

Rajiv K Luthra Vs Mohit Saraf

Court: Delhi High Court

Date of Decision: Jan. 22, 2021

Acts Referred: Arbitration And Conciliation Act, 1996 â€” Section 9, 12, 37

Hon'ble Judges: Rajiv Sahai Endlaw, J; Sanjeev Narula, J

Bench: Division Bench

Advocate: Dr. Abhishek Manu Singhvi, A.S. Chandhiok, Gopal Sankarnarayanan, Haripriya Padmanabhan, Pooja Dhar, Zeeshan Diwan, Shrutunjay Bhardwaj, Parag P. Tripathi, Vikas Singh, Arvind Nigam, Promod Nair, Apoorv Tripathi, Srinivasan Ramaswamy, Raghvendra Singh, Deepeika Kalia, Shailendera Singh, Abhishek Gupta

Judgement

1. The appeal impugns the judgment dated 18th January, 2021 of the Single Judge, allowing OMP (I) (COMM) No.339/2020, under Section 9 of the

Arbitration & Conciliation Act, 1996, filed by the respondent.

2. The appeal was filed and on urgent mentioning got listed yesterday and was received by us, post court commencement hours and was taken up for

hearing at about 1600 hours. The senior counsels for the appellant sought stay of the operation of the impugned judgment dated 18th January, 2021.

The senior counsels for the respondents appearing on advance notice opposed the grant of stay.

3. Considering that the disputes are amongst advocates of this Court, we started hearing of the appeal yesterday itself by limiting the time of

arguments on behalf of the appellant as well as the respondent to two hours each. The senior counsels for the appellant were heard for about fifteen

minutes yesterday and the further hearing adjourned to 29th January, 2021. The Single Judge, while allowing the Section 9 petition filed by the

respondent, on request of the counsels for the appellant, had directed his judgment to remain in abeyance till today. We thus posted the hearing qua

arrangement if any to be made during the pendency of this appeal, to today.

4. We have today heard the senior counsels for the appellant as well the senior counsels for the respondent. As aforesaid, we have already

commenced hearing of the appeal and intend to conclude the hearing and pronounce orders, soon. We have thus considered, whether till then there

should be stay of the impugned judgment or any other order, of course without prejudice to the final adjudication of the appeal.

5. The senior counsels for the appellant have contended that the state of affairs which has been ordered to be altered vide the impugned judgment has

been prevalent since October, 2020, with the petition under Section 9 having been filed on 15th October, 2020 or thereabout. It is argued that before

the Single Judge, there was no ad-interim order and now that the hearing of the appeal is underway, the said status which has been continuing for the

last four months should be permitted to continue till the appeal is decided. It is urged that changing the status may lead to further acrimony and

disputes between the parties.

6. We are however unable to agree with the aforesaid contention. The jurisdiction under Section 9 of the Arbitration Act, which was invoked by the

respondent, is a jurisdiction to order interim measures preceding or during or after the arbitral proceedings. The disputes between the parties, else are

to be decided by arbitration. When a Single Judge of this Court, after going through the pleadings and after hearing lengthy arguments, has devised an

interim arrangement between the parties, the said interim arrangement ordinarily should continue during the hearing of the appeal and there should be

no two stages i.e. of first hearing for ad-interim relief in the appeal and thereafter whether the interim arrangement made by the Single Judge requires

any interference; of course, if the appellate court finds the interim arrangement so worked out to be perverse and capable of more mischief, the

appellate court would be entitled to, at the stage of admission of the appeal itself, pass appropriate orders. The contention of the senior counsels for

the respondent, that the scope of interference in an appeal under Section 37 is even otherwise limited, has merit. We have thus confined the hearing

today to one hour only and express appreciation that the counsels abided by the time so limited. The discussion hereunder is thus in the aforesaid

background.

7. The appellant and the respondent, being advocates, were / are partners of a law firm in the name and style of "L&L Partners, New Delhi". On

disputes arising between them, the respondent filed the petition under Section 9, from which this appeal arises, claiming the following interim measures:

a) Stay the notice issued by the Respondent No.1 to the Petitioner by way of email sent on 13.10.2020 purportedly terminating the

Petitioner's partnership with L&L Partners, New Delhi and all actions taken consequent thereto;

b) Restrain the Respondent No.1 from directly or indirectly, interfering with the management and/or administration, and from participating

in the affairs of the firm L&L Partners, New Delhi;

c) Restrain the Respondent No.1 from holding himself out as, or representing himself to be a partner in L&L Partners, New Delhi;

d) Direct the Respondent No.1 to forthwith handover to the Petitioner all assets and properties of the firm L&L Partners, New Delhi,

currently within his possession, including ownership and control over the website www.luthra.com;

e) Restrain the Respondent No.1 from accessing or using any of the assets of the firm, including but not limited to restraining the

Respondent No.1 from withdrawing any monies, or authorizing any payments out of, or otherwise operating bank accounts held by the firm,

without the consent of the Petitioner;

f) Restrain the Respondents from interdicting the Petitioner's rights to conduct and manage the affairs of the firms L&L Partners, New Delhi,

L&L Partners, Mumbai and L&L Partners Litigation, New Delhi;

g) Direct the Respondents to forthwith restore the Petitioner's access to his firm email id - MSaraf@luthra.com and the Petitioner's name as

being part of the management on the websites of the firms, L&L Partners, New Delhi, L&L Partners, Mumbai and L&L Partners, Litigation,

and further restrain the Respondents from directly or indirectly, preventing or otherwise restricting the Petitioner's access to and use of the

Delhi Firm's IT infrastructure such as personal laptop, desktop, email with the domain name @luthra.com, servers, database, software

subscriptions;

h) Direct the Respondents to forthwith restore the access of all employees and staff to, and enable use of the IT infrastructure such as

personal laptop, desktop, emails with the domain name @luthra.com, servers, database, software subscriptions, whose access has been

drastically blocked since 13.10.2020;

i) Direct the Respondent No.1 to remove the 'bouncers' stationed by him at the office of the Delhi Firm at the 1st and 9th Floors, Ashoka

Estate, 9, Barakhamba Road, New Delhi - 110001 and further restrain the said Respondents from restricting any manner the Petitioner's

ingress and egress to the office space at 1st and 9th Floors, Ashoka Estate, 9, Barakhamba Road, New Delhi-110001;

j) Restrain the Respondents from causing any disturbance or damage to the office cabin of the Petitioner;

k) Direct the Respondent No.1 to cease and desist from entering the offices at 1st and 9th Floors, Ashoka Estate, 9, Barakhamba Road, New

Delhi - 110001, soliciting or contacting the employees, retainers, or clients of L&L Partners, New Delhi;

l) Restrain the Respondent No.1 from making any representation to any of the clients or retainers or employees of any of the firms, L&L

Partners, New Delhi, L&L Partners, Mumbai or L&L Partners, Litigation, New Delhi, and from making any representation, communication,

filing, applications etc. to any regulatory authorities including the Registrar of Firms, or to the media to the effect or on the basis that the

Petitioner's partnership has been terminated, or that the Petitioner has ceased to be a partner of any of the said firms, or that the petitioner

is not authorized to represent the said firms, and further direct the Respondent No.1 that if any such communication has been made, then to

forthwith withdraw the same;

m) Restrain the Respondent No.1 from using the name ""Luthra & Luthra"" or ""L&L Partners"" or any variation thereof, for carrying on any

business competing with the business of L&L Partners, New Delhi;

n) Grant ex parte ad interim reliefs in terms of the above;

o) Pass such order and any further other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present

case.Ã¢â€â€

The Single Judge, vide the impugned judgment, on a prima facie view of the matter, has held the termination by the appellant of the respondent from

the partnership, in terms of e-mail dated 13th October, 2020, is in violation of the Partnership Deed and the Indian Partnership Act, 1932 and keeping

in view the mandate of Section 12 of the Act, has held the respondent to have a right to take part in the conduct of the business of the law firm and

further held that keeping away the respondent from the partnership business shall be to his prejudice, if he finally succeeds in the arbitration

proceedings. The Single Judge has accordingly directed stay of the operation of the e-mail dated 13th October, 2020 issued by the appellant

terminating the respondent from the partnership.

8. We have enquired from the senior counsels for the respondent, how the order of stay, as granted by the Single Judge, will address the grievances as

evident from the prayer paragraph reproduced above, with which the Section 9 petition was filed by the respondent. We have further enquired,

whether not in the absence of specific directions as sought in the prayer paragraph aforesaid, there will be disputes at the spot i.e. at the offices of the

law firm, as to what each party is required to do or not do in pursuance to the impugned judgment. To illustrate, we have enquired what will the

respondent do if restrained from entering the offices pursuant to the order.

9. Mr. Vikas Singh, Senior Advocate appearing for the respondent states that the respondent will take the assistance of the police for entering the

office.

10. That is precisely the situation which ought not to arise and should be averted at an advocateÃ¢â€s office. Advocates, who advise others and

dispassionately seek legal resolution of the disputes of others, should not be seen as resorting to police aid against each other. We have thus asked the

senior counsels for the respondent, what restraints against both, appellant as well as respondent, ought to be ordered for preservation of status quo.

11. Mr. Parag P. Tripathi, Senior Advocate for the respondent has argued that, (i) the offices of the non-litigation portfolio of the law firm were / are

on the 9th floor and of the litigation portfolio on the 1st floor of Ashoka Estate Building at Barakhamba Road, New Delhi; the respondent has always

had his personal office on the 9th floor and the appellant on the 1st floor; however the appellant for some time past has shifted his office also to the 9th

floor; (ii) both respondent and the appellant can amicably continue to work from their respective chambers / offices, even if on the same floor, as have

been doing in the past; (iii) both could be restrained from addressing any adverse communication prejudicial to the law firm, to the clients or to the

outside world; (iv) both should sent out a joint message, to allay apprehensions of nearly 300 lawyers and 200 para legal staff of the firm; (v) both

should observe full civility in the matter of running the affairs of the firm and should not interfere with the functioning of each other; (vi) the appellant

should be directed to restore to name of the respondent as partner on the website of the law firm; (vii) the appellant should be restrained from

interfering with the access of the respondent to his clients whom he has been servicing in the past; and, (viii) both should exercise their powers as

partners directly and not acting through any other person.

12. Dr. A.M. Singhvi, Senior Advocate for the appellant, in support of his contention that the impugned judgment directing restoration of status quo

ante as existing prior to the filing of the petition under Section 9 should be stayed during the pendency of the appeal, has argued that (i) it is not as if

the law firm has suffered in any manner owing to non-participation of the respondent for the last four months; since the filing of the petition under

Section 9, four new partners and forty new Associates from other law firms have joined L&L Partners, New Delhi; (ii) the gross earnings of the firm

for the quarter ending December, 2020, are far more than that for the previous quarter; (iii) it is thus not as if the respondent is suffering any prejudice

as a result of ouster; (iv) restoring status quo ante would lead to further disputes between the parties; (v) the respondent has already nominated his

arbitrator and the appellant also has nominated an arbitrator and the Arbitral Tribunal can also deal with the interim arrangement; (vi) it is not as if the

respondent is restrained from practicing law and can continue to practice law, though not in the name of L&L Partners, New Delhi; and, (vii) the

appellant is also willing to let go one or two persons who were closely associated with the respondent in the law firm.

13. Having found the respondent to have claimed a specific relief in the Section 9 petition, of restoration of access to the law firm e-mail ID and use

of law firm's IT infrastructure and being further of the view that in the prevalent pandemic large part of the legal work even otherwise is online, we

have understood from Ms. Haripriya Padmanabhan, Advocate for the appellant, how the same works. Ms. Haripriya Padmanabhan, Advocate for the

appellant has explained that granting access to the respondent to the e-mail ID of the law firm would give access to the respondent to the entire

database of the law firm relating to all affairs whatsoever of the law firm.

14. The senior counsel for the appellant has contended that granting such access would make the respondent privy to communications of the law firm

with all its clients and which is capable of harm and mischief; it is argued that the clients of the law firm would also object to an unauthorized person

as the respondent, so having access to their data. It is also argued that there would be a fear of the respondent divulging the said information to others,

to the prejudice of the appellant and the law firms' clients.

15. We have considered the aforesaid arguments and are of the view that for the time being the implementation of the impugned judgment be confined

in the manner as hereinbelow provided:

A. The appellant is directed to forthwith restore the respondent's access to the law firm's e-mail ID MSaraf@luthra.com and the appellant is

restrained from directly or indirectly preventing or otherwise restricting the respondent's access to and use of the Delhi firm's IT infrastructure

such as personal laptop, desktop, e-mail, domain name @luthra.com, servers, database, software subscriptions; however the respondent shall be

entitled to the said access, not from the offices of the law firm but remotely from his home or from any other place he may desire and his personal

laptop and desktop if not already with the respondent shall be forthwith delivered to the respondent through his advocate.

B. Both, appellant and the respondent shall use all the information on such system of the law firm for the bona fide use of and in the benefit of the law

firm and are restrained from putting the information on the said database including the client information to any other use and are also restrained from

divulging the same to any other person or use the same to the prejudice of the law firm.

C. The appellant shall also stand restrained from directly or indirectly interfering with the respondent servicing the clients of the law firm.

D. Both appellant and the respondent are restrained from, (i) making any communication in any manner whatsoever to any person, prejudicial to the

affairs of the law firm or prejudicial to each other (save before the Court / Arbitral Tribunal); (ii) inducting any new partners / associates or any other

personnel and / or from adding to a regular financial liability of the law firm; (iii) doing any other act towards changing the status as existing

immediately prior to the filing of the petition and if already changed since then, as existing today; and, (iv) from interfering in any manner whatsoever,

directly or indirectly in performance by each other or by any other advocate or personnel of the law firm, of their respective roles in discharge of their

duties and in servicing the clients and affairs of the law firm.

16. We however clarify that the respondent, under orders of the Single Judge or under this arrangement, shall not be entitled to physically access the

offices of the law firm as we are of the opinion that the same, as of today, is likely to lead to an ugly situation.

17. The appellant to also, by the next date, on affidavit, furnish accounts of the law firm, with effect from 13th October, 2020 till date, in a sealed

cover.

18. We also implore upon the parties to instead of their personal hats, wear their lawyer's hat and instead of airing their disputes in public and in the

Court, attempt to either revive the partnership or amicably part ways in the spirit of give and take and realize that what is going on, in the long run will

not benefit either. This is the least expected by the clients of the law firm from their advocates and advisors.