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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. (COMM) 244/2016 & IA Nos. 3149/2010, 4834/2016

ANIL KUMAR JAIN

..... Petitioner

Through: Mr. Rajat Navet with Mr. Kushagra
Pandit, Advocates.

versus

ISHWAR GOEL AND ORS

..... Respondents

Through: Mr. M.P.S. Kasana, Advocate for R-2.
Mr. Vijay Kumar Gupta with Mr. Mehul Gupta,
Advocates to 3 to 5.

CORAM: JUSTICE S. MURALIDHAR

ORDER

06.10.2016

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1. Since the Arbitrator, Respondent No. 1, is not a necessary party, he is deleted from the array of the parties. Respondent Nos. 2 to 6 are renumbered as Respondent Nos. 1 to 5.

2. Learned counsel for Respondent No. 1 hands over to learned counsel for the Petitioner a sum of Rs. 20,000 as ordered by this Court on 29th August, 2016.

3. The challenge in this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') is to an *ex parte* award dated 22nd January, 2007 passed by the learned sole Arbitrator. The parties to the arbitration are the Petitioner, Anil Kumar Jain, and his three brothers, i.e., Ashok Jain,

Anand Jain, Arvind Jain, now Respondent Nos. 1 to 3 and cousin brother, Sharvan Jain, Respondent No. 4. During the pendency of the arbitration proceedings, Smt. Darshana Devi, the mother of the Petitioner, and Respondent Nos. 1 to 3 had expired.

4. The arbitration itself came to be as a result of the Memorandum of Understanding ('MoU') entered into between the parties on 26th March, 2006. The MoU itself states that the parties are "members of a joint family" and are in possession of undivided joint Hindu family immovable properties. The MoU has set out 12 properties. It must be noted at this stage that one of the properties – TU-48, Pitam Pura, Delhi – 110 085 is stated to be in the possession of the "second party and family" i.e., Ashok Jain, Respondent No. 1 herein and his family. The said MoU contemplates that in the event any dispute arose in the implementation of the MoU, then the dispute would be referred to sole arbitration. That is how the matter went before the learned Arbitrator who came to pass the impugned Award.

5. While the Petitioner and Respondent Nos. 2 to 4 have now agreed that the impugned Award should be set aside and have entered into a fresh MoU on 22nd March, 2016, Respondent No. 1 appears to not have any problem with the impugned Award.

6. The Petitioner and Respondent Nos. 2 to 4 have filed a joint application, IA No. 4834 of 2016 praying that the Award should be set aside and the matter should be referred to fresh arbitration by any Arbitrator that may be appointed by this Court.

7. In a reply filed to this application, the stand of Respondent No. 1, Ashok Jain, is interesting. He states that “the property bearing No. TU-48, Pitam Pura, Delhi – 110 085 as shown the joint family property/HUF of the parties belongs to One Smt. Kamlesh Jain, wife of Respondent No. 2, Sh. Ashok Jain.” It is further stated that the “sale deed of the said property stands duly registered in the office of the Sub-Registrar in the name of Smt. Kamlesh Jain as such the said property is neither joint family property nor HUF property and the same has been wrongly and malafidely mentioned in the Memorandum of Understanding/family settlement dated 22nd March 2016”.

8. Learned counsel for Respondent No. 1, Ashok Jain, reiterates that the said property i.e., TU-48, Pitam Pura, Delhi – 110 085 was never a joint family property. He adds that Ashok Jain had signed the MoU at the relevant time when the mother of the parties was alive and in deference to her wishes he did so.

9. The Court notes that the above changed stand of Respondent No. 1 was not urged even before the Arbitrator. Further, at no point in time did Ashok Jain inform the Arbitrator that he signed the MoU under any duress or coercion. The change in the stand of Ashok Jain is inexplicable.

10. The Court is of the view that the fact that Ashok Jain is now contending, contrary to the MoU dated 26th March, 2006 to which he was a party, that the property in his possession is not a joint family property and that this changed stand was not brought to the knowledge of the learned Arbitrator is a good enough ground for the impugned Award to be set aside.

11. One of the grounds on which a challenge has been raised to the impugned Award is that the learned Arbitrator had the *ex parte* Award without their actually being any claim filed by any of the parties. This is apart from the challenge to the Arbitrator himself on the ground that he was a close friend of one of the parties and he failed to disclose his interest.

12. It appears to the Court that there was no occasion for an impartial and neutral Arbitrator to consider the respective stand of the parties stemming from the MoU dated 26th March, 2006. Further, there is a changed circumstance in the form of the fresh MoU dated 22nd March, 2016 between the Petitioner and Respondent Nos. 2 to 4.

13. For all the aforesaid reasons, the Court considers it appropriate to accede the prayer made in this application by the Petitioner and Respondent Nos. 2 to 4 and set aside the impugned Award.

14. The plea of Respondent No. 1 that the impugned Award should be preserved cannot be accepted. It will, however, be open to Respondent No. 1 to participate in the arbitral proceedings in terms of this order and to put forth all his points for consideration before the learned Arbitrator. It is clarified that since Respondent No. 1 is not a party to the new MoU dated 22nd March, 2016 which has been entered into between the Petitioner and Respondent Nos. 2 to 4, he is not bound by the terms of the said MoU and it will be open for him to place his claims irrespective of the said MoU.

15. For the aforesaid reasons, this Court sets aside the impugned Award dated 22nd January 2007 passed by the Arbitrator. The Court appoints Mr. Babu Lal, a former Additional District Judge, residing at B-750, 2nd Floor, Greenfields Colony, Faridabad 121010 (Mobile No. 9910384643) as a sole Arbitrator to adjudicate the disputes between the parties including their claims and counter claims. The sole Arbitrator shall fix his own fees and terms and communicate them to the parties. The venue of the arbitration will be arranged by the parties and communicated to the Arbitrator at least one week in advance of every hearing. A fresh Award shall be passed by the Arbitrator, without reference to the previous Award.

16. The parties are directed to appear before the learned Arbitrator on 16th November, 2016 at 4 pm.

17. The petition and the pending applications are disposed of in the above terms. Order be given *dasti*.

18. A certified copy of this order be communicated to the learned Arbitrator forthwith.

S. MURALIDHAR, J

OCTOBER 06, 2016

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