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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: July 07, 2017

+ O.M.P. (COMM) 241/2017

SH. BHUPINDER SINGH (SINCE DECEASED) THROUGH
LEGAL HEIRS & ORS.

..... Petitioner

Through Mr.S.L.Gupta, Mrs.Tarunika Gupta
and Mr.Mithilesh Pal, Advs.

versus

SH. AMARJEET SINGH

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

IA No.6239/2017 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

IA No.6241/2017 (delay in re-filing)

For the reasons stated in the application the delay in re-filing the petition is condoned. Application stands disposed of.

O.M.P. (COMM) 241/2017 & IA No.6240/2017 (stay)

1. Present petition is filed under section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the Award dated 27.8.2016 passed by the learned Arbitrator Shri Prem Kumar, (Retired ADJ). The controversy revolves around dissolution of a partnership firm by the name of M/s. Kirpal Singh Wazir Singh, of which, the petitioner (since deceased, and

now represented by his legal heirs) and the respondents were partners. The firm was established vide partnership deed dated 1.4.1978.

2. The learned Arbitrator has passed the following Award in favour of the respondents:-

I. Claim No. 1:- Allowed dissolution of firm w.e.f. January 1997;

II. Claim No. 2:- Awarded the profits from the business of the non-subsisting partnership at Rs. 1 Lakh per year, from August 1990 to December 1996, totaling to Rs. 6,41,666/- with interest @9% p.a. w.e.f. January 1997;

III. Claim No. 3:- Passed the award for the payment of Rs. 4.50 Lacs as value of the tenancy rights with interest @9% p.a. w.e.f. January 1997;

IV. Claim No. 4:- Allowed the interest @9% p.a. w.e.f. January 1997 against the Petitioners in favor of the Respondent for all claims allowed;

V. Claim No. 5:- Awarded the cost of Rs. 5 Lacs being the fee paid to the Ld. Arbitrator between 2006 and 2016 with interest @9% w.e.f. January 1997;

VI. Claim No. 6:- Rejected all the Counter Claims/Claims of the Petitioners.”

3. The brief facts as stated by the petitioner are that the father of the petitioner and father of the respondent after partition of the country constituted a partnership firm by the name of M/s. Kirpal Singh Wazir Singh. The said partnership firm had a small shop and modest business at Sadar Bazar, Delhi. The original partners expired. The firm was lastly constituted on 01.04.1978 whereby the petitioner and respondent were the

only partners. The shop from where the business of the firm was carried out was taken on rent by the families somewhere in 1950. At the time of re-constitution of the firm in 1978, nothing was paid to the outgoing partners for the tenancy rights. It is claimed that for the period 1985-90 the profits of the firm ranged from Rs.31,000/- per year to Rs.64,000/- per year.

4. It is further stated that on 14.3.1990 there was a serious fight between the families and the shop was closed with the locks of the petitioner and the respondent. The shop did not open thereafter. On 16.4.1990 there was a devastating fire in the Sadar Bazar area which engulfed the shop also. In the fire the store and stocks lying in a godown in Chaudhary Market, Tellwara, Delhi were saved. Thereafter no steps were taken by any of the partners to rebuild the shop or to infuse fresh stocks and to restart the business. It is alleged that the respondent and his family took control of other business including property measuring 350 sq.yards Yds. at 6977, Beriwalla Bagh, Pul Bangash, Delhi; Industrial Plot measuring 400 Sq. Yds. with super structure constructed thereon bearing no. B 28, Group Industrial Area, Wazir Pur, Delhi; Industrial Plot measuring 200 Sq. Mts. Bearing No. T-2-168, Phase I, Mangol Puri, Delhi and other businesses.

5. It is urged that the petitioner on 15.7.1990 served a letter of Dissolution of Partnership Firm and hence the partnership stood dissolved on 31.7.1990.

6. In 1993 the respondent is said to have filed a suit before this court being Suit No.935/1993 for decree of permanent injunction to restrain the petitioner from obstructing the respondent from looking after the partnership business and to attend to the firm. Other connected reliefs were also sought. In the course of proceedings the counsel for the petitioner is said to have

made a statement that the petitioner is not in possession of the partnership premises and statement was taken on record.

7. It is further urged that after the fire, as none of the partners took any interest in reconstruction of the tenanted property, the landlord entered into possession and rebuild the premises and leased out the same on 1.9.1990 to new tenants who started business in the name of M/s. Sachdeva Traders.

8. It is further urged that on account of non-execution of formal Deeds of Dissolution the sales tax license of the firm M/s. Kirpal Singh Wazir Singh was not cancelled by the authorities and the petitioner used the said license without informing the authorities about any such change in the firm. The petitioner has used the sales tax license of the firm from 1.1.1991 and started making the supplies.

9. The respondent is said to have filed another suit being suit No.2792/1996 in this court seeking dissolution of the firm and rendition of accounts. On 28.8.2002 both the suits filed by the respondents were disposed of and the matter was referred to the sole arbitration of Justice N.C.Kochhar (Retired) for adjudication of the disputes. The learned Arbitrator entered into reference. Subsequently, Justice N.C.Kochhar (retired) died in 2004. On account of increase in pecuniary jurisdiction of the District Courts, the matter came up before the District Courts on 25.5.2005, when the court appointed Shri Prem Kumar, ADJ (retired) as the Sole Arbitrator.

10. The respondent filed his claim petition before the learned Arbitrator and sought several reliefs. Claim No.1 pertained to seeking of an Award directing dissolution of the partnership firm. In claim No.2 the respondent sought payment of his share of 50% of income of the partnership business. The respondent claimed an amount of more than Rs.2 crores from the

petitioner. Under claim No.3 the respondent claimed that the tenancy rights in the firm including the shop being Shop No.5613, Gandhi Market, Sadar Bazar, Delhi comprising of the basement and ground floor and first floor. It was urged that the parties be directed to bid for the same and on the basis of the highest bid the goodwill, tenanted rights and tenanted shop be awarded to the highest bidder. Under claim No.4 the respondent sought payment of interest @ 9% per annum. Under Claim No.5 the respondent sought payment of costs of Rs.5 lacs including costs of the arbitration proceedings.

11. The petitioners filed a counter-claim before the learned Arbitrator. It was urged that the firm M/s. Kirpal Singh Wazir Singh was a family concern of the families of the brothers, namely, late Shri Kirpal Singh and Wazir Singh. Not only this, but various other businesses were being carried out by the family of the brothers. The petitioner and respondent were the eldest son of late Shri Wazir Singh and Kirpal Singh respectively. Hence, the family was looking after businesses of the firm in question apart from other businesses, namely, M/s.A.Paul and Company M/s. Bhupindra Lace Factory and M/s. New Bharat Lace Braid Factory. Based on this averment the petitioner claimed that the petitioner and his family members have 50% share in the following business/properties.

- “(i)Business of M/ s. A. Paul & Co.;
- (ii)Business of M/s. New Bharat Lace Braid Factory;
- (iii)Business of M/s. Bhupendra Lace Factory;
- (iv) Premises bearing N.o .6674, Kothi Memwali, Bara Hindu Rao, Delhi-no 006;
- (v)Industrial Plot measuring 400 sq. yards, with 2-1/2 storeyed and full basement, bearing No.B-28, Group Industrial Area,Wazirpur, Delhi;

(vi) Industrial Plot measuring 200 sq. mtrs. 1 bearing No. T-2-168, Phase I, Mangolpuri, Delhi;
(vii) Tenancy of the godown on the First Floor bearing No. 2327/2, Choudhary Bhawan, Sadar Bazar, Delhi;
(viii) Industrial property bearing No. 6977, Beriwal Bagh, Pul Bangash, Delhi, measuring 350 sq. yds.”

12. Based on the above averment and other averments, the petitioner sought a sum of Rs.2,84,21,835/- from the respondents besides half share in the land and building, plant and machinery at B-28, Wazirpur Group Industrial Area, Delhi, the property bearing No.6977, Beriwal Bagh, Pul Bangash, Delhi, tenanted premises bearing No.2327/2, Chaudhary Market, Sadar Bazar, Delhi and the property bearing no. 6674, Kothi Memwali, Bara Hindu Rao, Delhi, from the Claimant.

13. As noted above, the learned Arbitrator in the impugned award has not believed the version of the petitioner. A finding has been recorded that the partnership firm continued to do business even after the alleged fire in the shop on 16.4.1990. The Award concludes that the firm stood dissolved w.e.f. January 1997. The Award also concludes that the firm which was in control of the petitioner would be earning an annual profit of Rs.2 lacs an year of which Rs.1 lac would be the share of the respondent. Thus, the Award holds that the respondent is entitled to profits from August 1990 to December 1996 @ Rs.1 lac per year amounting to Rs.6,41,666/-. Similarly, a sum of Rs.1 lac is awarded towards the goodwill of the firm. Another sum of Rs.4.5 lacs is awarded on account of the surrender value of the shop in Sadar Bazar. A sum of Rs.5 lacs is also awarded for costs. The counter-claims of the petitioner were rejected inasmuch as none of the claims arose out of the partnership deed dated 1.4.1978. It was held that none of the properties pertained to the

firm M/s.Kirpal Singh Wazir Singh. There was also nothing on record to show that the respondent diverted funds from the partnership to purchase these properties. The plea of the petitioner that the firm business was not exclusive business of the parties but of the families of late Shri Kirpal Singh and late Shri Wazir Singh was rejected. It was held that the firm in question is a separate legal entity having its own assets and liabilities. As the disputes which were subject matter of the counter-claim were not referred to the Arbitrator the learned Arbitrator held that the same cannot be adjudicated in the present proceedings.

14. I have heard learned counsel for the petitioner. Learned counsel for the petitioner has submitted as follows:-

- (i) The firm was dissolved in 1990. In fact even when the respondent filed the first suit in 1993 a statement was made by the learned counsel for the petitioner that the petitioner is not in possession of the shop in question. Reliance was sought to be placed on the report of the Receiver that was appointed by this court vide its order dated 24.11.1998. It is urged that this court by the said order dated 24.11.1998 in the second suit filed by the respondent had directed the Receiver to go to the premises of the partnership firm at Gandhi Market and prepare a complete inventory of the raw material and goods lying therein and to submit a report as to who are the persons in possession of the premises. It is urged that the Receiver visited the premises being 5613/5613A, Gandhi Market, Sadar Bazar, Delhi and found that Shri Surinder Singh son of Shri Wazir Singh and Shri Avtar Singh son of Shri Wazir Singh and Shri Amarjeet Singh son of Shri Kripal Singh were present there apart from staff members.

The signboard of the premises was of M/s.Sachdeva Traders where partners were, namely, Shri Surender Singh s/o Shri Wazir Singh, Shri Avtar Singh son of Shri Wazir Singh and Smt.Niranjan Kaur wife of the petitioner. Hence, it is urged that the finding recorded by the learned Arbitrator about dissolution of the firm in 1997 is misplaced. Reliance was placed upon judgment of the Bombay High Court in ***Vazirbhai Sultanbhai Tamboli s. Gadmali Nathmal Marwadi, AIR 1940 Bombay 263*** to contend that when a partnership, at will is formed it will come to end by notice of dissolution or by abandonment by one of the partners.

(ii) It is urged that the shop was destroyed in the fire in 1990. All records were destroyed and hence there was not enough material on record to come to proper conclusions.

(iii) It was pointed out that as per Income Tax Returns of the firm the annual income was only about Rs.60,000/- per annum. Hence, the computation of income in the award is entirely baseless and misplaced.

(iv) It is urged that costs of Rs.5 lacs interest have been awarded from back date which was improper and illegal.

15. The bone of contention between the parties is actually the date of dissolution of the partnership firm. As per the petitioner he has sent a notice of dissolution on 15.7.1990 after the fire broke out in the shop. The respondent refuted the said notice of dissolution and insisted that there was no dissolution of the firm. Hence, in 1996 he filed a suit before this court seeking dissolution of the firm.

16. A perusal of the award would show that the learned Arbitrator noted the following salient facts:-

(i) The fire broke out in Gandhi Market on 16.4.1990 on account of which there was only partial loss of the structure. The basement of the premises 5613, Gandhi Market, New Delhi was saved from the fire. Records of the firm which were lying at 6666, Kothi Mem, Bara Hindu Rao, Delhi, of the petitioner were not destroyed. It is pointed out that the petitioner has deposited sales tax on 24.9.1990 and Income Tax Return on 29.8.1991. The premises was reconstructed in July 1990 and the partnership resumed functioning from August 1990. Goods lying at godown No.2327/2 Chaudhary Market were brought to the shop in 1990. Two telephone Nos. of the firm were also reinstalled in August 1990.

(ii) The report of the Local Commissioner appointed in the first suit dated 3.8.1993 shows the presence of the petitioner and his two brothers Shri Surender Singh and Shri Avtar Singh in the shop. The petitioner posed that he has no links with the respondent and refused to produce books of accounts and stock registers and gave no satisfactory reply to the Local Commissioner.

(iii) On 8.9.1993 the petitioner wrote a letter to GPO with respect to shifting of the firm. In the letter he has mentioned that the building of the firm M/s.Kirpal Singh Wazir Singh has been destroyed in April 1990. Hence, future mail in the name of the firm be delivered at 6666 Kothi Mem, Bara Hindu Rao Delhi. The learned Arbitrator concluded that sending of this communication to the post office shows that the petitioner does not deny existence of the firm as late as on 8.9.1993.

(iv)The bank account of the firm continued to be operated by the petitioner till 1993. Hence, it cannot be said that the firm stood dissolved by the alleged notice dated 15.7.1990.

17. Based on some of the above and other facts, the learned Arbitrator concluded that the petitioner did not serve any formal notice on the respondent for dissolution of the firm. The notice dated 15.7.1990 is said to have not been served upon the respondent. The Award notes that the subsequent conduct of the petitioner confirms the fact that the petitioner used the sales tax license of the firm and inducted his wife and brother Shri Surender Singh in the shop to do business under a different name and with the other members of the family got the tenanted premises from the landlord and took the same on rent. The tenancy of the premises 5613, Gandhi Market, Sadar Bazar, Delhi was never formally surrendered by the firm. Shri Surender Singh brother of the petitioner and the petitioner's wife could not have been inducted in the premises without the consent and connivance of the petitioner. Hence, the award records a finding of fact that there was never any dissolution of the firm prior to filing of the suit by the respondent before this court in 1996. Hence, the Award comes to a conclusion that it would be appropriate to dissolve the firm w.e.f. January 1997 in view of section 44 of the Partnership Act, 1932.

18. Having come to a conclusion that the firm was not dissolved in 1990 as pleaded by the petitioner, the issue of rendition of accounts would also consequently arise. The learned Arbitrator rejected the plea of the respondent claiming Rs.100 crores. It was the plea of the respondent that the firm was earning a profit of Rs.5,000/- per day of which he was entitled to Rs.2,500/-

per day. Noting that there is nothing to show an earning of this figure, the Award notes the statement of volume of business for the period 1979-90. Considering the figures of sales and stocks mentioned by the petitioner the learned Arbitrator comes to a conclusion that the earnings of the firm would not be less than Rs.10 lacs per year. Hence, the award concludes that there would be an annual profit of the firm of Rs.2 lacs out of which Rs.1 lac would be the share of the respondent. Share of profits was accordingly awarded to the respondent for the period August 1990 to December 1996 at the said rate i.e. Rs.6,41,666/-.

19. Regarding the assets of the firm, appropriate compensation has been awarded to the respondent on account of the tenancy rights the firm enjoyed the shop at Sadar Bazar, Delhi taking into account its surrender value.

20. The Supreme Court in *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49 held as follows:

“12The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where-

1. a finding is based on no evidence, or
2. an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or
3. ignores vital evidence in arriving at its decision,

such decision would necessarily be perverse. A good working test of perversity is contained in two judgments. In **H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons**, 1992 Supp (2) SCC 312 at p.317, it was held:

7.It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.

In **Kuldeep Singh v. Commr. of Police**, (1999) 2 SCC 10 at para 10, it was held:

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”

It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In **P.R.Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd.**(2012) 1 SCC 594, this Court held:

21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or re-

appreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.

.....”

21. It is clear that the learned Arbitrator has come to conclusion of facts based on evidence on record. The conclusions are plausible conclusions. The finding cannot be said to be perverse or irrational. It is not for this court while exercising powers under section 34 of the Act to interfere in the findings of facts recorded by the learned Arbitrator.

22. Regarding the reliance of the learned counsel for the petitioner on the judgment of the Bombay High Court in *Vazirbhai Sultanbhai Tamboli s. Gadmal Nathmal Marwadi(supra)* it is manifest that whether there has been an abandonment of the partnership by one of the partners will necessarily have to be a question of fact. The learned Arbitrator has not accepted the said plea of the petitioner.

23. Accordingly, there is no merit in the present petition and the same is dismissed.

(JAYANT NATH)
JUDGE

July 07, 2017/n/rb/v

