a clause that the investment in merchandise, showrooms, administrative expenses, publicity and promotion etc. shall be borne by the petitioner and the respondent No.1 will not make any investment, therefore, the said counter claim No.1 of the petitioner was rejected.

14. The arbitrator has also dealt with the counter claim No.2 which is a loss on turnover for three months for a sum of Rs.99 lac as there was no provision the said claim was also rejected. In counter claim No.3, the

petitioner claimed loss of profits for one year onward of Rs.2.4 crores @25% i.e. Rs.60 lac. Since there was no provision in the agreement, the said counter claim No.3 was also rejected.

15. In counter claim No.4, the petitioner claimed Rs.50 lac on account of loss of opportunity, mental agony, breach of contract and wastage of talent. Since there was no provision in the agreement, the same also rejected.

16. The law on the issue raised by the petitioner in its objections filed under Section 34 is quite settled. The following are the few decisions which are directly applying to the facts of the present case :

(a) In the case of *M/s H.J. Baker & Bros. Inc. v. M.M.T.C.*, bearing suit No.1038-A/1996, decided on 05.09.2001, the Court observed as under:

“ No fault can be found in the aforesaid reasoning given by the arbitrators. The arbitrators were at liberty to interpret the clause in a particular manner and to decide as to whether such a clause is applicable in the given circumstances or not.”

(b) In the case of *Indu Engineering & Textiles Ltd. v. Delhi Development Authority*; AIR 2001 SC 2668, the Supreme Court observed as under:

“This Court, while dealing with the power of courts to interfere with an award passed by arbitrator, had consistently laid stress on the position that an arbitrator is

a Judge appointed by the parties and as such the award passed by him is not to be lightly interfered with. In the case on hand the only question that arose for consideration was whether the appellant was entitled to claim the enhanced price of hard coke for the quantity supplied by it to the respondent. Under the contract a specific quantity of the material was to be supplied during the period fixed under the agreement. Right from the beginning while submitting the tender the appellant had included a price escalation clause in which it was stipulated that any escalation of the price after submission of the tender will entitle the supplier to claim higher price from the other party. This clause was subsequently revised only to the effect that the price escalation will be applicable when there is statutory enhancement in the price of the commodity. No dispute was raised before the arbitrator or the court that the escalated price claimed by the appellant was not the statutorily enhanced price of hard coke. It was also not in dispute that even accepting the appellant's claim for escalated price of the commodity, it was entitled to the claim only in respect of a part of the quantity supplied and not the entire quantity. In these circumstances, the arbitrator had not attached importance to the non-mention of the enhanced price of hard coke in course of negotiations between the parties. The view taken by the arbitrator, in the circumstances of the case, was a plausible one and the same could not be said to be suffering from any manifest error on the face of the award or wholly improbable or perverse one. As such it was not open to the court to interfere with the award within the statutory limitations laid down in Section 30 of the Act. The single Judge, therefore, rightly declined to interfere with the award passed by the arbitrator and made it rule of the court.”

(c) In the case of *Oil and Natural Gas Corporation Ltd. v. SAW Pipes Ltd.*; AIR 2003 SC 2629, the Supreme Court observed as under:

“It cannot be disputed that for construction of the

contract, it is settled law that the intention of the parties is to be gathered from the words used in the agreement. If words are unambiguous and are used after full understanding of their meaning by experts, it would be difficult to gather their intention different from the language used in the agreement. If upon a reading of the document as a whole, it can fairly be deduced from the words actually used therein that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that term. Further, in construing a contract, the Court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the court can do about it.”

17. In view of the above said settled law and coupled with the fact that the arbitrator has given a complete answer to the claims and counter claims made by the parties, there is hardly any reason to interfere with the award passed by the respondent No.2. Therefore, the objections, filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 24.11.2010, are dismissed. No costs.

18. The amount deposited by the petitioner with the Registrar General of this Court in terms of order dated 01.06.2011 be released to the respondent No.1.

MANMOHAN SINGH, J

SEPTEMBER 23, 2011