

\$~1

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

+ **FAO(OS) 46/2015**

BHAI MANJIT SINGH (HUF)

..... Appellant

Represented by: **Mr.Yugank Goel, Advocate
with Mr.Shohit Chaudhary,
Advocate**

versus

BHAI MANJIT SINGH & ANR

..... Respondents

Represented by: **Mr.Rudra Nath Sinha,
Advocate for R-2**

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **29.02.2016**

1. The appellant Bhai Manjit Singh (HUF) filed a suit for declaration and permanent injunction, impleading Bhai Manjit Singh and Ashok Gupta as defendants.
2. The HUF was represented through its Karta Vikramjit Singh.
3. Declaration and permanent injunction sought for was on the plea that the defendants had in collusion with each other entered into an agreement to sell dated December 29, 2010 which was exclusively owned by the plaintiff HUF. It was pleaded that on the date of the execution of the agreement to sell the defendants had no right, title or interest in the property. It was prayed that the defendants had played a fraud against the HUF. It was pleaded that the HUF was the owner of the property bearing municipal No.28-A, Prithvi Raj Road, New Delhi under a grant dated November 20,

1937. Larger part of the property changed hands and ultimately the superior lesser executed a lease-deed on February 11, 1949 in favour of Sardarni Avtar Mohan Singh wife of Bhai Mohan Singh. She allowed sub-division of the larger property which was allowed. It was pleaded on December 30, 1989 a memorandum of settlement was arrived at which recorded that the larger HUF comprising late Bhai Mohan Singh and his sons would be dissolved and four minor HUFs would be created.

4. It was pleaded that in terms of the settlement parties could not work their way out and dispute had to be referred to arbitration resulting in an award being pronounced on May 24, 1994 which was made a Rule of the Court on December 06, 1995 as per which Bhai Manjit Singh group became the owner of the property. It was pleaded that defendant No.1 had been accepting the aforementioned facts resulting in the subject property vesting in the HUF.

5. Pleading that the fraudulent agreement to sell dated December 29, 2010 had an arbitration clause and pursuant whereunto the defendant No.2 had initiated arbitration proceedings and an arbitrator had been appointed, prayers made were as under:-

“a) pass a decree of declaration in favour of the plaintiff and against the Defendant Nos.1 and 2 thereby, declaring that the Agreement to Sell dated 29.12.2010 or any other agreement, instrument, arrangement, understanding, settlement between the Defendants in relation to the suit property is not binding on the plaintiff HUF.

b) Pass a decree of declaration declaring that Defendant No.1 had no authority to represent Plaintiff HUF as member or karta from 10.01.2000.

c) Pass a decree of permanent injunction thereby, injunctioning the Defendant No.1 his employees and agents or any

other person claiming to be authorizing him from representing the plaintiff HUF in any manner.

d) award the cost of the present suit in favour of the plaintiff and against the Defendants.'

6. Along with the suit was filed an interim application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure in which prayers made were as under:-

“a) pass an ex-parte ad-interim order thereby, restraining the Defendant No.1, his representatives and agents from representing plaintiff HUF in any manner during the pendency of the present suit.

b) pass an ex-parte ad-interim order thereby, restraining the Defendant Nos. 1 and 2, their representatives, employees, agents or any other person claiming to be authorizing him from acting on the Agreement to Sell dated 29.12.2010 in any manner, including but not limited to the dispute resolution.

c) pass an ex-parte ad-interim order restraining the Defendants from prosecuting in any form the arbitration proceedings pending before Justice R.C.Chopra between the Defendants in respect of the Agreement to Sell dated 29.12.2010.

d) pass any other or further orders as this Hon'ble Court may deemed fit and proper in the facts and circumstances of the case in favour of the plaintiffs and against the defendants.

7. Taking cognizance of the suit and admitting the same, issue summons, the learned Single Judge declined to pass an interim pro-tem ad-interim, ex-parte order. Instant appeal was filed with a grievance that denial of a pro-tem ex-parte ad-interim injunction meant that the arbitration proceedings could continue, causing grave injury to the appellant.

8. Issuing notice of the appeal as also CM No.1620/2015, pro-tem ex-

parte ad-interim order was declined.

9. This took the appellant to the Supreme Court where, issuing notice, a pro-tem ex-parte ad-interim order was issued on March 27, 2015 directing that further proceedings before the arbitrator shall remain stayed.

10. When put to learned counsel for the parties as to what would be the effect of the order passed by the Supreme Court on March 27, 2015, both admit that it would mean a pro-tem ex-parte ad-interim order issued against the respondents.

11. In that view of the matter learned counsel for the parties agree that nothing survives for consideration in the instant appeal and that the proper course of action to be chartered by the appellant should be to request the Supreme Court to dispose of SLP (C) 8513/2015. That both parties would give consent that the order dated March 27, 2015 should enure till the learned Single Judge decides the application for injunction filed by the appellant.

12. We dispose of the appeal noting as above.

13. No costs.

CM No.1620/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 29, 2016

‘skb’