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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No.225/2006

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19th September, 2011

SHRI C.S. AHLUWALIA

..... Appellant

Through: Ms. Shobhna Takiar, Advocate.

VERSUS

MOHD. SALIM KHATRI & ANR.

..... Respondents

Through: Mr. M.A. Khan, Advocate with
Mr. Arun Batla, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this First Appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') is to the impugned judgment of the Court below dated 8.3.2006, and by which judgment the Court below dismissed the objections of the appellant/objector filed under Section 34 of the Act.

2. The facts of the case are that the appellant as an owner of the shop situated at ground floor of E-3, Lajpat Nagar-II, New Delhi-24 entered into a franchise agreement dated 13.8.2001 with the respondents whereby respondents were allowed to sell the leather

products under the name of “Aflatoon” and “4 Wheel”. The appellant received various amounts under the franchise agreement totaling to a sum of Rs.3,16,167/-. The respondents also spent a sum of Rs.50,000/- towards renovation of the shop. The appellant in spite of having received the amounts did not allow the respondents to operate the franchise agreement and sell the products from the shop as a result of which respondents initiated arbitration proceedings for recovery of the amounts paid in addition to the amount of Rs.50,000/- spent towards renovation.

3. The Arbitrator issued notices to the appellant to appear before him and which notices were sent by registered post AD, by courier as well by service of posting at the shop premises and where they were received. Since the appellant did not appear, he was proceeded ex parte and an ex parte Award was passed.

4. On behalf of the appellant it was argued before the Court below, and which is also an argument addressed before me, that the appellant was no longer at the premises in question where the franchise agreement was to be operated and in fact he had shifted to Chandigarh and it was therefore claimed that the appellant was not served in the arbitration proceedings and the ex parte Award is therefore liable to be set aside. It is also argued that the appellant is a senior citizen of over 80 years of age and therefore he is entitled to discretion from this Court.

5. In my opinion, the present litigation is a classic case of gross abuse of process of law and an endeavour by a dishonest person to retain with him monies received under a franchise agreement which he deliberately failed to come into operation. The Court below has noted that the Arbitrator is a retired Judge of this Court and notice issued shows the mobile number also of the Arbitrator. It is found that no effort was made by the appellant to contact the Arbitrator. Though it was argued that the appellant was sick, however, no proof with respect to the alleged sickness of the appellant was filed. The Court below has also noted that the entire judicial record shows no residential address of the appellant either of Delhi or of Chandigarh. On the aspect that the appellant is a senior citizen, the trial Court has held that he may be a senior citizen, however, the fact of the matter is that he was otherwise fully fit and in fact besides travelling abroad to meet his son in London he was also personally pursuing the litigation.

6. On these various aspects, the Court below has made pertinent observations which are contained in paras 17 to 21, and which read as under:-

“17. It is significant to note that even in the affidavit filed in support of the present objection petition, objector has given his address as ‘Prop. of M/s Park-N Shop No.E-3, Lajpat Nagar-II, New Delhi-24’. He has not furnished his residential address anywhere including the present petition. Photocopy of his passport placed on record by the objector also does not show his residential address.

18. Further the Objector in para 1 of the objection petition also claims that due to his old age he is living with this son in Chandigarh. Significantly objector’s own affidavit filed in

support of the present objection petition does not mention the said Chandigarh address. No such address is recorded in the copy of passport placed on record by the objector. There is no other evidence either oral or documentary to show the said Chandigarh address. So the objection of the objector to the effect that he resides at Chandigarh and he is not using the premises E-3, Lajpat Nagar-II, New Delhi is false on the face of it and is not supported by any evidence.

19. Notice dated 27.05.2005 issued by Ld. Arbitrator has also been placed on record. It clearly shows address and mobile phone of Ld. Arbitrator. In case of need or help, objector could have very well contacted Ld. Arbitrator on his mobile. That was not done. No effort was made by the objector to meet Ld. Arbitrator. No proof of sickness or consultation with any doctor has been filed.

20. The objector in the objection petition has repeatedly claimed that he is a senior citizen of 80 years. He also claims to have poor eye sight and memory. I am conscious of the fact that old age by itself is a disease. But the question is does that ipso facto entitle the objector to get the Arbitral award in question set aside.

21. As already discussed, objector has not given his residential address either of Delhi or Chandigarh. Admittedly objector went to his commercial premises at E-3, Lajpat Nagar-II, alone. Also admittedly objector came from Chandigarh. He also went to London alone. In other words objector has been doing so much of physical movement alone without the aid and help of anyone. The question is why no effort was made by him to contact Ld. Arbitrator either on phone or personally. No record of medical treatment has been filed. So, this is not a case where the objector lacked the skill, means or opportunity to present his case before Ld. Arbitrator. It appears to me that there was a deliberate attempt by the objector to avoid and thwart the arbitration proceedings. Objector has failed to establish any sufficient cause, even prima facie, which could justify his absence from arbitration proceedings. It is clear that his absence was deliberate and intentional. In the facts of this case mentioned above, it cannot be said that objector was unable to present his case before Ld. Arbitrator. In fact he deliberately avoided appearance and participation during the arbitration proceedings."

7. I do not find any gross illegality or gross perversity for this Court to interfere with the impugned order. The scope of hearing

objections to an Award is limited. If the scope of hearing objections to an Award is limited, then, the scope of hearing an appeal against the order dismissing objections will have to be further limited. I may note that even in the present appeal a learned Single Judge of this Court had recorded that respondents were ready to accept an amount lower than Awarded of Rs.2 lacs with interest @ 9% per annum, however, the appellant was not even agreeable to pay this particular amount. In view of the above, I dismiss the appeal with actual costs. This court is entitled to impose actual costs in terms of Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15. A Division Bench of three Judges of the Supreme Court in para 37 of the decision reported as ***Salem Advocate Bar Association Vs. Union of India (2005)6 SCC 344***, has also observed that it is high time that actual costs must be imposed. Considering the facts and circumstances of the case, therefore, I deem it fit to dismiss the appeal with costs of Rs.25,000/- and which shall be paid by the appellant to the respondents within two weeks from today.

8. The appeal is accordingly dismissed with costs of Rs.25,000/-. The amount deposited by the appellant in this Court be released to the respondents in part satisfaction of the subject Award.

SEPTEMBER 19, 2011
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VALMIKI J. MEHTA, J.