

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE ALOK KUMAR VERMA

APPEAL FROM ORDER NO. 296 OF 2022

27TH APRIL, 2023

BETWEEN:

Jagdish Bhatia

.....Appellant.

And

Parvati Devi & others

....Respondents.

Counsel for the Appellant : Mr. Ramji Srivastava and Mr. Nikhil Singhal, learned counsels.

Counsel for the Respondent Nos.2, 4 to 9 : Mr. Neeraj Garg, learned counsel.

Counsel for the Respondent Nos.3, 10 to 14: Mr. Piyush Garg, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

The present appeal, under Section 37 of the Arbitration and Conciliation Act, is directed against the order dated 02.08.2022, passed in Arbitration Case No.70 of 2022.

2. By the impugned order, learned Additional District Judge (Commercial), while dealing with the petition preferred by the appellant herein, under Section 9 of the Arbitration and Conciliation Act, issued notice to the respondents. However, no *ex parte* ad-interim order of injunction, as sought by the appellant, was granted while observing that considering the facts of the case, without hearing to the opposite party, granting *ex parte* interim injunction order, would not be appropriate and legal.

3. The submission of the appellant is that the appellant is a partner in the partnership firm namely Bhatia Enterprises, of which, the respondents herein are partners/ heirs of erstwhile partners. The case of the appellant is that he has 4% share in the said partnership firm, which has landed assets. The grievance of the appellant was that the other partners/ legal heirs of the partners were disposing of the properties of the Firm to a third party, and also amongst themselves without his consent, which was mandated under the terms of the partnership.

4. It is argued by learned counsels for the respondents that the notice dissolving the partnership was issued on 21.01.2011 by Mr. Jeet Ram Bhatia, whose legal representatives are respondent nos.10 to 14 in the present appeal.

5. Admittedly, the said notice was served upon the appellant and the appellant also responded to the said notice. The partnership was a partnership at Will. *Prima facie*, upon issuance of the said notice, the partnership stood dissolved.

6. It is argued by Mr. Ramji Srivastava that, apart from selling their shares amongst the partners/ heirs, sale of share in the partnership was also undertaken in favour of a third party.

7. In response to our query, we are informed that the said sale took place in the year 2006, i.e. before the dissolution. *Prima facie*, the challenge to the said sale or grievance in that regard would be barred by limitation, and it would be for the appellant to make out a case that the challenge to the same, or grievance with regard to the same is not barred by limitation now.

8. In our view, the appellant did not make out *prima facie* case for grant of an *ex parte* ad-interim injunction order, as sought by him. Pertinently, we had called the parties since it was offered by the respondents that the appellant may choose 4% share in the landed property by demarcation on the plan. However, the appellant does not appear to be interested in the same, and is keen that other partners may sell their shares to him.

9. It is not for this Court to compel other partners to sell their shares to the appellant. That is a matter *inter se* between the appellant and the other partners, and it is open to the appellant to approach the other shareholders in the erstwhile partnership to buy all their shares.

10. For the aforesaid reasons, we do not find any merit in the appeal, and the same is accordingly dismissed.

11. We, however, make it clear that the observations made hereinabove are only to deal with the present appeal,

and they shall not come in the way of either party during the hearing of the petition under Section 9 of the Arbitration and Conciliation Act, which is pending before the Commercial Court.

12. The appeal stands disposed of in the aforesaid terms.

13. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(ALOK KUMAR VERMA, J.)

Dated: 27th April, 2023

NISHANT