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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision:- 16.12.2024***+ **FAO(OS) 23/2019 & CM APPL. 49446/2024 –Addl. docs. (R-1(b))****SUBHASH CHANDER BAJAJ (SINCE DECEASED) THR LRS
& ORS**AppellantsThrough: **Mr.Sachin Chopra, Ms.Ashna Gupta
& Ms.Yashika Kapoor, Advs.**

versus

INDERJIT BAJAJ (SINCE DECEASED) THR LRS & ORS

.....Respondents

Through: **Mr.Manish Makhija & Ms.Simran
Makhija, Advs. for R-1(b).****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J(ORAL)**

1. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter “the Act”) seeks to assail the order dated 18.12.2018 passed by the learned Single Judge in O.M.P. No.306/2009. Vide the impugned order, the learned Single Judge has, while accepting the respondent no.1's (legal representatives of Shri.Inderjeet Bajaj) challenge to the arbitral award dated 27.03.2009 allowed their application under Section 34 of the Act. While allowing the respondent no.1's application, the learned Single Judge held that the findings of the learned Arbitrator to the effect that



the Memorandum of Family Settlement dated 30.07.1997 (hereinafter “MFS”), being an unregistered document, was invalid, were erroneous and unsustainable. Consequently, the learned Single Judge held that the MFS was valid and therefore, all the parties would be bound by the terms thereof MFS dated 30.07.1997.

2. The brief factual matrix as necessary for adjudication of the present appeal may be noted at the outset.

3. The dispute between the parties pertains to businesses and properties, which were in the name of late Shri. Amarnath Bajaj, who expired on 30.01.1987 leaving behind four sons namely Shri. Inderjeet Bajaj, Shri Rajender Kumar Bajaj, Shri. Subhash Chander Bajaj and Shri Baldev Raj Bajaj. While the appellants are the legal heirs of Shri. Subhash Chandra Bajaj, the respondent nos. 1 to 4 represent the other three sons of Shri. Amarnath Bajaj and their partnership concern, with respondent nos. 1 and 4 being the legal heirs of Shri. Inderjeet Bajaj and Shri. Baldev Raj Bajaj respectively.

4. Upon the death of Shri Amarnath Bajaj on 30.01.1987, disputes arose between the parties in respect of the Will dated 02.05.1983 left behind by him. After deliberations, a deed of retirement dated 01.04.1997 was executed by the appellants as also respondent no. 4 qua the partnership concern i.e., respondent no. 3/ M/s Jai Hind Timber Store. Soon thereafter, the parties also entered into a Memorandum of Settlement on 30.07.1997. However, since despite execution of these documents, the disputes between them were still not settled, the parties invoked arbitration and consequently, an award was passed by the learned sole Arbitrator on 27.03.2009. As per the learned Arbitrator, the aforesaid MFS entered into between the parties



not only recorded the allocation and division of properties and businesses as per the Will of late Shri Amarnath Bajaj but also partitioned some joint properties which were not the subject of either the Will or the Retirement Deed. Resultantly, the learned Arbitrator opined that since no evidence had been led before him regarding any prior oral partition of the joint properties, which were subject matter of the MFS, the said Memorandum was required to be compulsorily registered. He, therefore, held that the MFS being an unregistered document, was invalid and consequently, directed that the property bearing no.1/57 B, Kirti Nagar, New Delhi, which the respondent no.1 was claiming as his exclusive property under the MFS, was also required to be divided equally among all the legal heirs of Shri. Amarnath Bajaj.

5. Being aggrieved, the appellants as also respondent no.1 preferred an application under Section 34 of the Act. While the appellants subsequently withdrew their challenge, the respondent no.1 pursued their challenge by way of OMP 306/2009, which has been allowed by the learned Single Judge under the impugned order. It is this order passed by the learned Single Judge holding the MFS to be valid, which has been assailed by the appellants, who contend that the said family settlement being invalid, the property, which in terms of the settlement was to be the exclusive property of respondent no.1, is liable to be partitioned equally among all legal heirs of Shri. Amarnath Bajaj.

6. Before dealing with the rival submissions of the parties, we may note that the respondents have filed an application seeking to bring on record documents to show that during the pendency of the appeal, the appellants, by relying on the very same MFS dated 30.07.1997, which they claim to be



invalid, have not only sought mutation of properties in their names but have also entered into Sale Deed with third parties. Based on these mutation orders issued by the Delhi Development Authority (DDA) on 09.04.2024 and the Sale Deed executed by the appellants on 05.02.2024, learned counsel for respondents has urged that once the appellants have themselves relied on the MFS to claim title to the properties falling to their shares under the MFS, it is not open for them to now contend that the learned Single Judge's finding with regard to the validity of the MFS is erroneous or is liable to be set aside.

7. Learned counsel for the appellants while not denying that the appellants have relied on the MFS in the mutation application submitted by them to the DDA as also in the Sale Deed executed by them, urges that these properties fall in the share of the appellants even as per the arbitral award, which findings, have not been assailed by the respondents. He, therefore, contends that the mere reference to the MFS by the appellants in transactions pertaining to properties which are owned by the appellants as per the arbitral award, cannot be a ground to reject their plea that the said MFS being an unregistered document was not enforceable.

8. He further submits that the learned Single Judge has erred in setting aside the finding of fact arrived at by the learned Arbitrator to the effect that the MFS was not a recording of any prior settlement and was, therefore, compulsorily registerable. By placing reliance on the decision of the Apex Court in *Shakeel Ahmed v. Syed Akhlaq Hussain MANU/SC/1257/2023*), he submits that the learned Single Judge has failed to appreciate that an unregistered document which is compulsorily registerable under the Registration Act, 1908, cannot confer any title on the parties. His plea,



therefore, is that the MFS being invalid, the respondent no.1 could not claim exclusive ownership of the property at Kirti Nagar, New Delhi by relying on this unregistered MFS. He also seeks to place reliance on a decision of this Court in *Veeneta v. Jyoti Gupta* [MANU/DE/3571/2024] and of the Andhra Pradesh High Court in *Kalathooru Raghavareddi V. Kalathooru Venkataredii & Ors.*[MANU/AP/0045/1967].

9. He further submits that the learned Single Judge while holding that the MFS was a record of the prior settlement between the parties has relied upon on a receipt issued to the appellants of having received Rs. 6 lakhs from the respondent no. 1 and respondent no. 2, as also on a copy of the Taxation Identification Number (TIN) issued in favour of the respondent no.1. He contends that since these said documents were never placed before the learned Arbitrator, the learned Single Judge could not have relied on them to set aside the finding of the learned Arbitrator that the MFS was invalid. He, therefore, prays that the impugned order be set aside.

10. On the other hand, learned counsel for the respondent no. 1 supports the impugned order and submits that when from the findings of the learned Arbitrator, it was evident that the MFS entered into between the parties was a record of the prior oral settlement between the parties, the learned Single Judge correctly held that the MFS did not require registration. He submits that the appellant having taken advantage of the MFS, cannot be permitted to now urge that the MFS was not binding on the parties. He, therefore, prays that the appeal be dismissed.

11. Having considered the submissions of learned counsel for the parties, we may begin by noting the following extracts of the impugned judgment:-



“19. The Memorandum of family settlement and the recitals thereto clearly record the fact that the parties have amicably settled and adjusted their holdings/governance amongst themselves after **“detailed and due deliberations”** as described in Schedule B. The Memorandum also records that it is **“to give effect to the same”** that the Memorandum is being entered into. The signatures of all the parties on these documents is not disputed. The Schedules and contents thereof are not disputed. Any challenge raised to this document has also been withdrawn. The Ld. Arbitrator also comes to the conclusion that the arguments of the Respondents that it was signed on blank papers is also not made out. Thus, the question is - Did the Memorandum require registration?

20. The Ld. Arbitrator has recorded an important fact i.e., that there was a Will, there was a retirement deed and the parties are in occupation and possession of their respective properties as per the said two documents. The relevant portion of the award is extracted herein below:

“35.....It is admitted fact that the properties have been allotted as per the will are in possession of the brothers to whom such properties have been allotted”

21. Admittedly, the Kirti Nagar property is in possession of the Petitioners. Sh. Inderjit Bajaj, in his evidence, specifically stated that shop no.1/57B, Kirti Nagar was purchased by his father from DDA and his son – Sh. Sandeep Bajaj was doing business from this property under the name of Bajaj Plywood and Timber. This fact is thus not in dispute. The Memorandum therefore predominantly recorded settlement arrived at between the parties over the years based on the Will, retirement deed and other agreements. The fact that the Kirti Nagar property is not specifically mentioned in a document i.e.



the Will or the retirement deed does not mean that there was no settlement thereof prior to the Memorandum. The said property was self-acquired property of Sh. Amar Nath Bajaj. It was not bequeathed in favour of any party in the Will dated 2nd May, 1983. He passed away on 30th January, 1987. However, no other member of the family have stated or pleaded that his property was used by anyone else or was in possession of any of the family members, except that of Sh. Inderjit Bajaj. Further the document dated 6th April, 1999 under which the Respondents received a further amount of Rs.6 lakhs pursuant to Memorandum of family settlement also shows that there was a finality attached to the said Memorandum and it was accepted by all the parties. The said document dated 6th April, 1999 is set out herein below:

“Today on 6-4-1999, Sh. Subhash Bajaj, Sh. Baldev Bajaj, Sh. Tilak Bhasin and Sh. Pritpal Singh have got together and discussed in detail the Family settlement arrived at by Bajaj Family and with the agreement of all, it has been decided that Sh. Inder Bajaj and Sh. Rajinder Bajaj will give Rs. 6 lacs to Sh. Subhash Bajaj which will be shared by them in ratio of Rs. 3 Lacs each. After this Sh. Subhash Bajaj, Baldev Bajaj, Inder Bajaj and Rajinder Bajaj shall have no dispute between them. No brother shall raise demand of any kind and shall not quarrel. It has been further agreed that the family settlement arrived at between them shall prevail and be acceptable to all and each one deal with properties falling in his share as his individual property. Each brother shall facilitate help in mutating the property and no one shall object to the same. Secondly Inder Bajaj shall not back out from giving Subhash partnership in Rana Pratap Singh.”

23. The Memorandum, as held by the Ld. Arbitrator also, is



not happily worded but the acceptance and implementation thereof by the members of the family is not in dispute. The Memorandum having been signed by all concerned is evidence of the family settlement including the contents of the Will and the retirement deed and holding the same to be invalid would result in creating a disturbance among family members. It is the settled law that family settlements are meant to be honoured and not to be easily tinkered with. If family settlements are allowed to be challenged after they are duly executed and accepted by parties, it would result in enormous disquiet being created within the family.

24. Three of the brothers who had entered into this settlement have already expired and their legal heirs are currently fighting the present litigation. The Memorandum has to be used as a corroborative piece of evidence inasmuch as the same has been reiterated even on 6th April, 1999. All parties have gained in some form or the other by the execution of the Memorandum. The said process ought not to be reversed.

28. In the present case, on the other hand, after the Will dated 2nd May, 1983, the father of the parties passed away on 30th January, 1987. The deed of retirement is dated 1st April, 1997. This shows that after the death of the father, there were various discussions and deliberations between the parties pursuant to which the partition was executed within the family members. The Memorandum itself records that the parties have “amicably decided” “after detail and due deliberations”. Thus, the partition of the family assets did not take place on one day. It was a continuing process after the demise of the father. The TIN number (Sales tax registration) allotted in respect of the Kirti Nagar property in favour of M/s. Bajaj Plywood & Timber, run by the son of Sh. Inderjit Bajaj, is of 1986. Thus, the family of Sh. Inderjit Bajaj was in occupation of this property even during the father’s lifetime. Until 2000, no partition of this property was sought, though it was in the exclusive possession



of the family of Sh. Inderjit Bajaj. All these facts go to prove that the Memorandum was merely a recordal of various settlements/partitions effective between the parties over a long duration, based on the wishes of the father and thereafter based on a settlement arrived at between the parties including the Will and the deed of retirement. The family settlement thus clearly did not require registration. It was merely recording the settlement already arrived at and the partition which had already taken place between the parties.

29. The Ld. Arbitrator's finding that it required registration is thus clearly erroneous and is not sustainable. The award is accordingly set aside to the extent that it holds the Memorandum of family settlement dated 30th July, 1997 as being invalid. The remaining portion of this award is not under challenge. It is held that all the parties shall be bound by the Memorandum of family settlement dated 30th July, 1997."

12. From the aforesaid, what clearly emerges is that the learned Single Judge, after taking into account the findings of fact arrived at by the learned Arbitrator, opined that the record itself showed that the MFS was the result of a continuing process of discussion and deliberation between the parties after the demise of their father. The learned Single Judge further found that from the findings arrived at by the learned Arbitrator, it was evident that the MFS was merely a record of various settlement/ partition effected between the parties over a long duration of time based on the wishes of their father including the Will and the deed of retirement executed by the appellants. We are, therefore, of the opinion that the learned Single Judge has, without interfering with the factual findings arrived at by the learned Arbitrator, correctly applied the settled legal position to the MFS, by holding that the



same being a record of prior oral partition of the properties between all the sons of late Mr.Amarnath Bajaj, was only a Memorandum regarding the existing settlement between the parties. In these circumstances, we find no reason to interfere with the conclusion arrived at by the learned Single Judge that the MFS did not require registration.

13. Though learned counsel for the appellant has also urged that the learned Single Judge has relied on two documents, i.e., a receipt and a Tax Identification Number (TIN), which were not produced before the learned Arbitrator, we find that nothing much turns on this plea. These documents, we note, though referred to by the learned Single Judge, are not the basis of the findings rendered by her qua the validity of the MFS.

14. We have also considered the decisions relied upon by the appellants in *Shakeel Ahmed (supra)*, *Kalathooru Raghavareddi (supra)* and *Veeneta(supra)*. While there can be no quarrel with the proposition that a document which is compulsorily registrable cannot be given effect to unless registered, the factual findings arrived at, both by the learned Arbitrator as also by the learned Single Judge clearly show that the MFS was recording only the oral settlement already entered into between the parties. In this factual matrix, the decisions relied upon by the appellants are not applicable to the facts of the present case.

15. Furthermore, we find that the appellants have themselves, by relying on the MFS, which they claim is invalid, sought mutation of properties in their favour by the DDA. It is also an admitted position that the Sale Deed entered into by the appellants with third parties on 05.01.2024 refers to the very same MFS. In our considered view, the appellants having themselves relied on the MFS, cannot be now permitted to take a U-turn and claim that



2024:DHC:9740-DB



the same is invalid or could not be acted upon by the parties.

16. Even otherwise, once the learned Single Judge has taken a plausible view, which view, we find is based on the factual matrix noted in the award itself, we find no reason to interfere with the same.

17. The appeal alongwith the pending application is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

DECEMBER 16, 2024
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