

IN THE HIGH COURT OF DELHI AT NEW DELHI
(Reportable)

OMP No. 286 of 2004

Reserved on: 9th October, 2012
Decision on: 16th October, 2012

NARENDER KUMAR & ANR Petitioners
Through: Mr. Anil Sapra, Senior Advocate with
Ms. Payal Juneja, Mr. Akshay Sapra and
Ms. Joyeeta Banerjee, Advocates.

Versus

RAMESHWAR KUMAR Respondent
Through: Mr. Aman Lekhi, Senior Advocate with
Mr. Simon Benjamin, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER
16.10.2012

1. The challenge in this petition, under Section 34 of the Arbitration & Conciliation Act, 1996 ('Act') is to an Award dated 24th July 2004 passed by the arbitral Tribunal ('AT') in the disputes between the parties.
2. Petitioner No.1 is Mr. Narender Kumar and Petitioner No.2 is Mr. Ashok Kumar and the Respondent is Mr. Rameshwar Kumar. All three are sons of late Mr. Prabhu Dayal. Mr. Rameshwar Kumar is the eldest son and Mr. Narender Kumar and Mr. Ashok Kumar are the 2nd and 3rd sons respectively.
3. The Petitioners state that Mr. Prabhu Dayal had the following self-acquired properties:
 - (i) A-2/6, Model Town, Delhi.
 - (ii) ½ share in Shop No.367, Main Sadar Bazar, Delhi;
 - (iii) ½ share in property No.XIII/3011-3022; Bahadurgarh Road, Delhi.

4. The Petitioners state that the Respondent fell out with his late father and on 16th October 1999 Mr. Prabhu Dayal published a notice in the National Herald, disowning him. It is stated that on 22nd September 2000, Mr. Prabhu Dayal executed a Will, which was also registered, in which he disinherited and disowned the Respondent from all his movable and immovable assets due to threats and physical assaults on him by the Respondent and his two sons and his wife. It is stated that during the lifetime of Mr. Prabhu Dayal it was agreed that the disputes regarding the parties could be resolved through the arbitration of respectable persons belonging to Multan Sewa Samiti, i.e., Dr. B.N. Khanna, Mr. Om Prakash Thukral and Mr. Nand Lal. Although it is admitted that there was an agreement entered into between the parties on 17th July 2002 agreeing to refer the disputes mentioned in Annexure-A to the agreement to arbitration, the Petitioners state that the only dispute that was referred to arbitration concerned the residential property at A-2/6, Model Town, Delhi.

5. It is further contended by the Petitioners that no arbitral proceedings, in fact, took place and that they received no notice of such proceedings at any time after the agreement was signed. Mr. Prabhu Dayal expired on 14th December 2003. It is stated that even if the arbitral proceedings had commenced prior thereto, they certainly abated after the death of Mr. Prabhu Dayal. They could not be continued without the participation of his Class-I legal heirs which included his daughter, Ms. Asha Rani. Consequently, a notice dated 30th July 2004 was sent to the AT. The AT had by then already concluded the arbitral proceedings and had passed the impugned Award dated 24th July 2004, the copies of which were dispatched to the Petitioners on 8th August 2004. According to the Petitioners, the impugned Award on the one hand dealt with issues which were not the subject-matter of arbitration and on

the other failed to deal with some of the disputes that were actually referred to arbitration.

6. In terms of the impugned Award unanimously passed by the AT, it was decided, after consulting the three sons of Mr. Prabhu Dayal, that 1/3rd value of the properties, i.e., Shop No.367, Main Sadar Bazar, Delhi (hereinafter referred to as 'Shop at Sadar Bazar') and House No.A-2/6, Model Town, Delhi (hereinafter referred to as 'House'), should be given to each of the three sons. Mr. Ashok Kumar, Petitioner No.2, was given the Shop at Sadar Bazar in lieu of his 1/3rd share in each of the properties owned by Mr. Prabhu Dayal after noting that "he is already running and earning his livelihood from the same premises." It was further decided that all the three brothers would be restrained from selling, alienating or creating 3rd party interest till Mr. Ashok Kumar vacated the portion in his possession in the Model Town House. Mr. Ashok Kumar was to vacate his portion in the Model Town House and give its possession to Mr. Rameshwar Kumar and Mr. Narender Kumar. In the event of Mr. Ashok Kumar failing to vacate the Model Town House, he was to pay the other two brothers Rs. 25,000 per month from the date of the Award. If Mr. Rameshwar Kumar and Mr. Narender Kumar were unable to live peacefully in the Model Town House, it would be disposed of and the proceeds equally divided between the said two brothers in the ratio of 50:50. No party would sell, alienate or create third party interest in the properties mentioned in the schedule till the Award was given effect to.

7. Property No.XIII/3011-3022 situated at Bahadurgarh Road, Delhi (hereinafter referred to as the 'Bahadurgarh property') was a property on lease and was given to all the three sons equally. They had absolute right to claim title to the property for the purpose of sale, transfer etc. jointly. The Award

also noted that the parties volunteered to “withdraw all civil, criminal and labour cases filed against each other.”

8. Mr. Anil Sapra, learned Senior counsel for the Petitioners, assailed the impugned Award on several grounds. He submitted that the entire arbitral proceedings were violative of the principles of natural justice since no notice was ever received by either of the Petitioners of the pendency of the arbitral proceedings. Secondly, it is asserted that the AT did not afford any opportunity to the Petitioners either to lead their evidence or place on record the Gift Deed dated 17th June 1999 pertaining to ½ share of the Shop at Sadar Bazar and the registered Will dated 22nd September 2000 pertaining to the properties owned by Mr. Prabhu Dayal, including ½ share in Bahadurgarh property. It is submitted that the self-acquired properties of Mr. Prabhu Dayal, which were the subject-matter of the Will dated 22nd September 2000, could not be the subject-matter of the arbitral proceedings, as the disputes were never referred to arbitration.

9. Mr. Sapra submitted that Annexure-A to the agreement was not signed by any of the Objectors or the Respondent “whereas the same has been allegedly prepared and signed by the Arbitral Tribunal along with the date mentioned as 17th July 2002.” It is further pointed out that although the Award recorded the offer of the parties to withdraw all civil, criminal and labour cases filed against each other, the labour cases were, in fact, not private disputes between the parties. Mr. Sapra submitted that under Section 31(3) of the Act, it was incumbent on the AT to have given a reasoned Award. Since the arbitration took place in terms of the Act, it is obvious that the mandatory requirement under Section 31(3) of the Act to give reasons was binding. Even the parties to the agreement should not have waived the statutory requirement of the learned Arbitrator having to give reasons. Reliance in this regard is placed on

the decision in *Tamil Nadu Electricity Board v. M/s. Bridge Tunnel Constructions AIR 1997 SC 1376*. It is denied that the Petitioners ever consented to the AT not giving a speaking Award. It is pointed out that the impugned Award failed to deal with the three items of dispute admittedly referred to arbitration as recorded in the impugned Award. Mr. Sapra stated that Annexure-A to the arbitration agreement was subsequently added and that the scope of dispute was otherwise confined to the Model Town House only.

10. Appearing for the Respondent, Mr. Aman Lekhi, learned Senior counsel submitted that it is not unusual that the disputes within families are referred to arbitration by elders who may even be related to the parties. He submitted that the Shop at Sadar Bazar was sold by the Petitioners on 8th August 2008, which obviously meant that the Award had been accepted by the parties and acted upon. Nothing turned on the fact that the Award made no reference to the registered Will and the Gift Deed as the disputes in fact arose as a result of those documents. As regards a challenge to the AT, it is pointed out that the Petitioners never filed any application under Section 12 read with Section 13 of the Act or even a petition under Section 16 of the Act, challenging the jurisdiction of the AT to entertain the claims. Mr. Lekhi referred to certain proceedings in the Court of Metropolitan Magistrate ('MM') in which the statements were made by the parties in acceptance of the impugned Award.

11. The above submissions have been considered. The Court would like to preface the examination of the above submissions with certain general observations regarding settlement of family disputes through Arbitrators who may be respectable elders in whom the parties repose trust. Disputes among close relatives in a family can become acrimonious if not handled with a degree of sensitivity. Some flexibility may have to be shown by the

Arbitrators in matters of procedure. It is understandable that in arbitration among family members, with Arbitrators also being either relatives or respectable elders, there may not be an insistence by parties of maintenance of record of every proceeding. The attempt at every sitting would be to help the parties either resolve their disputes or at least narrow down their differences. With the passage of some time, parties may be persuaded to give up some of their claims in the larger interests of peace and harmony in the family. It is usually a clash of egos that can be assuaged by the more experienced and mature in the family. When arbitral Awards that bring about a settlement of family disputes are challenged, the Court will view it in the light of the above considerations. As observed in ***Hari Shankar Singhania v. Gaur Hari Singhania AIR 2006 SC 2488*** (at AIR, p.2493) the settled policy of law in the first instance “is always to promote a settlement between the parties wherever possible and particularly in family disputes.” To that extent, Awards in arbitral disputes that bring about a family settlement have to be viewed differently. The Court will be reluctant to undo a family settlement that has come about as a result of negotiations over a length of time unless the settlement arrived at is so unfair as to shock the judicial conscience.

12. In the present case, in the first place it must be noted that there is no dispute between the parties as to the existence of the arbitration agreement dated 17th July 2002. The said agreement, a copy of which is at Annexure-C to the present petition, shows that late Mr. Prabhu Dayal and his three sons, i.e., the two Petitioners and the Respondent, were parties thereto. The preamble paragraph to the agreement reads as under:

“Whereas parties are related to each other and the party of the first part is the father of the party of the second, third and fourth part. Dispute and differences have arisen among the party of the first part, party of the second part, party of the third part and the party of the fourth part, in respect of the division of the properties, mentioned in

Annexure 'A'. The parties have not been able to settle their dispute and differences among themselves and have therefore agreed to refer the same for decision and award by the Arbitration of three persons namely Dr. B.N. Khanna son of Shri Ganesh Dass Ji, R/o A-2/2, Model Town, Delhi-52, Sh. O.P. Thukral son of Shri Parmanand, R/o H-58, Ashok Vihar, Phase-I, Delhi-52 and Shri Nand Lal son of Shri Mohan Lal, R/o 5911/4 Swedeshi Market, Ist Floor, Sadar Bazar, Delhi-6 appointed by the above said parties.”

13. It is important to note that what was agreed to be referred to arbitration were the “disputes and differences in respect of the division of the properties mentioned in Annexure-A.” Annexure-A to the agreement, which has been signed by the three Arbitrators, lists out the disputes between the parties and reads as under:

“1. Financial claims by Sh. Prabhu Dayal and his son Rameshwar Kumar in the business dealings against each other.

2. Allegation by Shri Rameshwar Kumar regarding the distribution of money by Shri Prabhu Dayal to his younger sons Shri Narender Kumar and Shri Ashok Kumar and not giving him any shares.

3. Objections by Shri Rameshwar Kumar against his younger brother Shri Narender Kumar for starting business in socks which was allotted to him by his father Shri Prabhu Dayal earlier and good will was given to Shri Narender Kumar & Ashok Kumar and the same is unjust and against the spirit of the family.

4. Dispute regarding the properties owned by Shri Prabhu Dayal:

a) Shop No.367, Main Sadar Bazar, Delhi-6

b) House No.A-2/6, Model Town-I, Delhi-9

c) Property on rent and occupied by tenants at Bhagwan Ganj, Bahadurgarh Road, XIII/4274 to 4284 and 3205 (old)/3011 3012 to 3022 (New) Delhi.

5. Withdrawal of Civil, Criminal and Labour cases against each other, which are pending in the courts, between them.”

14. In view of the express reference to Annexure-A in the agreement, it cannot possibly be stated that only the dispute relating to the Model Town House was referred to arbitration.

15. The AT has noted that the parties agreed that no reasons need be given for the decision of the AT. In the 5th preamble paragraph of the impugned Award, it was recorded as under:

“Whereas the parties have agreed that the Arbitrators assign no reasons for their award, as such we have reprecieved (*sic* refrained) from giving any reasons.”

16. It is not mandatory that there should be a reasoned Award in every case. Section 31(3) of the Act states as under:

“31.....

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.”

17. It is possible, therefore, for parties to agree that no reasons are to be given. In ***Tamil Nadu Electricity Board*** the Court noted the difference in the legal position under the Arbitration Act, 1940 and the 1996 Act. The Court observed (AIR, p.1385):

“34. Thus, the law on the award, as governed by the new Act, is other way about of the pre-existing law; it mandates that the award should state the reasons upon which it is based. In other words, unless (a) the parties have agreed that no reasons are to be given or (b) the award is an arbitral award on agreed terms under Section 30 of the New Act, the award should state the reasons in support of determination of the liability/non-liability. Thereby, legislature has not accepted the ratio of the Constitution Bench in the ***Chokhamal Contractor’s case (AIR 1990 SC 1426)***, that the

award, being in the private law field, need not be a speaking award even where the award relates to the contract of private parties or between person and the Government or public sector undertakings. The principle is the same, namely the award is governed by Section 31(3).”

18. It was submitted by Mr. Sapra that there ought to be some documents to show that the parties had agreed that no reasons need be given by the AT. The wording of Section 31(3)(a) does not require a written agreement between the parties that no reasons be given in the Award. Where the legislature intends that an agreement should be in writing it expressly provides for it as has been done under Section 7 of the Act. Although Clause 3 of the agreement states that the provisions of the Act would apply to the arbitration, Section 31(3)(a) is very much part of the Act and does contemplate the parties agreeing to dispense with the requirement of the AT having to give reasons. The argument that the only agreement between the parties should be the arbitration agreement itself, overlooks the possibility of the parties agreeing, during the course of arbitral proceedings that reasons need not be given.

19. That the parties accepted and acted upon the impugned Award is evident from the events that followed it. Admittedly, there were criminal complaints filed by the parties against each other during the lifetime of Mr. Prabhu Dayal. The Respondent had filed the complaint under Sections 323, 342, 357, 427, 506 of the Indian Penal Code, 1860 (‘IPC’) read with Section 34 IPC against the two Petitioners and one Mr. Varun alias Babloo. In the said complaint, the following proceedings were recorded by the MM on 24th November 2005:

“Pr.: Complainant Rameshwar Kumar with his Cl. Sh. Rajiv Sinha, Adv.

All the 3 accused with Sh.O.P. Faizi, Adv.

Complainant stated that matter has been compromised between the parties. In view of the arbitration award and in compliance of the arbitration award, he be permitted to withdraw his complainant. Let statement of complainant be recorded.

Statement of complainant Sh. Rameshwar Kumar, s/o Prabhu Dayal, r/o A-216, Model Town, Delhi on SA:

In view of the arbitration award passed between the parties, I may be permitted to withdraw the complaint.

Statement of accused persons namely Varun s/o Narender Kumar, 2. Narender Kumar, s/o Prabhu Dayal and Ashok Kumar s/o Prabhu Dayal, all r/o A-2/6, Model Town, Delhi without oath:-

In view of the statement of complainant and arbitration award between the parties, we have no objection to the withdrawal of the complaint.”

20. On the basis of the above statement, on the same day, the learned MM passed the following order:

“In view of the statement of parties, I am satisfied that this matter has been settled. Complaint case is at the stage of pre-charge evidence. Complainant is permitted to withdraw the complaint. Complaint is dismissed as withdrawn. All the 3 accused are acquitted. Their PB, SB stand cancelled. Necessary endorsements on the documents of surety, if any, be cancelled. Original documents of surety be also returned, if any, after taking an attested copy of the same on record. File be consigned to record room after due compliance.”

21. While it is true that the above statements were made by the Respondent as the Complainant, it was made in the presence of the Petitioners who did not protest that the said Award was invalid and should not be acted upon. There is sufficient indication, therefore, that the parties did accept and act upon the impugned Award, particularly since one part of the Award recorded that the parties agreed to withdraw the civil and criminal cases against each other. The

second indication of acceptance of the impugned Award is the sale of the shop at Sadar Bazar by Mr. Ashok Kumar, Petitioner No.2 on 8th August 2008 during the pendency of the present petition. The sale of the said shop is not denied by him. There was no question of Mr. Ashok Kumar selling the said shop without his accepting the impugned Award under which he got the shop absolutely in lieu of his 1/3rd share in all the properties of Mr. Prabhu Dayal.

22. At the risk of repetition, it may be observed that it is perfectly possible that the parties agree to give up their respective claims and settle for something less with a view to maintaining harmonious relationship *inter se*. The fact that the impugned Award refers to “the paramount consideration between the parties” does not make the impugned Award *per se* illegal. This explains why the impugned Award does not deal with the other disputes between the parties which have been summarised in the Award itself. Obviously the parties agreed not to pursue the remaining disputes. It is also not surprising therefore that no reference is made to the Will or the Gift Deed because the disputes appear to have commenced primarily on account of those documents. Given the limited scope of interference with an Award under Section 34 of the Act, this Court is not persuaded to hold that any of the grounds under Section 34 of the Act are attracted in the present case.

23. Consequently, this Court finds no merit in the present petition and it is dismissed as such. Considering that the disputes are within the family the parties are directed to bear their respective costs.

S. MURALIDHAR, J.

OCTOBER 16, 2012
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