

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

% *Judgment pronounced on: May 26, 2014*

+ **Arb. P. No.131/2014**

ASCHRAJ LAL SAHNI & OTHERS Petitioners
Through Mr.Sunil K. Mittal, Adv. with
Mr.Kshitij Mittal, Adv.

versus

MUKESH SAHNI Respondent
Through Mr.Vikram Chaudhri, Sr. Adv. with
Mr.Raktim Gogoi, Adv.

+ **Arb. P. No.134/2014**

YOGESH SAHNI & ANR Petitioners
Through Mr.Sunil K. Mittal, Adv. with
Mr.Kshitij Mittal, Adv.

versus

ANSHU SAHNI & ANR Respondents
Through Mr.Vikram Chaudhri, Sr. Adv. with
Mr.Raktim Gogoi, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioners, namely, Aschraj Lal Sahni, Mrs.Veena Sahni & Saagar Sahni and the respondent Mukesh Sahni are the partners in partnership business which was being carried on under the name and style of M/s Tolia Agency from the premises No.305, 311, 285 & 992,

Sadar Bazar, Delhi, under a Partnership Deed dated 1st April, 2008 entered into between the partners. The parties are related to each other. The said partnership also contained an arbitration clause No.12. The same was at will. Disputes and differences between the parties arose. The petitioners dissolved the said partnership business by virtue of legal notice dated 31st December, 2013. The abovementioned facts are pertaining to Arbitration Petition No.131/2014.

2. Yet another petition under Section 11 of the Arbitration and Conciliation Act, 1996 (in short, called the “Act”) has been filed by Yogesh Sahni and Mrs.Saroj Sahni against the respondents, namely, Mrs.Anshu Sahni and Saheb Sahni. The facts in the said petition are that they were carrying on the business under the name and style of M/s Yogesh & Co from the premises No.2402, 2403, 2420 & 2421, Hardhyan Singh Road, Karol Bagh, New Delhi, under a Partnership Deed dated 1st April, 2006 entered into between the partners. The said partnership also contained an arbitration clause No.13. The said partnership business was also at will. Since the disputes and differences arose between the parties, the petitioners dissolved the partnership business by virtue of legal notice dated 27th January, 2014 and invoked the arbitration clause.

3. The respondent in Arbitration Petition No.131/2014 instead of invoking the arbitration clause in Partnership Deed dated 1st April, 2008 moved an application under Section 9 of the Act which was listed before another Court from time to time. After filing the reply, the said Court passed the following order on 16th January, 2014:-

“1. Reply has been filed. Rejoinder, if any, be filed within four weeks.

2. The petitioner, respondents No.2 and 4 are present in Court. I have personally heard their grievances.

3. The petitioner is the son of respondent No.4. Respondent No.2 is the other son. The father/ respondent No.4 started the business. The petitioner and respondent No.2 were taken as partners by respondent No.4 in the business run under the name and style of M/s Tolia Agency, i.e. respondent No.1. Since disputes have arisen between the parties after filing of this petition, respondent No.4 has sought to put an end to the partnership business as the partnership was at will.

4. At the behest of the petitioner, the operation of the bank accounts of the partnership firm M/s Tolia Agency have been stopped. This is leading to difficulty in making recoveries from the market. Obviously, the respondents have had to resort to running the business in another name as the ongoing business of M/s Tolia Agency has brought to a halt.

5. Since the firm M/s Tolia Agency has to receive monies from its creditors, the Managers of the Sadar Bazar branches of Punjab National Bank, Canara Bank and ICICI Bank Limited are directed to permit the deposit of monies into the accounts of M/s Tolia Agency maintained with them. However, no withdrawal shall be made from these accounts, as stated by learned counsel for the respondents.

6. The following premises have been jointly locked by the parties:

(a) 311, Ist Floor, Main Sadar Bazar, Delhi-110 006;

(b) 992, Pan Mandi, Sadar Bazar, Delhi-110 006; and

(c) 2402-2403/ 2420-2421, Hardhyan Singh Road, Karol
Bagh Market, New Delhi.

7. The parties agree that this Court may appoint a Local Commissioner in whose presence the locks of the aforesaid premises shall be opened, and an inventory of the items lying inside the aforesaid shops shall be made shopwise. After the

opening of the shops, the possession of two premises situated in Sadar Bazar along with the inventory found therein shall be delivered to the respondents and the shop premises situated at Hardhyan Singh Road Karol Bagh Market, New Delhi along with the inventory found therein shall be handed over to the son and the wife of the petitioner. It is made clear that the aforesaid arrangement is only a working arrangement, and this Court has not made the said arrangement on the basis of, and after determining the inter se rights of the parties.

8. Mr. Siddhartha Sharma, Advocate, Mobile No.09650460022, is appointed as the Local Commissioner for the aforesaid purpose. The opening of locks of the aforesaid premises shall be undertaken in consultation with, and after notice to the parties. The fees of the Local Commissioner is fixed at Rs.1 Lakh, to be shared equally by the petitioner on the one hand, and the respondents on the other hand apart from all other out of pocket expenses. The Local Commissioner shall specifically take note of the damaged goods and shall also take photographs.

9. The parties pray that the matter be referred for mediation. Accordingly, let the parties appear before Delhi High Court Mediation and Conciliation Centre on 20.01.2014 at 04:00 p.m. The Centre is directed to appoint a seasoned and matured mediator to resolve the disputes between the parties.

10. Adjourned to 03.04.2014 to await the mediation report.”

4. It was recorded in the order dated 3rd April, 2014 that despite of passing of the abovementioned order dated 16th January, 2014 on consent of the parties to arrive at a working arrangement, the respondents in the said petition, i.e. OMP No.1082/2013 have obstructed the enforcement of the said order. Therefore, the detailed order was passed by the said Court on 3rd April, 2014. The same is also reproduced here as below:-

“I.A. No. 4766/2014

1. I have heard learned counsel for the parties.

2. The submission of learned counsel for the petitioner is that despite passing of the order dated 16.01.2014 by this Court, on consent of parties to arrive at a working arrangement, the respondents have continuously obstructed the enforcement of the said order. In the said order, the Court had recorded the agreement of the parties for appointment of a Local Commissioner, in whose presence the locks of the three premises had to be opened; inventory of the items lying inside the shops to be prepared shop-wise, and; the possession of the shops along with the inventory to be delivered to the parties as per the recording made in the said order.

3. In the first instance, the respondent objected to the implementation of the said order on the premise that the petitioner had instituted criminal proceedings against the respondents. This objection was nullified since the petitioner withdrew the complaint vide order dated 11.02.2014 passed by Sh. Harun Pratap, MM-01 (Central)/THC/Delhi. On 13.02.2014, the Court inter alia, recorded *"In view of the said development, learned senior counsel for the respondents does not press for modification of the order dated 16.01.2014. The parties shall now proceed to comply with the order dated 16.01.2014. The Local Commissioner shall proceed to execute the commission in its entirety and file his report within two weeks."*

4. The respondents assailed the aforesaid two orders dated 16.01.2014 and 13.02.2014 in appeal, i.e. FAO(OS) No.103/2014. The said appeal was unconditionally withdrawn by the respondents on 21.02.2014.

5. Soon thereafter, an application was filed by Mrs. Saroj Bala Sahni, who is the mother of the petitioner and the respondent No.2, and the wife of Mr. A.L. Sahni, i.e. respondent No.4. Her application, i.e. I.A. No.3816/2014 was dismissed by this Court on 26.02.2014 by observing that the same was an abuse of the process of the Court. Costs of Rs.10,000/- was also imposed on the applicant.

6. The said order was also assailed in appeal being FAO(OS) No.138/2014. The appeal was dismissed and the order passed by this Court was confirmed on 18.03.2014.

7. Still not content, a civil suit has been filed by Mr. Yogesh Sahni and his wife against the petitioner herein and his wife, being C.S.(O.S.) No.800/2014 to claim partition. The defendants in the said suit, i.e. petitioner herein appeared and brought to the notice of the Court the orders passed in these proceedings. Taking note of the said orders, the Court passed the order on 21.03.2014 observing that “subject to the order dated 16.01.2014 passed in O.M.P. No. 1082/2013 and/or its modification, if any, in appropriate proceedings, the parties shall maintain status quo in respect of title and possession of the suit property till the disposal of the suit.”

8. The Local Commissioner appointed by this Court has filed his report dated 03.03.2014. A perusal of the said report shows that though the petitioner has been more than willing to proceed with the execution of the commission, the respondents have been obstructing the execution of the commission on one or the other ground. According to learned counsel for the petitioner, the result of the aforesaid is that the petitioner is completely out of business whereas the respondents are carrying on business under other firms and other names.

9. The submission of learned counsel for the respondents is that the order dated 16.01.2014 and 13.02.2014 wrongly record the consent and agreement of the parties. He submits that no consent was given by the respondents to the passing of these orders. Such an argument has only to be recorded to be rejected. Both the orders were passed by the Court in open Court and were dictated orally. They were dictated in the presence of the parties with their counsels after hearing the learned counsels, and keeping in view the fact that the parties to the petition and their respective spouses and children are all having cross-holdings in the firms in question. No such claim was made, at any prior point of time, even though the orders dated 16.01.2014 and 13.02.2014 were passed nearly three months and two months ago respectively. No application for review, or correction of the orders was preferred on the aforesaid basis. It is most unfortunate that seasoned counsels should advance such like arguments, and go to the extent of saying that this Court falsely recorded the consent of the parties. This conduct of learned counsel for the

respondents is deprecable. It is evident that the respondents are hell bent in not complying with the orders passed in their presence, and with their consent.

10. Accordingly, I direct that the order dated 16.01.2014 shall be enforced by the Local Commissioner with police aid. The SHO/ in-charge of Karol Bagh Police Station is directed to personally ensure due and strict compliance of the order dated 16.01.2014. In case the respondents are not interested in the opening of locks and taking delivery of the shops with the inventories which were to go to them in terms of the said order, the Local Commissioner shall enforce the order in respect of the shop premises, which were to go to the petitioner under the said order. The other premises shall remain locked and neither party shall disturb the same.

11. For their conduct, the respondents are subjected to costs of Rs.25,000/- to be paid to the petitioner within two weeks.

12. The application stands disposed of.

13. List for compliance on 29.04.2014.

14. Dasti.”

5. I have been informed by the learned counsel for the parties that the said order passed on 16th January, 2014 has now been complied with.

6. When these two petitions under Section 11 of the Act are listed before Court, the learned counsel for the parties have referred the correspondence exchanged between the parties, i.e. letter dated 27th January, 2014 issued by the petitioners to the respondent to invoke the arbitration who earlier proposed the name of Sh.Praveen Anand, President of Traders Welfare Association, Gali Tolia Wali, Sadar Bazar, Delhi to act as an Arbitrator. Reply to the said notice was given by the respondent by letter dated 25th February, 2014 whereby the respondent has suggested few names for the appointment of Arbitrator. In the said

reply, it was suggested by the respondent that in addition to the abovementioned dispute, since the proceedings have been initiated out of a family dispute which also extends to the division/partition of the residential premises located at B-1/8, Model Town-II, Delhi-110009; F-2/4, Model Town-II, Delhi-110009; business premises located at 2402-2403, Hardyan Singh Road, Karol Bagh, New Delhi-110005 and Shop Nos.305, 311, 285, 992 located at Tolia Market, Sadar Bazar, New Delhi-110006 may also be included in the reference to be made to the Arbitrator. In reply to the suggestion given by the respondent, it was stated by the petitioners in rejoinder notice dated 28th February, 2014 that the owners of the said properties would have to execute arbitration agreements, as there are different owners thereof, coupled with the fact that with regard to the property bearing No.B-1/8, Model Town, Delhi-110009, the respondent has already filed a civil suit being CS(OS) No.2083/2013 and one of the petitioners has also filed a civil suit being CS(OS) No.443/2014 before this Court, thus, the same will have to be withdrawn in case the parties are agreeable to execute the arbitration agreements to refer the disputes with regard to the said properties.

7. Learned counsel for the respondent has referred the letter of the petitioners dated 28th February, 2014 and states that let the remaining disputes with regard to immovable properties may also be decided by the sole Arbitrator i.e. Justice S.K. Mahajan (Retd. Judge of this Court). Thus the name suggested by the petitioners is now agreeable by the respondent. The petitioners are not inclined to accept the said suggestion given by the learned counsel for the respondent. Mr.Sunil K. Mittal,

learned counsel for the petitioners has submitted that in the absence of any agreement between the parties, the said dispute cannot be referred as suggested by the other side. He states that for the said purpose, the parties have to sit together and think over and to take a decision. The other reasons given by him that these cross pending suits filed by the parties and all of them are not parties of the partnership agreement.

8. Having considered the facts and circumstances of the cases, in the absence of any agreement between the parties with regard to the immovable properties detailed above, I am of the view that it would not be appropriate to refer the said disputes for arbitration unless the consent of the parties.

9. Lastly, it is stated by Mr.Mittal, learned counsel for the petitioners that the respondents in OMP No.1082/2013 had not given the consent which was recorded in the order dated 16th January, 2014. Though the similar statement was made by the petitioners in Arbitration Petition No.131/2014. In the OMP proceedings, however, the contention was rejected by order dated 3rd April, 2014. I am of the view that the interim arrangement as recorded in the orders dated 16th January, 2014 and 3rd April, 2014 shall continue. However, both the parties are given liberty to file interim application for modification due to change of circumstances before the Arbitrator.

10. Under these circumstances, both the petitions are accordingly disposed of. Justice S.K.Mahajan, a Retired Judge of this Court is appointed as sole Arbitrator to adjudicate the disputes between the parties in both the petitions who are entitled to raise their claims and

counter-claims in accordance with law. The arbitration shall be conducted by the learned Arbitrator under the provisions of the Act who shall commence the proceedings after serving the notice to all the parties in the matters. Both parties request that lump-sum fee be fixed by the Court as they are in a position to pay the fee as per Rules maintained by the Delhi High Court Arbitration Centre.

11. The said request of the parties is allowed. As there are disputes of two partnership firm. Some facts are also common and it is a family dispute. Considering all the facts and circumstances, let a sum of Rs.4 lac as fee of the learned Sole Arbitrator in equal proportion at this stage. The remaining fee would be fixed if necessary by the Court depending upon the work.

12. Copies of this order be given *dasti* to the learned counsel for the parties, under the signatures of the Court Master and a copy thereof be also communicated to the learned Arbitrator forthwith.

(MANMOHAN SINGH)
JUDGE

MAY 26, 2014