**Calcutta High Court**
**In the Circuit Bench at Jalpaiguri**
**Civil Appellate Jurisdiction**

**The Hon'ble Justice Sabyasachi Bhattacharyya**
**And**
**The Hon'ble Justice Kausik Chanda**

**FMAT 3 of 2021**
**With**
**CAN 1 of 2021**

**Shri Kajal Sarkar**
**Vs.**
**Haldibari Tea Manufacturers LLP and another**

| | | |
|---|---|---|
| For the appellant | : | Mr. Jaydip Kar,<br>Mr. Anindya Lahiri,<br>Mr. Samrat Dey Paul,<br>Ms. Arpita Saha |
| For the respondent | : | Mr. Joyjit Choudhury,<br>Mr. Rohit Agarwal,<br>Mr. Ajay Singhal |
| Hearing concluded on | : | 19.03.2021 |
| Judgment on | : | 23.03.2021 |

**Sabyasachi Bhattacharyya, J.:-**

**1.** The present challenge has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") against Order No. 12 dated December 14, 2020 passed by the District Judge, Darjeeling under Section 9 of the 1996 Act.

**2.** The application under Section 9 was filed by the present respondent No. 1, a Limited Liability Partnership (LLP) and respondent no. 2. The present appellant was arrayed as the respondent therein. The reliefs sought therein were as follows:

**3.** "… Interim Orders of Injunction restraining the Respondent its men an agents:

a. From disturbing the Petitioners and its men and agents in the smooth conduct of the day to day functioning and managing the management of the Petitioner Limited Liability Partnership business till the disposal of the Arbitration proceedings,

b. From entering into the Tea Garden premises being run and managed by the Petitioner Limited Liability Partnership business, its Land, Building, factory premises, officers of the Petitioner LLP, all other moveable assets and properties of the Petitioner LLP till the disposal of the Arbitration proceedings,

c. From representing the Petitioner LLP as a Partner in any manner whatsoever till the disposal of the Arbitration proceedings,

d. From creating third party interest and/or causing encumbrance to assets, properties and business of the petitioner LLP.

e. Such other interim measure of protection as may appear to the Learned Court to be just and convenient,

f. Any other relief or reliefs to which the Petitioners may be found entitled to under the law.

g. Ad interim orders in respect of prayers (a) to (d)."

**4.** The learned District Judge, by an ex parte order dated July 24, 2020, passed an ad interim order of injunction restraining the present appellant from entering the tea estate for a period of three weeks. The tea estate is run by the respondent no. 1, an LLP.

**5.** After subsequent exchange of affidavits, by the present impugned order dated December 14, 2020, the order dated July 24, 2020 was made absolute. The present respondent no. 2 (petitioner no.2 in the application under Section 9) was given liberty to approach before the Commissioner of Police, Siliguri or the S.P. Jalpaiguri, as the case may be, for police assistance for the purpose of operating his Tea Estate of Haldibari Industries and Plantation Company Limited and also his LLP business. The police administration, in case of need of present respondent no. 2, if complaint is filed, in that event, was directed to render him all possible assistance till the matter is placed before the Arbitrator regarding resolving the matter of exclusion of the present appellant (respondent there) from LLP Partnership Firm. Once the matter was placed before the Arbitrator, the Arbitrator would be at liberty to continue or discontinue the order of the District Court after hearing the parties therein in view of arbitration clause No. 28. The present respondent no. 2 was directed to make an application before this Court for appointment of an Arbitrator within February 28, 2021 and the order of that court was observed to be enforceable till the end of March 2021.

**6.** Learned senior counsel appearing for the appellant argues that the District Judge virtually decided the dispute between the parties and granted final relief, leaving nothing to decide for the arbitrator.

**7.** Moreover, the observations in the impugned order as regards the agreement dated May 15, 2020 being manufactured are without any basis. As per such agreement, the appellant was assigned full rights to run the tea business of respondent no. 1-LLP.

**8.** Thirdly, the subsequent conduct of the partners, including respondent no. 2, in admitting the appellant as a designated partner in all documents filed on behalf of the LLP before appropriate authorities, where the other partners were also signatories, was ignored altogether by the court below.

**9.** Fourthly, learned senior counsel for the appellant contends that, in any event, the admitted deed of reconstitution of the LLP dated January 31, 2020 confers 20% share on the fourth party therein. Although the appellant submits that such description was a misnomer, as evident from the chronology of parties and gender used in the agreement, and the appellant was actually the third party referred to therein, even if such contention is negated, the appellant would be the fourth party as per the erroneous description and is entitled to 20% share in the LLP. Hence, it is argued, completely ousting the appellant from the business, that too by police help at the outset, was patently erroneous and passed without jurisdiction.

**10.** Learned counsel appearing for the respondents refutes the appellant's arguments by contending that the impugned order is well-reasoned and all the materials on record were considered by the learned District Judge at length before granting relief.

**11.** It is argued that the relief granted falls within the scope of the prayers in the application under Section 9 of the 1996 Act and hence was not beyond the jurisdiction of the court below to grant.

**12.** As regards the observations on the May 1, 2020 agreement being manufactured, are contended to be supported by reasons.

**13.** It is submitted by the respondents that respondent no. 2 has full rights to run the LLP and not the appellant, which would be clear from the documents placed before the District Judge and, thus, the impugned order ought not to be interfered with under Section 37 of the 1996 Act.

**14.** Upon consideration of the arguments of both sides and going through the materials on record, we find that the impugned order was patently perverse and suffered from errors of law and fact on several scores.

**15.** First, at the stage of deciding an application under Section 9 of the 1996 Act for interim protection, the District Judge virtually granted final relief to the respondent no. 2, leaving nothing for the arbitrator to decide. The probable issues involved in the proposed arbitral proceeding were pre-judged on merits at such preliminary stage, thereby exceeding the scope of Section 9.

**16.** Secondly, the agreement dated May 15, 2020 was held to be manufactured without any specific pleading or proof on that score which, it is well-settled, is a pre-requisite of such a finding. The bases on which the document was held manufactured were also flimsy. As per the court below the said agreement was “prepared in hasty manner if entire recital is properly read and analysed”, without citing the nature of such “reading and analysis” was resorted for coming to the finding. More shockingly, despite the forensic expert report having observed that the specimen signatures and those on such document were matching, the District Judge disregarded such report since "There are so many handwriting signature experts who can copy with the same handwriting as that of any persons in the Business transaction in the Share Market at Calcutta". He went on to hold that the document was not a registered one and so, unless the offer and acceptance is there in clear terms, preceded by money transaction to both the partners in their account, it could not be inferred that there was acceptance of the offer by respondent no. 2. The next observation is more interesting: "If that be so there would not have been any case of this nature in this court". That apart, the document was held to be manufactured also because the appellant was silent on it when the matter was "heard at length at Siliguri Circuit Court".

**17.** This prompted the District Judge to come to the conclusion that the appellant had forcibly taken possession over the LLP business.

**18.** We find that above reasons to be flimsy because those were based on utter conjecture and surmise, disbelieving the expert's report on signature without any independent assessment and finding of the court that the signatures did not match. The grounds for discarding the report casually, as indicated above, are unheard of and unwarranted.

**19.** If the agreement dated May 15, 2020 was not held to be manufactured, it had to be construed, at least *prima facie*, to confer rights on the appellant to run the business of respondent no.1-LLP exclusively.

**20.** Even without taking into account the agreement dated May 15, 2020, the observations of the court below on interpretation of the deed of reconstitution of the LLP dated January 31, 2020 were *ex facie* erroneous. Although Kajal Sarkar, the present appellant, was described as the "FOURTH PARTY" and Ruby Mitruka as the "THIRD PARTY" in the preamble. The chronological layout of the names of the parties was contrary thereto. In order, Kajal Sarkar was the third and Ruby Mitruka the fourth parties respectively, leaving sufficient scope to draw conclusion that Kajal was the third party. Taken in isolation, such logic might have been weak; but when the pronoun "his" was used throughout the document to qualify the third party and, on the other hand, "her" to define the fourth party, it becomes clear that gender-specific pronouns were used for each of the parties and the grammatical usage was not a usual generalization of the term "his" for all genders.

**21.** If the reconstitution deed dated January 31, 2020 was interpreted harmoniously, a plain reading of the entire document would reveal the proper perspective which, in turn would make the error in description of parties in the preamble rather obvious.

**22.** That apart, there was sufficient corroborative evidence in the form of several transactions, as annexed to the writ petition and produced in the court below, to reveal that the other partners of the LLP, including respondent no. 2, had admitted the appellant to be a designated partner having 50% share in the LLP.

**23.** Going one stage further, even if we ignore the agreement dated May 15, 2020 altogether and opine that the preamble error, though contrary to the rest of the reconstitution deed, was deliberate and the appellant was the fourth, and not third party, therein, even then the appellant would be entitled to the 20% share attributed to the fourth party.

**24.** In the light of such discussions, the District Judges patently acted without jurisdiction in ousting the appellant totally from the LLP business.

**25.** The crème de la crème of the impugned order was the grant of police assistance for implementing an order simultaneously with the order itself, without recording any allegation that the same was flouted by the appellant, thereby putting the nail to the coffin by totally ousting the appellant from the business despite having at least some share therein.

**26.** Moreover, such relief was beyond the purview of the application under Section 9 of the 1996 Act itself, since the respondent no. 2 had alleged that he was ousted from the business by the appellant and sought interim protection restraining the appellant and his agents from disturbing smooth conduct of business by the respondent no. 2. The rest of the reliefs sought exceeded the contentions of the application under Section 9.

**27.** Another aspect which irks us is that the copy of the application under Section 9 which was handed over to the appellant and is annexed to the interlocutory application filed before us, itself shows that it was verified on July 21, 2020, but the primary cause of action for the application, being the purported expulsion letter whereby the petitioner was thrown out from the LLP, is mentioned in paragraph no. 25 of the application under Section 9 of the 1996 Act to be dated July 22, 2020, which was one day *after* the verification.

**28.** The respondents' defence on this aspect is two-fold. First, that the "decision" to expel was taken on July 20, 2020 and second, that the application under Section 9 had been filed on July 22, 2020 itself. It beats us as to why any of such explanations would hold water. The alleged "decision" taken by other partners, representing the LLP, behind the appellant's back could not be the cause of action but only the actual expulsion letter. Even if the application was filed on July 22, 2021, it was affirmed on the preceding day, when the purported expulsion letter had not even seen the light of day even as per the Respondents' own averment made in the application.

**29.** This creates sufficient scope of doubt as to the maintainability of the application under Section 9 of the 1996 Act.

**30.** The learned District Judge, for all practical purposes, not only pre-judged the bones of contention to be canvassed before the arbitrator, but also granted final relief in the dispute at the preliminary stage of adjudication of an application for interim protection, complete with police assistance to implement the same.

**31.** In view of the above discussions, we hold that the impugned order was *de hors* the law and perverse, justifying interference under Section 37 of the 1996 Act.

**32.** Hence, F.M.A.T. No. 3 of 2021 is allowed, thereby setting aside Order No. 12 dated December 14, 2020 passed by the District Judge, Darjeeling under Section 9 of the 1996 Act.

**33.** The connected application bearing CAN 1 of 2021 is also disposed of consequentially.

**34.** It is made clear that the observations made by us in this order are only tentative in nature, made for the limited purpose of examining the legality and veracity of the impugned order, and shall not prejudice the arbitrator in any manner while adjudicating the arbitral proceeding and/or interlocutory applications made in connection therewith.

**35.** We grant liberty to the present respondents to pray for the same reliefs as claimed in their application under Section 9 of the 1996 Act before the arbitrator under Section 17 of the said Act. If such an application is made, the arbitrator will decide the same on its own merits in accordance with law, without being influenced in any manner by any of the observations made hereinabove.

**36.** There will be no order as to costs.

**37.** Urgent certified copies, if applied for, shall be furnished to the parties upon satisfaction of all necessary requisites and formalities.

**(Sabyasachi Bhattacharyya, J.)**

I agree.

**(Kausik Chanda, J.)**