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* IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON: 28.04.2017

% **PRONOUNCED ON: 28.07.2017**

\+ **FAO (OS) 13/2017, REV.PET.137/2017, CM APPL.1579/2017**

M/S KIDARSONS INDUSTRIES PVT. LTD. ..... Appellant

Through: None.

Versus

M/S. HANSA INDUSTRIES PVT. LTD. ..... Respondent

Through: Mr. V.P. Singh, Sr. Advocate with Ms. Anju Bhattacharya and Mr. Abhimanyu Singh Khatri, Advocates.

Mr. Jayant Tripathi with Mr. Dinesh Dahiya and Mr. Abhay Verma, Advocates.

CONT.CAS (C) 303/2017

NARENDRA NATH NANDA ..... Petitioner

Through: Mr. Jayant Tripathi with Mr. Dinesh Dahiya and Mr. Abhay Verma, Advocates.

Versus

RAJENDER NATH NANDA AND ANR. ..... Respondents

Through: Mr. V.P. Singh, Sr. Advocate with Ms. Anju Bhattacharya and Mr. Abhimanyu Singh Khatri, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

S.RAVINDRA BHAT, J.

Facts:

1. The appellant company, M/s. Kidarsons Industries Pvt. Ltd. (hereafter variously referred to as "the appellant" or "Kidarsons") was incorporated in the year 1963 with its Registered Office at the Allahabad Bank Building, 17, Parliament Street, New Delhi. The Nanda family, consisting of four brothers and one mother, held its shares. All the brothers were carrying on the business of the company together, until the second respondent, one of the brothers, wanted to separate and secured for himself the agency business of M/s. ThyssenSthal Union of Germany (hereafter "Thyssen"). The respondents filed a petition for winding up of Kidarsons on 4th April, 1988 under Section 433 and 439 of the Companies Act, 1956 (C.P. No. 28/88). During its pendency, the appellant filed a suit on 26th May, 1988 claiming for a decree of perpetual injunction restraining the defendants and their agents from carrying on the agency business of the agency in India and holding themselves out as the agent of that agency.
2. Both sides arrived at a settlement on 09.06.1988 which was recorded in the Court, by which it was agreed that Narendra Nath Nanda (hereafter "N.N.Nanda, the fourth defendant) and his group would sell their 5564 equity shares (30.14% of share

capital) in Kidarsons, for which he and his group were to be compensated by transfer of 30.14% of the assets of the company as valued on 01.07.1998, ₹ 5 lakh being payable by either parties as equalization payment. Clause 14 of the settlement stipulated that NN Nanda would continue to occupy the portion of the property of the company in which he was at that time residing as the deemed owner, the value of such portion being taken into account for evaluating the assets of the company, and this value was to be adjusted against his share. M/s. V. Shankar Iyer& Co. were appointed as the Chartered Accountants to determine the value of the shares. The Chartered Accountants submitted their report on 12.11.1990.

3. Objections to the valuer’s report dated 13.05.1991 were urged by moving an application under Order 26 Rule 18 read with Section 151 CPC. One of the objections was that the Chartered Accountants should have ascertained the value of the portion of the Golf Links property in their occupation independently, so that the same could be adjusted against the value of their shares. A learned Single Judge disposed of these objections by order dated 05.02.1993, (in the reported judgment *M/s. Kidarsons Industries Pvt. Ltd. V5. M/s. Hansa Industries Pvt. Ltd. & Ors.*, 1993(1) Delhi Lawyers 275). The appellant was required to pay ₹4,45,212/- to NN Nanda within the specified period *"against his handing over possession of the portions of Golf Links property in his occupation to the company"*. NN Nanda appealed the decision, to a Division Bench of this Court, which upheld the

single judge's order. The portion in the occupation of NN Nanda was handed over; a copy of the report dated 12.10.1993 of the local commissioner is on record and indicates that the handing over of the afore-mentioned portion of the Golf Links property by NN Nanda took place on 11.10.1993 in the presence, amongst others, of the defendant no.4 accompanied by his counsel and Mr. Rajender Nath Nanda, Director of the appellant company also accompanied by the learned counsel on his side.

4. An appeal was filed against this order of the Division Bench, and the Supreme Court of India its judgment dated 13th October, 2006 (*Hansa Industries(P) Ltd. & Ors. v Kidarsons Industries (P) Ltd* (2006) 8 SCC 531 affirmed the decision by the learned Single Judge, with two modifications:

> "*(a) that the judgment and order of the High Court is modified to the extent that appellant No.2 namely, Shri Narender Nath Nanda shall be allotted the portion of the Golf Link, which was in his occupation on the date of settlement and the value thereof shall be adjusted against his share. If something remains to be paid even after adjustment, the appellant shall pay such amount within a period of two months from the date of the order of the High Court*
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> *(b) The matter is remitted to the High Court for giving effect to the aforesaid modification which may involve directing the Chartered Accountants to make a recalculation on the basis of the directions contained in this judgement, and apportion the assets accordingly. This appeal is allowed to the extent indicated above……*"

5. To give effect to the above directions, a Division Bench passed an order directing M/s. V. Shankar Iyer & Co. to recalculate the valuation of the Golf links property on the basis of directions contained in the judgment of the Supreme Court and apportion assets in terms of the said order. The Chartered Accountant was accordingly, directed to submit report within six weeks. The Division Bench by its order on 10.07.2007 remitted the matter to the Single Judge for further proceedings to give effect to the modifications of the Supreme Court.
6. The matter was heard on various occasions to work out the right, entitlement and interest of the respective parties, and by order dated 16.12.2016, the Single Judge directed the Appellant to restore the possession of the portion of the Golf Links property to Respondents from whom it was taken over in 1993 on or before 30.03.2017, pursuant to the order of the Division Bench of this Court as modified by the Supreme Court. Aggrieved by the said order passed by the learned Single Judge, Kidarsons is in appeal on the grounds that the learned Single Judge had erred when he failed to take into consideration that in order to give effect to the directions of the Supreme Court it was important to ascertain the portion in occupation of N.N. Nanda as the value thereof had to be adjusted against his share and assets had to be apportioned accordingly.
7. The Division Bench of this Court by order dated 09.03.2017 stated that the question of the Chartered Accountant's report being considered for making a recalculation on the basis of the

directions contained in the judgment is not a pre-condition for putting Narendra Nath Nanda in possession of the said portion of the Golf Links house, and ordered the following:

> *"We have heard the learned counsel for the parties at length on the issue of interim order. It is clear that the Supreme Court decision in Hansa Industries Pvt. Ltd. v. Kidarsons Industries Pvt. Ltd: (2006) 8 SCC 531 is categorical that Shri Narendra Nath Nanda shall be allotted the portion of the Golf Links house which was in his occupation on the date of settlement and the value thereof shall be adjusted against his share. It is also clear that if something remains to be paid even after adjustment, the appellant herein shall pay such amount within a period of two months from the date of the order of the High Court. The question of the Chartered Accountant's report being considered for making a recalculation on the basis of the directions contained in the judgment is not a pre-condition for putting Shri Narendra Nath Nanda in possession of the said portion of the Golf Links house. Consequently, interim order stands vacated.*
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> *Renotify for arguments on appeal on 28.04.2017.*
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> *The possession shall be handed over to Shri Narendra Nath Nanda of the said portion of the Golf Links house latest by 31.03.2017. We also note that in the impugned order itself it has been recorded that there is no dispute with regard to the portion that has to be handed over to Shri Narendra Nath Nanda."*

8. The above order was not complied with by Kidarsons, and the Respondents filed a petition for initiation of contempt proceedings against the Contemnors under Section 12 read with

Section 10 of the Contempt of Courts Act, 1971 for willful disobedience of order.

Proceedings and Arguments:

9. The Appellant argues that the learned Single Judge had to go into the merits of the contention of the parties in order to decide the ultimate amount to be paid by the Respondent to enable him to get portions of the Golf Links Property and as to the entitlement of other parties to various assets. Instead, the order was passed by simply reproducing the directions given by the Supreme Court, with no reference to the recalculation to be undertaken on the basis of the reports submitted by the Chartered Accountants and without first undertaking the exercise of determining the extent of portion which had actually been in possession of NN Nanda at the time of handing over.

10. It was argued that the learned Single Judge erred in omitting to consider that to give effect to the directions of the Supreme Court, it was first necessary to ascertain the portion in occupation of N.N. Nanda as its value had to be adjusted against his share and assets had to be apportioned accordingly. Accordingly, the Appellants submitted that the order of the Learned Single Judge dated 16.12.2016 ran contrary to the plain language of the Supreme Court judgment dated 13.10.2016.

11. Mr. V.P. Singh, learned senior counsel submits that the single judge decreed the main suit, by order dated 06.04.2010. Thereafter NN Nanda filed an application, I.A. No 11703/2011, which was disposed of by an order dated 15.03.2012. The

appellant was aggrieved by that order, as it did not comply with the Supreme Court's directions and therefore, it preferred FAO (OS) 369/2012. That appeal was disposed of on 26.04.2013. The Division Bench set aside the single judge's order stating, *inter alia* that

> *"as to what is the ultimate amount to be paid by N.N. Nanda to enable him to get portions of the Golf Links property and as to the entitlement of other parties to other assets is subject matter which has to be finally decided before the judgment can record satisfaction. Before completing that process, the learned Single Judge could not have directed the Registry to draw a decree as was done in this case."*

12.Learned senior counsel relies upon the order of the Division Bench dated 10.07.2008 observing that, the direction issued by the Supreme Court remanding the matter back to this court to give effect to the directions referred to would also necessarily imply that the exercise had to be undertaken before the learned Single Judge. In the impugned order, the single judge, beyond observing that a resolution as to the dispute arising out of the recalculation done had remained pending, did not in fact return any finding. Thus, the impugned order is facially erroneous. Mr. V.P. Singh also found fault with the impugned order, stating that there was no finding - and indeed, there was controversy as to what portions NN Nanda had occupied, of the Golf Links property. Since this foundational point was not resolved, the assumption that he was entitled to be put into possession by virtue of the Supreme Court order, could not be given effect to.

The learned Single Judge also had to examine the merits of the contention of the parties in order to decide as to what is the ultimate amount to be paid by NN Nanda to enable him to get portions of the Golf Links Property and as to the entitlement of other parties to various assets. Without completing this task, a mere direction to hand over possession could not have been made.

13. It is submitted that the order impugned in the present appeal is no different from the two previous orders that were set aside by the Division Bench. The clear mandate to the single judge, according to the appellant, was to calculate the true value of the share and, after giving due adjustments to payments made, or recovering amounts payable, hand over the portion of the Golf Links property to NN Nanda. Till such time this exercise is not completed, the question of handing over any portion of the property does not arise. Learned counsel also argued that there are disputes as to the extent of the portions of the property which NN Nanda occupied, before he handed over possession, which are evident from the Local Commissioner's report. Without resolving that dispute, the single judge should not have made any direction.

14. Regarding the non-compliance with the order of the Division Bench dated 09.03.2017, the appellants argued that there was no deliberate and intentional defiance of the order of this Court. The Appellants submitted that the respondents received the certified copy of the order on 21.03.2017, and a revision petition was

filed on 28.03.2017.

15. It was argued on behalf of NN Nanda that directions in the order dated 09.03.2017 were in consequence of the Supreme Court judgment in *Hansa Industries Pvt. Ltd &Ors. vs. Kidarsons Industries (Pvt.) Ltd.*(2006) 8 SCC 531. It was further argued that despite there being two orders for handing over possession of part of the property in question, the Appellants have not complied with the same to date, even though the last deadline for the same, of 31.03.2017 has passed, and that the Appellants by not handing over possession of the property as ordered by the Division Bench of this Court have, intentionally and willfully disobeyed an order of this Court of 09.03.2017. It submitted that there can be no excuse for such willful and intentional disobedience of orders passed by this Court, that the obedience of orders is the foundation upon which the justice system works and is effective, and that by such disobedience, the appellants are also guilty of obstructing the administration of justice, and are, therefore, liable for initiation of criminal contempt proceedings against them.

16. So far as the other submissions with respect to failure by the single judge to consider the precise share holding and the value thereof is concerned, learned counsel pointed out that more than 11 years had elapsed since the Supreme Court directions. The orders of the single judge had travelled by way of two appeals to the Division Bench, at the behest of the appellants, who were bent upon delaying the proceedings and ultimately defeating NN

Nanda's rights. It was submitted that the question of value of shares can be independently ascertained and that the appellants' insistence that resolution of that issue is a precondition for handing over possession, is without substance.

17. The relevant extracts of the Supreme Court's judgment, read as follows:

> *"It is true that the High Court has taken note of the practicalities of the situation and has proceeded on the basis that the appellants and the respondents cannot peacefully live in the same premises. The High Court has, therefore, not favoured allotment of a portion of the house in favour of appellant No.2 and has approved the allotment of the house to the respondents who owned the majority shares in the respondent No.1/ Company. This was done with a view to ensure that the parties live separately but in peace and harmony. We cannot find fault with the concern shown by the High Court, but the problem which arises in the instant case is that the High Court was not considering a matter in which it could have exercised its discretion to make allotment one way or the other as in a case of family partition. The decree of the Court is based upon a settlement reached between the parties. Even at the time when the settlement was reached the parties were well aware of the strained relationship which existed and the unfortunate events that occurred between the branch of appellant No.2 and the remaining members of the family. Despite this, it was agreed by all of them that the portion in occupation of appellant No.2 shall be allotted to him and the value thereof adjusted against his share. The respondents cannot now be heard to say that it would be inconvenient for them to reside with appellant No.2 and his family members in the same house, though in separate portions. The question as to how the parties will manage their affairs is a matter with which they only are primarily concerned and the Court cannot advise them in the matter. It may be that the architects may provide a solution for their problems, or it may be that in view of the*

circumstances one party may agree to sell its share or buy the share of the other party with a view to purchase peace, if that becomes necessary. These are matters in which the Court may have nothing to say.

Clause 14 of the settlement being unambiguous, clear and categoric, it must be given effect because one cannot term the said Clause 14 as vitiated by fraud, or illegal being in breach of any statutory provision, or against public policy, or hit by the principle of impossibility of performance. The settlement was made bona fide by the parties to resolve all their disputes and all facts were known to the parties when they reached the settlement. With their eyes open and fully aware of their experiences of the past, they agreed to share the Golf Links property. The relevant clause in the settlement is not vitiated by any consideration which may impel the court not to give effect to that clause in the settlement. The question of practical inconvenience should have concerned the respondents when they entered into the settlement. They cannot at the stage of implementation of the settlement avoid a covenant in the settlement solemnly incorporated with their consent on the pretext of practical inconvenience of living in the same house, albeit in separate portions, in the unfortunate background of bickerings and acrimony. This issue must, therefore, be decided in favour of the appellants.

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We, therefore, allow this appeal to the extent indicated below:-
a) that the judgment and order of the High Court is modified to the extent that appellant No.2, namely Shri Narendra Nath Nanda shall be allotted the portion of the Golf Links house which was in his occupation on the date of settlement, and the value thereof shall be adjusted against his share. If something remains to be paid even after adjustment, the appellants shall pay such amount within a period of two months from the date of the order of the High Court.
b) That no deduction shall be made from the value of the assets of the anticipated capital gains tax liability on the hypothetical sale under the settlement. In case a demand of capital gains tax

is made by the tax authority in future against respondent Company, the aforesaid Company shall be entitled to challenge the imposition of such tax subject to appellant No.2 providing sufficient funds to the respondent Company for this purpose. In any event, the capital gains tax, if found payable, shall be the liability of the appellants to be discharged by them. They shall furnish an undertaking before the High Court accepting such liability, and shall execute a document creating a charge on the assets allocated to them under the settlement to discharge capital gains tax liability, if found payable.

The matter is remitted to the High Court for giving effect to the aforesaid modifications which may involve directing the Chartered Accountants to make a re-calculation on the basis of the directions contained in this judgment, and apportion the assets accordingly."

18. The Supreme Court's judgment was delivered on 13.10.2006, i.e., about 11 years ago. In the impugned order dated 16.12.2016, the learned Single Judge in CS (OS) 1310/1988 held that the valuation of the various assets, including the valuation of the subject portion of the Golf Links property, would be an exercise which is bound to continue and may follow the handing over of the possession of the portion of the property. It further directed the Appellants to hand over the said portion to NN Nanda.

19. After the order of the Supreme Court, no less than 66 dates of hearing took place before the learned single judge. The order sheet discloses that about 15 adjournments were given at the behest of the plaintiff/appellant. On 15.04.2014, the case had to be transferred to another Hon'ble Judge, because the appellants'

counsel attributed some improper motive on account of the court setting down a date of hearing that was not usual. This suggestion of impropriety does not appear to be founded; in any case, the matter continued to languish for a long time. On the other dates of hearing, the matter could not proceed either because the court did not have enough time, or adjournment was sought by some party to file pleadings, or for some other reason.

20. The appellants' main argument is that a piecemeal compliance with the Supreme Court directions cannot be undertaken. In support, the appellant relies on the Division Bench order of this Court, dated 26.04.2013. That order no doubt faulted the single judge because the final decree was directed to be drawn, without deciding what were the ultimate amounts to be paid by N.N. Nanda in lieu of possession of the Golf Links property, and as to the entitlement of other parties to other assets was the subject matter which had to be finally decided before the judgment could record satisfaction. However, that order does not reflect any sequence: there is no sequitur to the occurrence of an event, or the absence thereof. In other words, there is nothing in the order of the Division Bench, or any other order, indicative of what the appellant argues to be sacrosanct, i.e., determination of shares (and amounts payable by NN Nanda) as the pre-requisite to handing over possession.

21. In this regard, the directions of the Supreme Court are categorical:

"Shri Narendra Nath Nanda shall be allotted the portion of the Golf Links house which was in his occupation on the date of settlement, and the value thereof shall be adjusted against his share. If something remains to be paid even after adjustment, the appellants shall pay such amount within a period of two months from the date of the order of the High Court."

No doubt, the value of the share is to be adjusted against NN Nanda's share; if something remains to be paid, that payment is to be made after re-calculation. What therefore, transpires is that the happening of one event is definite: allotment of the portion to NN Nanda *"of the Golf Links house which was in his occupation on the date of settlement."* This allotment (and the consequence, i.e. handing over of possession thereof) cannot be seen as entirely dependent upon conclusion of the determination of value, an exercise to be undertaken after hearing the parties on the report and the recalculation conducted by the valuer.

22. This court is also of the opinion that there is no inchoateness about the share of NN Nanda; it was the portion of the Golf Links apartment that he was in occupation of till 12.10.1993, which, pursuant to the Division Bench ruling in the first round of litigation, he was constrained to hand over, to the other party. The judgment of the Supreme Court, resulted in reversal of that part of the Division Bench ruling. The court is unpersuaded by the appellants' argument that there are disputes with respect to what portion was in occupation of NN Nanda. The report of the Local Commissioner appointed by the court, Shri Ravinder

Sethi, Senior Advocate, dated 12 October, 1993, reads as follows:

> *"There was a dispute between the respective parties as to the portion of the house of which possession has been handed over by the appellant to the respondent. Whereas the appellant was contending that he has handed over possession of portion shown in 'Red'colour In plan A-1 respondent was contending that the appellant was in possession of portion shown In 'Red' colour in planEx. R-1 and possession of this portion alone has been handed over.*
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> *I, inspected the portion shown in 'Red' colour in plan 'A-1' and found it to be vacant and there were no belongings of any nature in the said portion. It did appear that the appellant had taken all the belongings from the said portion so as to enable it to handover vacant possession to the respondent.*
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> *Shri N.N. Nanda of the appellant Company handed over keys to Shri R.N. Nanda and the possession of the entire property at 41, Golf Links, New Delhi thus came to be with the respondent."*

Quite evidently, the parties are aware as to what was the extent of the Golf Links property which was in possession of NN Nanda; in any case, the Local Commissioner's report with regard to the portion being marked in the map as A-1 has not been controverted. Thus, it is that portion ('A-1') which has to be handed over. So far as calculation of amounts needed to be adjusted in accordance with the Supreme Court's order is concerned, the court is of the opinion that the learned single judge should complete the exercise at his earliest convenience, and in any case within 4 months from today.

23.So far as willful non compliance with the single judge's order, by virtue of this court's directions go, no doubt, facially, the appellants' conduct is *prima facie* contumacious. Yet, the court notices that the appellant had sought recall of the said order (dated 09.03.2007); moreover, since the appeal was pending, there was some likelihood of the directions being modified after a hearing on merits.

24.In order to give effect to the directions of the Supreme Court in its judgment in *Hansa Industries Pvt. Ltd &Ors. vs. Kidarsons Industies (Pvt.) Ltd.* (2006) 8 SCC 531, the Court further directs the Chartered Accountants M/s. V. Shankar Iyer & Co., who as per the directions of the Division Bench did a recalculation of the value of the Golf Links Property, to ascertain the final amount to be paid by Narendra Nath Nanda to the Appellants so as to enable him to get portions of the Golf Links Property and as to the entitlement of other parties to various assets, and submit its report to the Court within six weeks.

25.In view of the foregoing discussion, the Court is of opinion that there is no merit in the appeal. The appellant shall comply with the court's directions within 6 weeks from today. To ensure due compliance, the parties through their counsel shall be present before the learned Single Judge, on 03.08.2017. The Single Judge may issue appropriate directions for ensuring that possession is handed over in front of a responsible officer (of this court) or a local commissioner to be appointed, for the purpose.

26. The appeal, FAO 13/2017, Review Petition No. 137/2017 and Contempt Case 303/2017 are accordingly dismissed. There shall be no order on costs.

S. RAVINDRA BHAT
(JUDGE)

ASHUTOSH KUMAR
(JUDGE)

JULY 28, 2017