

OD-10

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/177/2024

MOHAN LAL SARAF
VS
SURESH KUMAR SARAF & ANR.

AP/184/2024

MOHAN LAL SARAF
VS
SURESH KUMAR SARAF & ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 20th January, 2025.

Appearance:
Mr. Mainak Bose, Sr. Adv.
Mr. Rhul Singh, Adv.
Ms. Prabhleen Bharara, Adv.
...for the petitioner.

Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Ritoban Sarkar, Adv.
Mrs. Somali Mukhopadhyay, Adv.
Ms. Sampa Ghosh, Adv.
... for the respondent no.1.

The Court: AP/177/2024 is an application under Section 9 of the Arbitration and Conciliation Act, 1996. The application has been filed post the arbitral award dated September 9, 2024.

The petitioner, who was the unsuccessful claimant in the arbitral proceedings, prays for an injunction restraining the respondent no.1 and his

men, agents and assigns from selling, alienating, encumbering, transferring, charging or creating any third party interest with regard to the properties mentioned in the Memorandum of Understanding (in short MOU) dated August 1, 2012. Further prayer is to restrain the respondent no.1 and his men, agents and assigns from claiming to be the owner or shareholder of the assets which form a part of the petitioner's entitlement under the said MOU. The MOU was in the nature of a family settlement.

Mr. Mainak Bose, learned Senior Advocate appearing for the petitioner submits that under the terms and conditions of the MOU entered into between Banwari Lal Saraf, Girdhari Saraf, Suresh Kumar Saraf and Mohan Lal Saraf, 40% of the total value of the assets Rs.11,65,09,109/-, amounting to Rs. 4,66,03,643/-, fell within the share of the petitioner. The respondent no.1 had been enjoying the assets and properties which were to be transferred to the petitioner under Schedule-H of the MOU. The respondent no.1 did not discharge his obligation under the said MOU. According to Mr. Bose, the parties were governed by Mitakshara School of Law and as such the female members were not made signatories to the MOU, although part of the assets (mainly in the form of shares) were in their names. The recital of the MOU would indicate that all the properties belonging to the entire family, male and female members included, were brought within a common pool and thereafter distributed only amongst 3 groups Banwari Lal Saraf and Ginni Devi Saraf, Suresh Kumar Saraf and Madhu Saraf, Mohan Lal Saraf and Alka Saraf. The fact that the parties had given effect to the said MOU would be evident from the transfer of shares worth Rs.1,38,00,000/- in favour of the petitioner, by Banwari Lal Saraf.

Mr. Bose submits that the sale of shares by Banwari Lal and Ginni Devi were from their common pool i.e. 20% of the value of the assets which they had acquired under the said MOU. Such transfer would show that the parties had honoured the MOU and assets had vested in the parties, including the petitioner, but the petitioner did not get his entire share.

Drawing the attention of the Court to the award, Mr. Bose submits that the observations of the learned Arbitrator were contrary to the evidence. The learned Arbitrator did not take into consideration the evidence before him and erroneously held that the MOU had become inchoate. At least transfer of those assets by Suresh upon executing appropriate deeds in favour of the petitioner in terms of the MOU, ought to have been awarded. Even if the learned Arbitrator found that after the demise of the parents, the shares or the assets in their pool could not be dealt with on the basis of the MOU as their daughter (heir), namely, Kusum Jhunjhunwala was not a party to the proceedings, the other obligations of the respondent no.1 (Suresh) ought to have been directed and award should have been made with regard to those.

According to Mr. Bose, while the father had discharged his obligation under the MOU by transferring shares to the petitioner, the brother i.e. Suresh did not do so.

Under such circumstances, the disputes arose and Suresh was obliged to execute a deed of gift in respect of immovable property as also shares as mentioned in Schedule-H. The notice invoking arbitration was on account of failure of Suresh to discharge his obligation as per Schedule-H.

The petitioner did not have any claim against either the parents or the other heirs of the parents.

Mr. Chowdhury, learned Senior Advocate for the respondent no.1, submits that when the learned Arbitrator had held that the MOU dated August 1, 2012 no longer existed, the question of an injunction against the respondent no.1 from dealing with the properties or claiming ownership in respect of the shares could not arise. The learned Arbitrator had specifically observed that both Banwari Lal and Ginni Devi had sold out some of the shares to the parties as also to other heirs. This, itself, would indicate that the parties had not proceeded to give effect to the said MOU.

Mr. Chowdhury's contention is that an omnibus prayer for injunction should not be entertained by this Court in the absence of any specification with regard to the assets which the petitioner was allegedly entitled and which were to be transferred by Suresh. There was no pleading that the assets were in the risk of being damaged, destroyed or alienated. Referring to Section 9 of the Act, Mr. Chowdhury submits that the award would indicate that the properties of Suresh were not subject matter of the MOU. The learned Arbitrator was of the view that the parties had not come upon their respective properties, on the basis of the MOU.

Having heard the rival contentions of the parties, this Court, prima facie, finds that considerable shares were sold by Banwari Lal and Ginni Devi to other persons, apart from the petitioner. Although Mr. Bose's contention is that the sale of the shares by Banwari Lal was in furtherance to the MOU and that such sale will indicate that the parties had acted in terms of MOU, this Court does not find from Schedule-H, which was the

allocation to be made in favour of the petitioner, that the father was required to transfer any share to the petitioner as part of 40% of the petitioner's allocation. The award further indicates that the Schedule G1 which forms part of what Suresh was supposed to gift or transfer to the petitioner was missing. The learned Arbitrator specifically observed that the shares mentioned in the MOU were not available as they had been sold. In the decision of ***Dirk India Private Limited-Versus-Maharashtra State Electricity Generation Company Limited*** reported in **2013 SCC OnLine Bom 481**, the Bombay High Court held that an interim measure of protection within the meaning of Section 9(ii) was intended to protect the fruits of a successful conclusion of arbitral proceedings. A party whose claim has been rejected in the course of the arbitral proceedings, could not obviously have an arbitral award enforced in accordance with Section 36. The object and purpose of an interim measure after the passing of the arbitral award, but before it could be enforced was to secure the property, goods or amount for the benefit of the party who could seek enforcement.

In the present case, the situation is reverse. A party whose claim has been rejected on the ground that the MOU was unworkable, inchoate and specific performance of the same could not be allowed, cannot seek an injunction in respect of the properties of the respondent no.1(successful party). This Court does not find any observation or conclusion of the learned Arbitrator that Banwari Lal and Ginni Devi had sold their shares from their 20% allocation under the MOU and as such this Court, prima facie, concludes that the parties had not given effect to the MOU. In the decision of ***Nussli Switzerland Ltd-Versus-Organizing Committee***

Commonwealth Games, 2010 reported in ***2014 SCC OnLine Del.4834***, the Delhi High Court held that legislative intent was not to confer an all embracing and all pervading power upon the Court adjudicating a post-award application under Section 9 of the said Act.

Unless the Court is satisfied prima facie, that the petitioner has been deprived although the other parties to the MOU had benefited from the same and taken their properties, as per the Schedules, injunction cannot be granted. Moreover, the petitioner raised the dispute in 2023 although Banwari Lal died in 2018 and Ginni Devi in 2014.

Accordingly, the application is disposed of without granting any of the prayers of the petitioner.

All actions taken by the respondent no.1 in the meantime, will abide by the result of the application under Section 34 of the Arbitration and Conciliation Act, 1996.

AP/184/2024 will appear in the list for further hearing on February 6, 2025 at 3 p.m.

(SHAMPA SARKAR, J.)

Pa/snn.