

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

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ARB.A. 3/2015 &IA No. 873/2015

RAMESH KOHLI

..... Appellant

Through: Mrs. Nalini Chidambaram, Senior
Advocate with Mr. Varun Kumar, Mr. Saurabh
Seth and Ms. Saloni Choudhary, Advocates.

versus

J.B KOHLI & ORS

..... Respondents

Through: Mr. Vineet Jhanji, Mr. Gaurav Duggal
and Mr. Imran Moulaey, Advocates.

With

ARB.A. 6/2015 &IA No.2909/2015

RAMESH KOHLI

..... Appellant

Through: Mrs. Nalini Chidambaram, Senior
Advocate with Mr. Varun Kumar, Mr. Saurabh
Seth and Ms. Saloni Choudhary, Advocates.

versus

J. B. KOHLI & ORS.

..... Respondents

Through: Mr. Vineet Jhanji, Mr. Gaurav Duggal
and Mr. Imran Moulaey, Advocates.

And

ARB.P. 464/2014 &IA No.17440/2014

RAMESH KOHLI

..... Petitioner

Through: Mrs. Nalini Chidambaram, Senior
Advocate with Mr. Varun Kumar, Mr. Saurabh
Seth and Ms. Saloni Choudhary, Advocates.

versus

J.B. KOHLI & ORS.

..... Respondents

(4)

Through: Mr. Vineet Jhanji, Mr. Gaurav Duggal
and Mr. Imran Moulaey, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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05.03.2015

1. These three appeals have been filed by Mr. Ramesh Kohli, the Appellant, against the orders passed by the learned Arbitrator in the disputes arising between the parties. Since the parties are common and the impugned orders arise from the arbitral proceedings between the parties, these appeals are disposed of by this common order.

2. The Arb. A. No. 3 of 2015 under Section 37(2) of the Arbitration and Conciliation Act 1996 ('Act') is directed against an order dated 24th December 2014 passed by the learned Arbitrator, *inter alia*, holding that that the learned Arbitrator had jurisdiction to deal with the property situated at 7 & 7A Crossroad, Dehradun ('Dehradun property'). By the impugned order, the learned Arbitrator directed, *inter se* bidding for the Dehradun property by the parties.

3. Arb. P. No. 464 of 2014 ought to be numbered as an arbitration appeal ('Arb.A.'). The Registry is directed to register it as an appeal and number it accordingly. This appeal is directed against an order dated 31st July 2014

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passed by the learned Arbitrator rejecting the prayer of the Appellant for opening the locker No.190 belonging to late Mr. B.C. Kohli with the Punjab National Bank ('PNB'), Dehradun. According to the Appellant, the said bank locker contains, apart from certain movable assets, a Will left by the late Mr. B.C. Kohli.

4. Arb. A. No.6 of 2015 is directed against an order dated 16th January 2015, whereby the learned Arbitrator directed a third party to appear before him for proceeding in the sale of the Dehradun property.

5. The background to these appeals is that the Appellant, Mr. Ramesh Kohli and Respondent Nos. 1 and 2, i.e. Mr. J.B. Kohli and Mr. M.M. Kohli, are the sons of late Mr. B.C. Kohli who died in New Delhi on 15th April 1978. It is stated that the Appellant and Respondent Nos. 1 and 2 were coparceners of Hindu Undivided Family ('HUF') known as B.C. Kohli & Sons (HUF). The said HUF was dissolved on the death of Mr. B.C. Kohli.

6. Mr. B.C. Kohli owned several properties, including the Dehradun property and a property at 31, Golf Links, New Delhi ('Golf Links property'). Mr. J.B. Kohli had filed CS (OS) No.73 of 2005 before this Court, *inter alia*,

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seeking permanent and mandatory injunction to restrain the Appellant, Mr. Ramesh Kohli from carrying out any construction activity in the property at 31, Golf Links, New Delhi. By order dated 27th April 2007 the said suit was referred to arbitration before Justice S.K. Mahajan. The order passed by this Court on 27th April 2007 reads as under:

“NDMC has filed a status report with respect to the suit property, being 31 Golf Links, New Delhi. Mr. Arvind Sah, Advocate, who appears for NDMC, further points out that the NDMC has also initiated action based on the status report filed by them and after following the due process of law, they will take the required action.

After some hearing in the matter, learned counsel for the parties agree that all disputes between the parties be referred to an independent arbitrator. Accordingly, Mr. Justice S. K Mahajan, C-271, Defence Colony, New Delhi (Mobile No.9873304200), a former Judge of this Court, is appointed as a sole arbitrator to adjudicate upon the disputes and differences amongst the parties. The arbitrator will be entitled to fix his own fees. Suit stands disposed of.

A copy of this order be sent directly to the learned Arbitrator.
Dasti”

7. On 18th October 2012, the learned Arbitrator passed an interim Award. The first paragraph of the interim Award, noting the scope of the dispute

between the parties reads as under:

“Parties hereinabove are the sons and daughter of late Shri BC Kohli. On the death of Shri BC Kohli, there arose disputes between the parties about the properties left behind by him. While Shri JB Kohli and MM Kohli had set up a will stating inter alia that some of the properties had been left by the deceased to them, other parties objected to the said will. In a suit filed by Shri JB Kohli against Shri Ramesh Kohli and MM Kohli, the said three parties agreed that all disputes between them be referred to an arbitrator for adjudication. The High Court of Delhi, accordingly by order dated April 27, 2007 passed in CS(OS) no. 73 of 2005, appointed the undersigned as the Sole Arbitrator to adjudicate upon the disputes and differences amongst the parties.”

8. The learned Arbitrator then noted that while the claims were pending before him, with the consent of all the parties by an order dated 4th October 2007, all the heirs of late Shri B.C. Kohli were made parties to the reference “so that all matters and dispute between the heirs in respect of the estate of the deceased are decided by the Tribunal”.

9. Before the learned Arbitrator, Mr. Ramesh Kohli in his statement of claim claimed that the property at 31, Golf Links, New Delhi and the Grange, Mussourie were HUF properties and that the Dehradun property was a self acquired property of late Mr. B.C. Kohli. Mr. Ramesh Kohli further denied

the stand of Mr. J.B. Kohli and Mr. M.M. Kohli that late Mr. B.C. Kohli by Will dated 4th April 1978 bequeathed his 1/4th undivided share in the Golf Links property to Mr. M.M. Kohli.

10. The daughters of late Mr. B.C. Kohli – Ms. Indira Bhatia, Ms. Usha Chatrath and Ms. Ved Sawhney also denied existence of any Will. According to the daughters, the Golf Links property was an HUF property, which had to be divided under the provisions of the Hindu Succession Act ('HSA') whereas, the Dehradun property was a self acquired property and was to be divided equally amongst the legal heirs. They also contended likewise in respect of the property at Grange Mussourie.

11. However, since the property at Grange, Mussourie was the subject matter of a suit filed by Mr. Ramesh Kohli in Mussourie, it was kept out of the arbitral proceedings. Mr. Ramesh Kohli initially informed the learned Arbitrator that he would be withdrawing the suit but later on 15th March 2008, resiled from the said statement. Therefore, the Mussourie property was kept out of the arbitral proceedings.

12. The application filed by Mr. Ramesh Kohli for termination of the arbitral proceedings on the ground that it could proceed only between him and

Respondent Nos. 1 and 2 was dismissed by the learned Arbitrator by a detailed order dated 17th January 2009 on the grounds, *inter alia*, that all the parties had agreed to the matter being decided by the Arbitral Tribunal. On 13th July 2009, the learned Arbitrator held that the only dispute between the parties was in respect of the property at C-27, Friends Colony (East) New Delhi. There was no dispute that the Golf Links and the Dehradun properties had to be partitioned in accordance with the HSA. Accordingly, the following two issues were framed by the learned Arbitrator on that date:

“(1) Whether the property bearing no. C-27, Friends Colony (East), New Delhi was purchased by Shri BC Kohli as HUF as benami in the name of Shri MM Kohli?

(2) If the Issue no.1 is proved in favour of Shri Ramesh Kohli, whether the claim made by Shri Ramesh Kohli in this property was barred by time?”

13. The evidence was thereafter led by the parties and arguments were heard on various dates. By an interim Award dated 18th October 2012, the learned Arbitrator discussed the entire evidence and came to the following conclusions:

(i) The property at C-27, Friends Colony (East), New Delhi was not purchased for the HUF and was purchased in a DDA auction by Ms. Usha Kohli in her individual name.

(ii) As far as the plot at A-201, New Friends Colony was concerned, it was purchased by Mr. M.M Kohli in his individual capacity, and not as *benami* of the HUF.

(iii) In the suit filed by Mr. M.M. Kohli against Ms. Usha Chatrath in 1979, after entering into an agreement for the exchange of the two plots, a decree was passed declaring Mr. M.M. Kohli as the owner of property at C-27, Friends Colony (East). Pursuant to the decree, the sale deed in respect of that property was executed in favour of Mr. M.M. Kohli and a sale deed in respect of A-201, New Friends Colony was registered in the name of Ms. Usha Chatrath.

(iv) Therefore, the HUF had not purchased either of the above two properties.

14. As regards Issue No. 2, it was held that in any event the claim of Mr. Ramesh Kohli in respect of C-27, Friends Colony (East) was barred by time. It had been preferred 17 years after Suit No.502 of 1981, filed by Mr. J.B. Kohli was dismissed as withdrawn in 1990. Mr. M.M. Kohli thereafter had raised construction on the said property and Mr. Ramesh Kohli had not objected to it. It is only before the Arbitral Tribunal ('AT') that he made a claim that the C-27, Friends Colony (East) property was an HUF property for the first time on 19th July 2007.

15. By that time, with the amendment to Section 6 of the HSA in 2005, the

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daughters became coparceners in their own right in the same manner as the sons. Accordingly, the learned Arbitrator held that the parties to the proceedings would be entitled to 1/8th share in the Dehradun property and the Golf Links property. The interim Award was made in the above terms declaring 1/8th share of the each of the parties in the aforementioned properties. It was further held that whether or not the properties could be partitioned by metes and bounds could be decided only after an inquiry was held into the same.

16. The interim Award dated 18th October 2012 passed by the learned Arbitrator declaring 1/8th share of each of the parties to the aforementioned two immovable properties, i.e., the Dehradun property and the Golf Links property, was in the nature of a preliminary decree in a partition suit. It is significant that the above interim Award dated 18th October 2012 was not challenged by any party and consequently attained finality.

17. In the interim Award itself, it was noticed by the learned Arbitrator that during the pendency of the arbitral proceedings, an application had been filed for opening the bank locker with PNB. The learned Arbitrator had requested the parties to approach PNB with a copy of the High Court's order dated 27th

April 2007 appointing the learned Arbitrator to "get a date for opening of the locker". However, nothing had been done by the time the aforementioned interim Award was passed. The learned Arbitrator thus observed in the interim Award dated 18th October 2012; "So, at the present, nobody is aware as to what are the contents of the said locker and there has (sic) is no question of dividing the same. It is only after the locker is opened and the contents are made available that any order can be passed".

18. On 15th March 2013, the issue regarding the opening of the locker was considered by the learned Arbitrator. The learned Arbitrator noticed that no issue had been raised by Mr. Ramesh Kohli either in respect of the share certificates or the bank locker, when the issues were framed on 13th July 2009. It was accordingly held that these two items were not the subject matter of the dispute before the learned Arbitrator, and therefore, no order could be passed directing the opening of the bank locker or the division of the share certificates held in the name of the deceased. The share certificates in question had also not been placed on record. Therefore, it was not clear whether the registration continued in the name of the deceased or who was in possession of the shares. Therefore, both the applications, i.e., one relating to the opening of the bank locker and the other for the production of the share

certificates were dismissed. The above order dated 15th March 2013 was also not challenged by any party.

19. On 13th May 2014, Mr. Ramesh Kohli filed another application requesting for the opening of the bank locker as he apprehended that late Mr. B.C. Kohli "has left behind his will in the said locker". It was prayed that a Local Commissioner be appointed to open the locker, take out the Will and produce it before the AT by an order dated 31st July 2014. The learned Arbitrator declined the prayer for reviewing the interim Award and held that if Mr. Ramesh Kohli was aggrieved thereby, his only remedy was to file a petition under Section 34 of the Act after the passing of the final Award. The learned Arbitrator, *inter alia*, noted the submissions of the learned counsel for the Respondents that no party had objected to the sale of the Dehradun property. The parties also agreed that the properties could not be partitioned by metes and bounds and that "the only way to partition the properties is to sell them and distribute the proceeds among the co-owners". The learned Arbitrator accepted the above plea and held "In my opinion, it will not be a case of partial partition in case the same are sold separately and the proceeds of the sale are distributed among the co-owners in accordance with the shares determined by the Tribunal in the interim Award."

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20. The learned Arbitrator also noted in the aforementioned order, that on 14th May 2014, counsel for Mr. Ramesh Kohli had stated that his client was interested in purchasing the Dehradun property "at the price indicated by the intended buyer and he may buy out the other co-owners". Time was sought to take instructions on whether Mr. Ramesh Kohli would be interested in purchasing the property and how long he would take to pay the price thereof. On 3rd June 2014, Mr. Ramesh Kohli failed to inform the learned Arbitrator whether he was interested in purchasing the property. In those circumstances, the case was adjourned to 25th August 2014.

21. Thereafter, an application was filed by Mr. Ramesh Kohli on 24th December 2014 before the learned Arbitrator praying, *inter alia*, that the *inter se* bidding in respect of the Dehradun property should not proceed. It was contended that Section 36 of the Act did not permit the learned Arbitrator to conduct proceedings by way of execution of the interim Award and that could only be done by a civil Court. Consequently, it was contended that the learned Arbitrator did not have the jurisdiction to order *inter se* bidding for the Dehradun property. In para 4 of the application it was contended that the learned Arbitrator failed to note the contention that a Will of late Mr. B.C. Kohli was kept in the locker with PNB in Dehradun and till

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such time it was opened, the learned Arbitrator should not proceed further in the case.

22. On 24th December 2014 itself, the learned Arbitrator passed a detailed order, noting that the interim Award dated 18th October 2012 was followed by a subsequent order rejecting the challenge made by Mr. Ramesh Kohli to the interim Award on the ground that the learned Arbitrator lacked jurisdiction. The learned Arbitrator in this order dated 24th December 2014 noted that the challenge to the said subsequent order before this Court also failed. The learned Arbitrator noted that he had already dismissed an application for the opening of the locker to ascertain whether any Will had been left behind in the locker. The challenge to this order was also pending in appeal before the High Court.

23. As regards the *inter se* bidding in respect of Dehradun property, it was observed by the learned Arbitrator that "after a preliminary Award has been passed determining the rights of the parties, the matter has to be taken to its logical end so as to decide as to what would be the share/amount that each party would be getting on partition of the properties and to arrive at the same, either the property has to be sold or it has to be partitioned by metes and bounds". The learned Arbitrator further noted that "it was at the

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suggestion of Mr. Ramesh Kohli himself that instead of selling the property to a third party and to permit the same to remain within the family, it would be appropriate that the parties make inter se bidding. With all other parties agreeing to the same, the Tribunal directed *inter se* bidding amongst themselves". It was held that if Mr. Ramesh Kohli and any other party or their representatives were not present on the next date, the matter about rules deciding as to how the bid would be conducted, would be decided by the Tribunal. The further hearing was fixed for 16th January 2015 for *inter se* bidding amongst the parties. As already noted, the order dated 24th December 2014 has been challenged by Mr. Ramesh Kohli by filing Arb.A. No.3 of 2015.

24. The learned Arbitrator further, by an order dated 16th January 2015, negatived the plea of Mr. Ramesh Kohli that till such time the appeals were pending in the High Court, Mr. Ramesh Kohli would neither participate in the *inter se* bidding nor would he sell the Dehradun property to a third party; and that the Tribunal therefore, should not proceed in the matter. The learned Arbitrator noticed that the only course open was to sell the property by advertising the sale of the property in the newspaper. The parties were directed to give detailed descriptions of the properties for that purpose. The

above order dated 16th January 2015 has been challenged in Arb. A.No. 6 of 2015. It requires to be noticed that this Court has not ordered stay of the arbitral proceedings.

25. Ms. Nalini Chidambaram, learned Senior counsel appearing for the Appellant, Mr. Ramesh Kohli, contended that the scope of the dispute before the learned Arbitrator only pertained to the Golf Links property and not to any other property. Therefore, by deciding the issue pertaining to the sale of the Dehradun property and ordering an *inter se* bidding, the learned Arbitrator had exceeded his jurisdiction. Therefore, the three orders passed, which are subject matter of the appeals, i.e. the orders dated 31st July 2014, 24th December 2014, and 16th January 2015 ought to be set aside by the Court. Secondly, it was submitted that even assuming the interim Award dated 18th October 2014 has attained finality, the learned Arbitrator erred in converting himself into an executing court in respect of that Award.

26. Thirdly, it was submitted that with the learned Arbitrator having rejected the challenge made by Mr. Ramesh Kohli to his jurisdiction by filing an application under Section 16(3) of the Act, Mr. Ramesh Kohli had to necessarily wait for the final Award and then question the above order at the

time of challenge to the final Award under Section 34 of the Act. If Mr. Ramesh Kohli were to succeed in that challenge, then the Dehradun property could not be brought to sale prior thereto. However, if the learned Arbitrator's orders on the *inter se* bidding in respect of the Dehradun property were allowed to proceed to their logical end, then the property itself would not be available by the time the challenge to the final Award succeeded. It is submitted that inasmuch as a *fait accompli* would be presented, the challenge to the jurisdiction of the learned Arbitrator by Mr. Ramesh Kohli would be rendered meaningless. Accordingly, it is submitted that the impugned orders passed by the learned Arbitrator ought to be set aside by the Court.

27. Ms. Chidambaram lastly submitted that it has been Mr. Ramesh Kohli's case throughout that there has been a Will in the locker of the PNB left behind by late Mr. B.C. Kohli and in terms of the said Will, the entire Dehradun property would come to the share of Mr. Ramesh Kohli. By rejecting the prayer for the opening of the locker, the learned Arbitrator had ignored a vital piece of evidence, which could have a direct bearing on the issue pertaining to the Dehradun property. If, indeed there was a Will bequeathing the Dehradun property in favour of Mr. Ramesh Kohli, it would

be wholly illegal for the said property to be shared equally between the parties.

28. Countering the above submissions, Mr. Vineet Jhanji and Mr. Gaurav Duggal, learned counsel for the Respondents, pointed out that each of the above issues had already been decided by the learned Arbitrator. This included the question whether the locker should be opened; whether the Arbitrator had jurisdiction to pass any order in respect of the Dehradun property; and whether an *inter se* bidding should go on. It is pointed out that with the interim order not having been challenged, the learned Arbitrator only proceeded in accordance with the law to the next logical step of the sale of the properties so that the shares of both the parties, as determined by the interim Award could finally be arrived at. It is submitted that the proceedings are similar to the proceedings in a partition suit and therefore it was but natural that after the shares of the parties were determined by an interim Award, the learned Arbitrator had to proceed to the next stage to bring the property to sale to realise those shares.

29. Having heard learned counsel for the parties, the Court finds that in the first place, the objections raised by Mr. Ramesh Kohli to the learned Arbitrator deciding on the issue concerning the Dehradun property are

misplaced. It is seen that even before this Court, at the time of passing of the order dated 24th July 2007, the parties including, Mr. Ramesh Kohli agreed that all their disputes could be referred to arbitration. Consequently, it could not be said that the scope of the proceedings before the learned Arbitrator was confined to the issues raised in the suit, which was in fact transferred to him for decision. It is seen that in the various orders passed by the learned Arbitrator from time to time, the consent of the parties to have all the disputes settled by arbitration is evident. First, before the learned Arbitrator it was agreed by the parties that all the heirs of Mr. B.C. Kohli would be made parties. It was further agreed that the learned Arbitrator would determine the shares of the parties, not only in respect of the Golf Links property, but also the Dehradun property. Mr. Ramesh Kohli himself appears to have participated in those proceedings.

30. It is also seen that the earlier challenge by Mr. Ramesh Kohli regarding the jurisdiction of the learned Arbitrator who examined the dispute concerning the Dehradun property was rejected. The challenge to the said order was also negated by this Court.

31. It is also seen that the interim Award passed by the learned Arbitrator determining 1/8th share of the parties in respect of both the Dehradun
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property and the Golf Links property has attained finality. Mr. Ramesh Kohli certainly did not challenge the interim Award. It is, therefore, not open to Mr. Ramesh Kohli to question the jurisdiction of the learned Arbitrator to determine the shares in respect of the Dehradun property. Likewise, the issue regarding the opening of the locker was also concluded by the order dated 15th March 2003, which was not challenged. Mr. Ramesh Kohli cannot be permitted to reopen that issue now. It will, apart from delaying the proceedings, constitute an abuse of the process of law.

32. The Court also notes that all the parties before the learned Arbitrator agreed that the properties could not be divided by metes and bounds and the properties necessarily had to be sold. Only the modalities of the said sale had to be worked out. At that stage, Mr. Ramesh Kohli himself offered to submit a bid, failing which a third party would be allowed to bid. If Mr. Ramesh Kohli himself had suggested the possible modality of *inter se* bidding, it is no longer open for him to now turn around and question the orders of the learned Arbitrator in regard to the *inter se* bidding amongst the parties.

33. The Court finds that no error has been committed by the learned Arbitrator in holding that the interim Award was akin to a preliminary decree of partition. In fact the interim Award did determine the 1/8th share of the

parties. The next logical step was to determine how the $1/8^{\text{th}}$ share could be realised for each of the parties. This being the nature of the disputes between the parties, the steps taken by the learned Arbitrator cannot be said to be 'executing' the interim Award. After a preliminary decree of partition is passed, the Court seized of the dispute would necessarily proceed to the next stage, i.e. the final decree. By the time of the final decree, even in terms of the Partition Act, 1893 the learned Arbitrator would have to come to a conclusion, one way or the other, whether the properties could be divided by metes and bounds or sold, and the sale proceeds realised be divided amongst the parties. In doing that, the Court would not be acting as an executing court but as a court dealing with a dispute pertaining to partition of the properties amongst the legal heirs of the deceased.

34. For all the above reasons, the Court finds no merit in any of the appeals challenging the impugned orders of the learned Arbitrator. The appeals and the applications are accordingly dismissed, but in the circumstances with no orders as to costs.



S. MURALIDHAR, J.

MARCH 05, 2015
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