

Present :

AP 816 of 2023

Meraj Yusha

VS

For the petitioner : Mr. Joy Saha, Sr. Adv.
Mr. Abhijit Sarkar, Adv.
Ms. Urmila Chakraborty, Adv.
Mr. Saraswata Mohapatra, Adv.

For the respondent : Mr. S.N. Mookerji, Sr. Adv.
No. 1 Mr. Dhruv Chadda, Adv.
Mr. D.N. Sharma, Adv.
Mr. Yash Singhi, Adv.

For the respondent : Mr. Ratnanko Banerji, Sr. Adv.
No. 2 Mr. Jishnu Chowdhury, Adv.
Mr. Ratnesh Kr. Rai, Adv

For the respondent : Mr. Jishnu Saha, Sr. Adv.
No. 3 Mr. Ishaan Saha, Adv.
Mr. Rishabh Karnani, Adv.
Mr. Pranav Sharma, Adv.

For the respondent : Mr. S.K. Kapur, Sr. Adv.
No.4 Mr. Utpal Bose, Sr. Adv.
Mr. K.R. Thaker, Adv
Mr. Ankan Rai, Adv.

Last heard on : 15.12.2023

Delivered on : 22.12.2023

Moushumi Bhattacharya, J.

1. The petitioner prays for interim protection against a show cause notice dated 20.10.2023 and a notice of expulsion dated 15.11.2023. The petitioner is one of 5 partners in a prosperous partnership firm which carries on business by the name of M/s Serajuddin & Co.
2. The petitioner Meraj Yusha is supported by the 3rd respondent, Sarosh Yazdani. The other 3 respondents namely Hamida Khatoon, Mohammad Intekhab Alam and Seraj Yusha are opposed to the petitioner (and Sarosh) and issued the impugned notices.
3. The Court refused to grant interim protection on 30.11.2023 primarily on the ground that the complete facts were not before the Court. The order records that the reasons for the impugned show cause notice and the letter of expulsion should first be considered before any interim relief is granted to the petitioner. The parties filed their respective affidavits and the matter was considered threadbare thereafter.

4. The decision which follows now is on the complete set of facts disclosed by the parties. The Court proposes to deal with the individual allegations raised in the impugned show cause notice since that is the starting-point of the challenge before the Court.

5. The first allegation in the show cause notice dated 20.10.2023 is that Meraj unlawfully executed and signed Loan cum Hypothecation Agreements on behalf of the Firm in violation of the terms of the Partnership Deed. The specific allegations under this heading however show that the violation relates to all the 3 Agreements which are dated 19.3.2021 and made in favour of Tata Motors Finance. One of the agreements was executed between Tata Motors Finance and Yazdani Steel and Power Limited. Meraj apparently signed on behalf of Yazdani Steel as the Managing Director and on behalf of the Firm as the guarantor. The allegation is that such act is illegal and in violation of the terms of the Partnership Deed.

6. The facts disclosed in the pleadings however show that none of the 3 Agreements dated 19.3.2021 were challenged by the respondents in the interregnum which spanned more than 2½ years. Surprisingly, the respondents have also not been able to show a single letter between March, 2021 to October, 2023 sent to the petitioner bringing the complaint on record or questioning the petitioner on the same.

7. Even more curious is the constitution of Yazdani Steel which is one of the parties to the Agreements. The petition discloses a statement which shows that Seraj (Respondent no. 4) holds 10.68% shares in Yazdani Steel and the respondents were Directors of interconnected Companies / Firms

including Yazdani Steel. The Master Data on the MCA also bears testimony to this. These facts would naturally raise the presumption not only of the respondents' complicity but also of the respondents being possible beneficiaries of the Hypothecation / Guarantee Agreements. It is also relevant that none of the opposing respondents took any steps to cancel these 3 Agreements from 19.3.2021 to the date of the show cause notice, which is 20.10.2023.

8. The second allegation in the show cause notice is of undermining the morale of senior employees / auditors and partners of the Firm and defying the decisions taken by the majority of the partners.

9. The show cause notice however does not disclose a single instance in corroboration of this allegation. Learned counsel appearing for the respondents have argued that the petitioner Meraj opposed respondent no. 4 Seraj from taking over as the Managing Partner of the Firm. It has also been submitted that Meraj opposed a few of the resolutions taken by the majority partners. Even if such allegations are to be believed, it was incumbent on the respondents to disclose particulars in the show cause notice which forms the crux of the impugned action.

10. The third allegation is of the petitioner's malafide acts after the demise of one of the joint managing partners of the Firm, Md. Mofazzalur Rahman.

11. Although this heading is followed by 12 paragraphs, each of the allegations is couched in general and omnibus terms. The allegations mention the petitioner's defiance and criticism of the decisions taken by the

majority partners without factual specificity. The allegation with regard to Thriveni Earthmovers Pvt. Ltd. does not mention any detail or loss caused to the partnership business. The Court is also informed that Thriveni was ultimately appointed as the contractor by the Partnership Firm.

12. The fourth allegation is of financial and operational irregularities committed by the petitioner and the consequent loss suffered by the Firm. The allegations under this head are also substantially general in nature. The reference to Progressive Logistics Private Limited and Responsibility Logistics Private Limited are not supported by any particulars. There are also no details disclosed on the alleged loss caused to the Firm. The alleged threat to workers, creating chaos and confusion in the working of the Firm are all sweeping statements without reference to any particular instance or complaint.

13. The second ground of challenge is the notice of expulsion dated 15th November, 2023, received by the petitioner after filing of the petition and brought on record by way of a supplementary affidavit.

14. The impugned notice refers to the show-cause notice of 20th October, 2023 and dwells at length on the petitioner's alleged avoidance of the show-cause notice. The notice of expulsion significantly refers to the opposing respondents as the majority partners and the petitioner and the respondent no. 3 as the "estranged partners". The allegations made in the expulsion notice are substantial repetitions of those made in the show cause notice in relation to the loan cum hypothecation agreements and the alleged fraudulent activities of the petitioner against the interest of the Firm. The

notice also refers to Clause 20 of the Reconstituted Partnership Deed dated 18th July, 2019 and the power given to the majority partners to expel the petitioner.

15. The impugned notice does not contain any independent finding justifying the expulsion. In essence, there are no particulars disclosed or evidence relied upon with regard to any complaint or complainant. The most striking feature of the notice is the fact that the petitioner was not given any opportunity to defend himself against the expulsion.

16. Section 33 of The Indian Partnership Act, 1932 expressly prohibits expulsion of a partner by the majority partners save and except where the expulsion is done in good faith and in exercise of powers conferred by the partnership deed or contract. In the present case, the dispute is between 3:2 partners of the partnership firm; the petitioner, Meraj is in the minority with the respondent no. 3, Sarosh. Clause 20 of the Reconstituted Partnership Deed dated 18th July, 2019 empowers expulsion but on the factual satisfaction that the delinquent partner has been unjust and unfaithful to the other partners or has acted in a manner detrimental to the interest of the Firm. The process of expulsion contemplated is through a notice to the offending partner to show-cause. The majority partners may decide to expel the offending partner upon failure of the offending partner to show good cause. The offending partner shall thereafter cease to be a partner of the firm with immediate effect. The continuing partners shall have the option to purchase the shares of the offending partner in the partnership business.

17. Clause 20 of the Reconstituted Partnership Deed must be read with section 33 along with section 9 of the Partnership Act which forms the moral compass of the duty of the partners to be just and faithful to each other and to carry on the business of the firm to the greatest common advantage. The opposing respondents must therefore follow the “satisfaction requirement” of Clause 20 of the Deed with the greatest probity. It is not merely a question of “My way or the highway” where one partner commands and the other partners silently obeys – but a collective responsibility to conform to the trust and faith obligation of one partner to the other. The material disclosed shows that the tussle between the two groups is precisely on account of the minority refusing to toe the line of the majority – in fact the letter of expulsion used this expression.

18. The submissions made on behalf of the parties also makes it clear that the petitioner refused to back-slap the respondents on the resolutions and decisions taken by the majority or remain a mute spectator to these decisions. It appears that clause 20 of the Deed was pressed into service to rid the Firm of a vociferous and defiant opponent.

19. Even if the allegations made in the impugned show-cause notice and the notice of expulsion are taken to be true, the respondents’ obligation to fulfil the “good faith” requirement of section 33 of the Act remains. The respondents must discharge the burden of proving that there were indeed good reasons to issue the show-cause notice and thereafter to expel the petitioner. This would require at least a modicum of evidence or particulars in both the impugned notices in justification of the expulsion.

20. The statutory benchmark of “good faith” under section 33 of the Act also pre-supposes fulfilment of the principles of natural justice. The opposing respondents say that the show-cause notice dated 20th October, 2023 was received by the petitioner on 25th October, 2023. The petitioner, on the other hand, says that the petitioner received the show-cause notice on 6th November, 2023. The petitioner replied on 8th November, 2023 asking for 15 days to given a comprehensive reply. The respondents however declined the request and gave 3 days instead for the petitioner to reply to the show-cause notice. The letters exchanged are on record. The petitioner, in the meantime, was called for a personal hearing on 13th November, 2023 where the parties could not come to a resolution of the dispute. The letter of expulsion was issued on 15th November, 2023.

21. The opposing respondents place a great deal of emphasis on the petitioner trying various means to avoid service of the show-cause notice. The respondents insist that the petitioner received the show-cause notice on 25th October, 2023 and subsequently destroyed the records thereof. The petitioner, on the other hand, urges that the service was returned on 30th October, 2023 and the petitioner finally received the show-cause notice on 6th November, 2023. Learned counsel appearing for the petitioner also submits that the petitioner and the respondent no. 4 live in the same building and hence there was no way by which the petitioner could have avoided service of the show-cause notice.

22. Even if the contrary arguments made with regard to the service of the notice are discounted, the reason being that the track report shows a series

of confusing entries. The moot point is whether the petitioner was given sufficient opportunity to defend the charges contained in the show-cause notice as required under clause 20 of the Reconstituted Partnership Deed.

23. It is undisputed that the petitioner sought for 15 days time to reply to the show-cause notice on 8th November, 2023 but the petitioner was given 3 days instead. The respondents declined the petitioner's request by way of a mail dated 10th November, 2023 giving 3 days to the petitioner. The respondents at the same time asked the petitioner to be present for a personal hearing on 13th November, 2023. Therefore, the records themselves would show that the petitioner was not even given 3 days for replying to the show-cause notice. The petitioner being given a personal hearing on 13th November, 2023 cannot be equated to an opportunity being given for a comprehensive written reply to the show-cause notice.

24. Clause 20 of the Deed specifically mandates that expulsion by the majority can only follow where the offending partner fails to show good cause against the charges in the show-cause notice. The subtext of this requirement is of a full opportunity to the recipient of the notice to defend the allegations by way of a written reply. This would entail that the offending partner is given sufficient time to prepare his defence by way of the written reply. In this case, admittedly the petitioner did not get that opportunity since only 3 days were granted to the petitioner ended with the personal hearing; or actually less, taking the respondents' mail of 10th November, 2023 into account. Clause 20 specifically requires an effective defense, not a

hasty darn-job for complying with the requirement. Giving a personal hearing is not equivalent to an opportunity for an effective defense.

25. The above sequence of events would naturally lead to the conclusion that the respondents did not give the petitioner any chance to controvert the allegations by showing good cause. The personal hearing on 13th November, 2023 hence appears to be an ineffective mechanism with a foregone conclusion for the purpose of condemning the petitioner beyond redemption. This would be evident from the fact that the notice of expulsion was issued only 2 days thereafter.

26. The fact built-up leaves no option for the Court but to hold that the opposing respondents were in breach of the principles of natural justice for self-serving motives. The respondents have not been able to show any evidence to justify the expulsion either under section 33 of the Act or under Clause 20 of the Reconstituted Partnership Deed. Expulsion is the final step which can be taken against an erring partner from which there is no return. The majority partners must hence show utmost good faith before taking that step. Seen in light of section 33, the respondents have displayed bad faith in issuing the impugned notice against the petitioner.

27. In *Santiram Mullick vs. Hiranmoy Bagchi*; (1991) 2 Cal LT 399 a learned Single Judge held that the Court retains the duty to ascertain whether expulsion of a partner by the majority was done in good faith. The other decision cited on behalf of the petitioner, *Nem Das vs. Kunj Behari Lal*; AIR 1930 Oudh 392 is on the principles of review of a judgment and is not relevant to this case. *Amoorith Pipes and Tubes Private Limited vs. Dadu*

Dayal Commotrade Limited (AP/269/2021) was factually different since the Court specifically found the expelled partners of taking steps which were detrimental to the Firm. The expelled partners in that case had also not challenged the notice of expulsion.

28. The order dated 30.11.2023 refusing relief to the petitioner was on the set of facts which were present before the Court on that date. The Court was hence of the view that the parties should be allowed an opportunity to bring further facts on record and particularly for the respondents to show material justifying the expulsion. The affidavits which have subsequently been filed do not disclose any further or compelling fact calling for the petitioner's expulsion. The allegations are repeats of those made in the show cause notice and the letter of expulsion. The opposing respondents have taken a "Lord and Master" approach where all dissent is to be summarily stifled. The letters containing allegations have been issued by inter-connected entities related to the Firm but without disclosing particulars. In essence, the further pleadings filed do not take the respondents' case forward.

29. This Court is of the view, on a comprehensive appreciation of the facts after affidavits, that the petitioner deserves interim protection. The impugned show cause notice dated 20.10.2023 and the letter of expulsion dated 15.11.2023 are accordingly stayed for a period of 6 weeks or until further orders passed in the arbitration, whichever is earlier.

30. The petitioner shall take steps to constitute an arbitral tribunal in terms of the arbitration clause contained in the Reconstituted Partnership

Deed dated 18.7.2019 within a period of 4 weeks from the date of this judgment.

31. AP 816 of 2023 is disposed of in terms of the above.

Later

32. Learned counsel appearing for the respondent nos. 1 and 4 pray for stay of the operation of the order. Considering that the parties have presented all the facts in their respective pleadings, and the fact that the impugned show-cause and expulsion have been found to be wrongful, the prayer for stay is considered and refused.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)