

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

% Date of decision : 19.10.2011

FAO(OS) No. 429/2011

RAMAN KAPOOR APPELLANT

Through : Mr.Sandeep Sharma, Advocate.

- V E R S U S -

O.P.KAPOOR & ORS. ... RESPONDENTS

Through : Mr.Harish Malhotra, Sr. Adv. with
Mr.Rajinder Aggarwal, Advocate.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

SANJAY KISHAN KAUL, J. (ORAL)

1. The family dispute relating to Kapoor family was referred to the arbitration of Justice P.K.Bahri (Retired). The interim award was passed on 01.06.2005 and the final award was passed on 23.04.2009. Sh.O.P.Kapoor, the father, along with his sons sought to assail the interim award relating to the claims filed by the appellant. The final award was also assailed by them. The appellant before us filed OMP No.400/2009 seeking modification of the final award dated 23.04.2009 to a limited extent.
2. Another two OMPs were filed by the appellant seeking interim measures consequent to passing of the interim and final award.
3. All the aforesaid matters were taken up for hearing and as per the submissions made on behalf of the appellant, OMP No.400/2009 was not pressed qua the modification of the final award and was accordingly dismissed vide the order dated 08.06.2011. This order also deals with the other OMPs. The order dated 08.06.2011 partially set aside the interim award dated 01.06.2005 and since the final award dated 23.04.2009 was founded on the interim award, the

same was also set aside insofar as it depended on the findings of the interim award. This portion pertains to one of the firms Kapoor Sons & Company.

4. The appellant has assailed the aforesaid order in FAO(OS) Nos.373-374/2011. The said appeal was being adjourned on account of settlement discussions, but the settlement discussions were reported to have failed and thus the matter has been set down for final hearing on 13.03.2012 by an order passed today.
5. The appellant had filed an application under Section 151 r/w Sections 152 and 153 and Order 47 Rule 1 of Code of Civil Procedure, 1908 seeking correction of a typographical error in the judgment dated 08.06.2011 while disposing of the OMP No.400/2009. The appellant pleaded that the court had wrongly recorded that the appellant did not press its objection petition to the final award dated 23.04.2009. The findings of the learned single Judge on this plea are as under:

“This application is patently false. When the matter was heard, all the petitions were heard together and disposed of by a common judgment. The present application has been moved only as an afterthought. In fact, it was the argument of Mr. Sapra, learned senior counsel who appeared on behalf of the

petitioner, that though the petitioner has filed the aforesaid petition challenging the valuation, the petitioner is not pressing the same and is accepting the valuation as made by the learned Arbitrator.

It is unfortunate that this application has been moved by the petitioner, by making absolutely false averments. Pertinently, on the last date, counsel for the applicant on record Mr. Sanjay Bansal had not appeared and Mr. L.K. Garg had appeared and sought to make submissions. I may note that Mr.L.K. Garg had never before appeared in the aforesaid matter during the course of hearing. I put it to Mr.Garg that despite him having absolutely no personal knowledge of the matter, he was still making submissions without any basis. The matter was adjourned for today to enable, the counsel, who had appeared at the time when the matter was argued, to appear. Mr. Sanjay Bansal appears to day. Mr. Anil Sapra, learned senior counsel, is not present today as he is stated to be down with viral fever. I may note that Mr. Bansal does not display any conviction while appearing before me, and even today he is silent. Mr. Aggarwal is the one seeking to argue the matter.

The application is, accordingly, dismissed.”

6. It is the aforesaid order dated 21.07.2011, which has been assailed in the present appeal.
7. We have heard learned counsel for the parties. The impugned order dated 21.07.2011 leaves us in no manner of doubt that the appellant is trying to act clever by half and moved the application, which was dismissed vide the impugned order, only as an afterthought having seen the

final verdict in the other OMPs in terms whereof the awards have been partially interfered with. The learned single Judge has noted that the senior counsel appearing for the appellant had filed the OMP challenging the valuation, the same was not pressed as the appellant was accepting the valuation made by the learned Arbitrator. The learned single Judge, who dealt with the matter, found that false averments have been made and as to how different counsels appeared on different dates not having personal knowledge of what had transpired, has been noticed in the impugned order.

8. We cautioned learned counsel for the appellant at the inception itself that the application filed by the appellant appear to us to be a complete abuse of process of court which is aggravated by assailing the order in the present appeal. Learned counsel for the appellant, however, persisted in arguing the appeal and making his submissions seeking to re-agitate the issue and contending that the learned single Judge has misunderstood the stand of the appellant.

9. In our considered view, there is no question of misunderstanding. The learned single Judge is quite categorical in his finding in the impugned order as to what had transpired.
10. We must note with regret what the appellant is doing. The tendency of the parties to play ducks and drakes with court proceedings has been increasing in the recent past. The parties take chances and then seek to backtrack depending on the fate of certain proceedings. Such a conduct can hardly be encouraged by the courts.
10. We must note another aspect in the matter that while the settlement discussions were on, the appellant rang up the senior counsel for the respondents personally and threatened him on the phone. Learned counsel for the respondents states that he had brought this to the notice of the learned counsel for the appellant, who had assured that the appellant would not, in future, try to communicate with learned senior counsel for the respondents. The factum of such communication and the advice given by the counsel for the appellant is not disputed by him. This only shows that the present appeal is not a stray incident where the

appellant has tried to plead falsehood and his conduct, even otherwise, raises many question marks.

11. We are, thus, of the considered view that not only should the appeal be dismissed as meritless, but the appellant must be burdened with exemplary costs to send a signal that such kind of litigation is not encouraged by the courts.
12. We, thus, dismiss the appeal with costs of ₹ 1,00,000/-.

SANJAY KISHAN KAUL, J.

OCTOBER 19, 2011
dm

RAJIV SHAKDHER, J.