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

Date of Decision : 15th July, 2019

+ O.M.P.(I) 398/2015 & I.A. No.6469/2019

SANJAY KAPUR & ORS. Petitioners
Through: Mr.Sudhir Makkar, Sr. Adv. with
Ms.Meenakshi Singh, Adv.

versus

VIKRAM KAPUR & ORS. Respondents
Through: Mr.D.K.Sabharwal, Mr.Sameer
Bhatnagar, Advs. for R-9.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

1. This petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioners *inter alia* praying for the following reliefs:-

“a) Direct that the proceedings titled Bijender vs. Sanjay Kapur & Ors. pending in the Court of learned Assistant Collector, 1st Grade, Panipat shall remain stayed;”

2. It is the case of the petitioners that by an MOU dated 08.01.1999, the three groups of legal heirs of Late Sh.Janki Das Kapur had agreed to split the ownership, management and / or control of the companies and assets of the family in three equal shares and to award one share to each of the three units/groups of the family. One of the properties was the Panipat Agricultural Farm land.

3. As certain disputes arose between the parties, the same were referred to the Arbitrator named in the MOU.

4. The Arbitrator passed an Award dated 01.11.2014, directing as under:

“A. The three lots though not finally divided through the MoU(s) have been under the respective Groups as per the MoUs who have followed it thus far. Final division be done without disturbing the set up in any manner.

B. The lot allocated to each group shall remain in exclusive management, control and operation thereof and that group shall be entitled to hold the same and no other group will have any right or entitlement to any part of that lot or burden it for any liability incurred by the other group in managing its lot.

C. The profit and loss of the lot since 31st Aug 2003 shall remain the profit and loss of that lot and that no liability of that lot shall befall on any other lot.

D. Any loss or claim against the Assets arising because of a particular group, shall be met and

settled by the group managing, operating and controlling the said lot;

E. None of the groups to the MoU shall breach or cause to breach the baskets so caused while dividing the management and control of the assets;

F. All the groups shall jointly and severally perform their part of obligations as per the MoU in implementing and executing the understanding in splitting the ownership as per law;

G. the residential building shall be used for the residence of each group on as is basis and shall not induct any third party in the part in its possession and shall pay the taxes and other out goings for the area in their occupation; repair cost will be met on as is basis.”

5. Learned senior counsel for the petitioners submits that as the Arbitrator by his Award dated 01.11.2014 did not deal with some of the assets of the family, including the Panipat Agricultural Land, the Award was challenged by the petitioners *inter alia* on this ground by way of a petition under Section 34 of the Act being OMP No.30/2015. He draws my reference to Ground V in the petition, which is reproduced hereinbelow:

“V. The impugned award is conspicuously silent about the division of the assets like Dalhausie property, Panipat land, Jankidas & Company (Departmental Store) etc. which were specifically mentioned in the Memorandum of Understanding dated 8th Jan 1999. It is relevant to point out that Jankidas & Company (Departmental Store), which is a partnership concern shut down its business operations many years back and a suit filed for dissolution of partnership and rendition

of accounts is pending adjudication before this Hon'ble Delhi Court being suit No.430/ 2004."

6. The said petition was disposed of by this Court vide its order dated 03.08.2015, *inter-alia* observing as under:

"52. It must be mentioned at the outset that the Petitioners have made it clear that they are not questioning the division already effected on the residential buildings or other units other than the company and the trusts in terms of the 1999 and 2003 MoUs. The challenge in these petitions to the impugned Award is confined to the extent that it pertains to management and control of the company and the two trusts.

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80. Consequently, the Court is satisfied that the directions issued by the learned Arbitrator as regards the division of the assets and management and control of Atlas Cycles (Haryana) Ltd. is opposed to fundamental policy of Indian Law and, therefore, cannot be sustained under Section 34 (2) (b) (ii) of the Act.

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85. It is clarified that notwithstanding this order of the Court it would be open to the parties to seek remedies as envisaged in law in regard to the restructuring/arrangement as far as Atlas Cycles (Haryana) Ltd. is concerned and as far as the two Trusts i.e. the Dewan Harnam Das Saraswati Devi Trust and the Dewan Harnam Das Saraswati Devi Trust (Regd. Society) are concerned. Whether the parties are bound by the 1999 and 2003 MoUs, whether the said MoUs should be given effect to and to what extent are left open to be decided in appropriate legal proceedings as and when

initiated. The Court should not be understood as having pronounced on the legality of the 1999 or the 2003 MoUs in relation to the aforementioned Company and the Trusts. The remaining portions of the impugned Award so far as it relates to the division of the residential properties and other assets are not being interfered as that was not pressed before the Court.”

7. The learned senior counsel for the petitioners submits that the above judgment has been challenged by the respondent no.1 by way of an appeal, which is pending adjudication. He submits that though in the said order it has been recorded that the petitioners had made it clear that they are not questioning the division already effected on the residential buildings or other units other than the Company and the Trusts in terms of the 1999 and 2003 MOUs and that the challenge is confined to the extent that it pertains to the management and control of the Company and the two Trusts, however, as the said order is pending adjudication in an appeal filed by the respondent no.1, this Court should await the decision in the appeal.

8. Learned senior counsel for the petitioners further submits that by an interim order dated 30.08.2014 passed by the Arbitrator during the arbitral proceedings, the Arbitrator had directed maintenance of status quo with respect to the agricultural land situated at Panipat and therefore, it is in the interest of justice that the same order be continued.

9. On the other hand, counsel for respondent no.9 submits that the respondent no.9 has purchased portion of land by way of a registered Sale Deed dated 11.04.2013. He submits that on purchase of the said share, the respondents have initiated proceedings for demarcation before the Asstt. Collector, Panipat, which has been stayed by this Court by the order dated 17.09.2015. He submits that this Court would lack jurisdiction to grant the prayer made by the petitioners in the present petition inasmuch as the respondent no.9 is a *bona fide* purchaser for consideration and in any case, the petitioners, as recorded in the order dated 03.08.2015, had given up their challenge to the division of property including the agricultural land at Panipat.

10. I have considered the submissions made by the counsels for the parties. At the outset, it is noted that this petition was filed on 04.08.2015. Learned senior counsel for the petitioners has not been able to show if the petitioners have during these last four years invoked the Arbitration Agreement between the parties. He submits that the petitioners are in fact awaiting the outcome of the appeal filed challenging the order dated 03.08.2015. I may only note that the petitioners have not filed the said appeal. The appeal has been filed by respondent no.1 and 2, who are aggrieved of the final direction. As far as the petitioners are concerned, their statement has been recorded in paragraph 52 of the order dated 03.08.2015, which has been

quoted hereinabove. Further, the Court in paragraph 85 of the order dated 03.08.2015 clarified that the portions of the Award so far as they relate to the division of the residential properties and other assets are not being interfered with as that was not pressed. What was the nature of this division and effect thereof has not been explained by the petitioners either in their pleadings or in their oral arguments.

11. Once the petitioners have given a concession that the property stands divided and are not questioning the same, what is the extent of that division and effect cannot be considered in the present proceedings especially when the petitioners have for the last five years not initiated any arbitration proceedings against Mr.Salil Kapur or persons claiming under him.

12. In *Sundaram Finance Ltd. v. NEPC India Ltd.*, (1999) 2 SCC 479, the Supreme Court, while holding that Section 9 of the Act confers jurisdiction in a Court to pass an interim order even before a notice contemplated by Section 21 of the Act is given, further held that in such a situation, the Court must be satisfied that the applicant intends to take the disputes to arbitration.

13. In view of the above, as the petitioners have not shown any intent of invoking arbitration proceedings after having obtained the interim order from this Court, this itself is sufficient ground for vacating the said order. Interim order

dated 17.09.2015 is vacated and the petition is dismissed.
There shall be no order as to costs.

NAVIN CHAWLA, J

JULY 15, 2019
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