
(2022) 01 DEL CK 0063

Delhi High Court

Case No: Original Miscellaneous Petition (I) (COMM.) No. 315 Of 2019, CCP(O) No. 27 Of 2020, Miscellaneous Application No. 58, 4170 Of 2020, 10496, 14094 Of 2021, Criminal Miscellaneous Application No. 10482 Of 2020

Harshit Dhawan

APPELLANT

Vs

Chander Shekhar
Dhawan & Anr

RESPONDENT

Date of Decision: Jan. 6, 2022

Acts Referred:

- Indian Partnership Act, 1932 - Section 40, 43, 46
- Arbitration And Conciliation Act, 1996 - Section 9, 9(2), 11, 17

Hon'ble Judges: Sanjeev Narula, J

Bench: Single Bench

Advocate: Rajat Arora, Renu Bhandari, Kanwal Chaudhary

Final Decision: Disposed Of

Judgement

Sanjeev Narula, J

O.M.P. (I)(COMM.) 315/2019 & I.A. 14094/2021 (u/S. 151 of the Code of Civil Procedure, 1908 on behalf of Respondents seeking

modification of Order dated 12th October, 2021)

1. This Court, by way of a separate order passed today in ARB. P. 172/2020, has appointed a Sole Arbitrator for adjudication of disputes pertaining to

and arising from a Deed of Partnership dated 05th July, 2014, executed between Late Mr. Chander Shekhar Dhawan [Respondent No. 1] and

the Petitioner, in relation to the constitution of a partnership firm in the name and style of Dhawan Printers and Packers [Respondent No. 2]. The

deceased partner is now represented through his legal representatives.

2. With the arbitral tribunal in place, the question that now arises is whether any interim measure is required to be put in place till such time the tribunal enters upon the reference.

Facts in brief:

3. Petitioner and Respondent No. 1 each held 50% share in Respondent No. 2 firm. Petitioner contends that he was initially being paid a sum Rs.

20,000/- towards his share in the income of Respondent No. 2 firm. Later, this was reduced to Rs. 10,000/- per month by Respondent No. 1, and

stopped altogether from June, 2019. Now, despite repeated requests, Respondent No. 1 refuses to share the books of accounts and details of the

assets of Respondent No. 2 firm. Petitioner was thus compelled to serve a notice dated 23rd July 2019 upon Respondent No. 1, stating his intention to

dissolve Respondent No. 2 firm w.e.f. 31st August 2019 in terms of Clause 12 of the Partnership Deed, read with Section 43 of the Indian Partnership

Act, 1932. He also called upon Respondent No. 1 to provide true and correct accounts and details of assets of Respondent No. 2 firm and also sought

inspection of its books of accounts to enable him to settle the affairs of the Respondent No. 2 firm after its dissolution.

4. Although Respondent No. 1 agreed for dissolution, he never came forward to settle the dues and profits, and continued to exclusively utilize the

assets of the Respondent No. 2 firm, without compensation to the Petitioner for his share. He also contends that all the assets of Respondent No. 2

firm - including its immovable properties and goodwill - were being utilized by Respondent No. 1 (and after his death, by his legal representatives) and

they are refusing to divide the assets of Respondent No. 2 firm.

5. In these circumstances, this Court vide order dated 24th September 2019, restrained Respondent No. 1 in the following words:

“Respondent No. 1 shall not dispose of, alienate, encumber either directly or indirectly or otherwise part with the possession of any assets of the

firm except in the ordinary course of business such as payment of salary and statutory dues till the next date of hearing.

6. Then on 10th June, 2020, the Court passed an interim order directing Respondent No. 1 to make an ad hoc payment of Rs. 2,00,000/- to the

Petitioner. The Court is now informed that the said direction has been complied with.

7. Thereafter, subsequent orders over the course of several dates note that the parties unsuccessfully attempted mediation, and could not fructify an

interim arrangement. As a result, substantial time has lapsed since the invocation of Section 9 of the Act.

8. On 14th October, 2020, the Court passed the following Order:

“3. Upon notice having been issued, a detailed reply has been filed by respondent no. 1, wherein there is no denial to the fact that the partnership

between the petitioner and respondent no.1 stood dissolved on 31.08.2019. Respondent no.1 has, however, sought to furnish a detailed account of

expenses claimed to have been incurred by him for the treatment of the petitioner's father and marriage of the petitioner's sister. Mr. Iqbal Singh

Ratta, learned counsel for the respondent, thus, contends that if the amount spent by respondent no.1 for the family members of the petitioner is

deducted from the amount payable to the petitioner under dissolution of the partnership firm, it would rather be the petitioner, who would be liable to

pay a significant amount to the respondent no. 1. He submits that these facts have been deliberately concealed from the Court by the petitioner and,

thus, contends that the petition is liable to be dismissed on this ground alone. He further submits that even otherwise the petitioner, not having invoked

arbitration within 3 months of filing the present petition, is now barred under Section 9(2) of the Act and the petition is, therefore, liable to be dismissed

on this ground also.

4. Having considered the submissions of the parties, I find that there is no denial by respondent no. 1 to the fact that the two properties belonging to

respondent no.2, one on lease hold basis and the other as a tenant, are being exclusively used by respondent no. 1 for carrying out business as a sole

proprietor. It is also an admitted position that the petitioner had invoked arbitration vide notice dated 20.01.2020, and upon receiving no reply thereto

from respondent no. 1, has already preferred a petition under Section 11 of the Act, 1996 seeking appointment of an independent Arbitrator. Even

though notice has been issued in the said petition, the same has not been listed before this Court on account of the regular functioning of this Court

having been suspended.

5. In the light of these admitted facts which clearly show that the partnership between the petitioner and respondent no. 1 stand dissolved, I see no

reason as to why respondent no. 1 ought to be permitted to exclusively use the assets owned by respondent no.2, the erstwhile partnership firm,

especially when the petitioner is seeking complete winding up of its business and consequent division of all its assets.

6. At this stage, learned counsel for the respondents prays for time to enable the respondent no. 1 to make an endeavour to amicably settle the matter

with the petitioner.

7. Even though there is no justification for granting any further time to respondent no. 1 especially as the parties were not successful before the

Mediation Centre, keeping in view the fact that they are closely related, one last opportunity is granted to respondent no. 1 to amicably resolve the

matter, failing which, this Court will be compelled to issue appropriate directions including appointment of a Receiver. [Emphasis supplied]

9. Then on 12th October, 2021, this court passed the following directions:

“1. The property bearing No. 241, Pocket-H, Sector 2, Bawana, Industrial Area, Delhi-110039, which is admittedly owned by Respondent No.2-the

Firm, is today in exclusive possession of Respondent No. 1. Mr. Rajat Arora, counsel for the Petitioner, states that the rent of this property is nearly

Rs. 80,000/-per month.

2. It is therefore, put to the counsel for Respondent No. 1 that in case he would like to continue the exclusive use of the property, he has to pay use

and occupation charges - commensurate with the market rate. Mr. Iqbal Ratta, counsel for the Respondents, refutes that the rent of the property is

Rs. 80,000/- per month as is being projected by the Petitioner. He submits that the Court may fix any interim amount, which is reasonable. Mr. Rajat

Arora states that no payment has been made since 31st August, 2019.

3. In the interregnum, it is directed that the Respondent shall deposit before the Registry of this Court, the use and occupation charges from 1st

September, 2019 till date calculated at the rate of Rs. 30,000/- per month, within three weeks from today.

10. This order has subsequently been made the subject of a plea for modification by way of I.A. 14094/2021 filed by the Respondents.

Contentions of the Parties:

11. Mr. Kanwal Chaudhary, counsel for the Respondents, has argued that one of the assets of Respondent No. 2 firm, being the property bearing

Plot No. 241, Pocket-H, Sector 2, Bawana, Industrial Area, Delhi-110039, was mortgaged with Punjab National Bank for credit facilities availed

by the Respondent No. 2 firm. However, due to default in making payment(s) to the Bank, action was initiated under the SARFAESI Act, 2002, and

notice for taking possession of the property was affixed on the afore-noted property. Respondents then approached Petitioner to join them in

negotiating a one-time settlement with the Bank. Petitioner declined the request and was non-cooperative. In these circumstances, Respondents

themselves arranged the money and settled the dues of the bank and have made a payment of Rs. 15,34,910/- to the Bank. Mr. Chaudhary states that

this payment has been made by the Respondents from their personal account and Petitioner should be directed to bear 50% of the afore-said liability.

12. Mr. Chaudhary also submits that in these changed circumstances, the direction of this Court issued vide order dated 05th October, 2021 to make

monthly payments to Petitioner should be modified. Additionally, Mr. Chaudhary argues that the ad-hoc payment of Rs. 2,00,000/-, as already made in

terms of order dated 10th June, 202, should also be factored in.

13. Lastly, Mr. Chaudhary submits that the first floor of the afore-noted property is vacant, and Respondents would have no objection in case the

Petitioner were to occupy and utilise the same. In such circumstances, no obligation for payment for the use of the property should be foisted upon the

Respondents.

14. As regards moveable assets of Respondent No. 2 firm are concerned, Mr. Chaudhary states that Respondents are now in a different business and

are not utilising the plant and machinery of the firm. Thus, they would have no objection in case the same were to be liquidated.

Analysis:

15. Both the counsel have been heard at length. At this juncture, it must be noted that pursuant a direction of the Court, Respondent No. 1 had filed an

affidavit disclosing the moveable and immoveable assets of Respondent No. 2 firm. In the said affidavit, there was disclosure of another immoveable

property bearing No. 8942, Shidipura, Karol Bagh, New Delhi.

Although Mr. Chaudhry asserts that there is no title document of the said

property in the name of the firm, however, it is undisputed that the same is exclusively used by Respondents for carrying out their business.

16. Under Section 40 of the Indian Partnership Act, 1932, a firm may be dissolved with the consent of all partners, or in accordance with a contract

between the partners. Further, under Section 46 of the said Act, on the dissolution of a firm "every partner or his representative is entitled, as

against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to

have the surplus distributed among the partners or their representatives according to their rights and shares. It is manifest from the contentions urged

by the counsel that the partnership firm is no longer in business and stands dissolved.

The parties, therefore, need to proceed for final settlement of

accounts, clear the liabilities of the dissolved firm, and distribute the remaining assets between themselves.

17. The Tribunal, which now stands appointed, would eventually proceed to divide/liquidate all the moveable and immoveable assets, after rendition of accounts, and proceed to wind-up the firm. Till such time, the assets of the firm are required to be protected. Petitioner has thus made out a prima facie case; the balance of convenience is in their favour; and if the reliefs sought are not granted, grave and irreparable loss would be caused to the Petitioner. Considering the submissions made, appointment of a Local Commissioner is also deemed necessary to prevent any one party from exclusively using and exploiting the assets, to the disadvantage of the other.

18. In light of the foregoing, it is directed as follows:

(a) The restrain order passed by this Court on 24th September, 2019, is confirmed, and shall apply to all the Respondents, subject to further orders as and when passed by the Arbitrator.

(b) Mr. Gorang Goyal, Advocate, [Mobile +91 8397056493] is appointed as the Local Commissioner who shall forthwith proceed to make complete inventory of the plant, machinery, stocks, furniture, fixtures and other assets found in the premises bearing No. 241, Pocket-H, Sector 2, Bawana, Industrial Area, Delhi-110039 in terms of the Affidavit dated 13th January, 2020 filed by Late Mr. Chander Shekhar Dhawan (since deceased).

The parties and their counsel shall be entitled to remain present at the time of the preparation of inventory, and the Local Commissioner shall record

the claims and counter-claims in respect of any items found in the said premises.

(c) The Local Commissioner shall then proceed to take the same into his custody, and to the extent possible, seal the same. If any of the assets cannot

be physically removed, the Local Commissioner shall take symbolic possession thereof. The said assets shall be kept in a premises that shall be

arranged by Respondents. Keys of such premises shall be deposited with the Arbitral Tribunal, subject to further directions/ modifications that may be

issued by the learned Arbitrator.

(d) Both the parties shall render full assistance to the Local Commissioner for carrying out the aforementioned directions.

(e) The Local Commissioner would be at liberty to videograph and/or photograph the process of inventory and of taking symbolic possession. In the

event of non-cooperation by the parties, the Court Commissioner is empowered to take necessary measures, including forcible possession by breaking

open of any lock(s) on the premises. The Local Commissioner shall be at liberty to seek assistance from the police. The concerned police station shall

offer necessary assistance to the Local Commissioner if any request is made.

(f) Respondents are directed to provide to the Petitioner, copies of complete financial statements and books of accounts, ledgers, stock registers

relating to Respondent No. 2 firm. The same shall also be sealed and signed by the Local Commissioner in the presence of the parties, and given on

superdari to the Petitioner, upon his undertaking to produce the same before the Arbitral Tribunal, as and when called for.

(g) Payment to the Local Commissioner and all other incidental expenses shall be borne equally by both parties. The fee of the local commissioner is

fixed as Rs. 1 lakh for implementing the above directions. Thereafter, if the Arbitral Tribunal deems it necessary to avail his services for valuation of

the assets or sale etc, further fee may be fixed by the Arbitral Tribunal. This payment or any further payments made to the Local Commissioner shall

be taken into account at the time of making its final award.

(h) The Local Commissioner and the parties present during the execution of commission shall strictly follow COVID-19 related protocol and directions

issued by the Government of NCT of Delhi relating thereto.

19. This brings us to the question as to whether any modification is required with respect to the Order dated 12th October, 2021, as is sought in I.A.

14094/2021 by the Respondents. Mr. Rajat Arora, counsel for the Petitioner, opposes the prayer for modification and requests that directions

contained in the said order be continued until modified by the Arbitrator.

20. However, the Court is unable to agree with the above stance. It is noticed that "with Respondents making a substantial payment to the bank to

settle the liability of Respondent No. 2 firm " the circumstances in which the said directions were issued, have completely changed. Besides,

Petitioner can now occupy and utilise the first floor of the premises bearing "No. 241, Pocket-H, Sector 2, Bawana, Industrial Area, Delhi-

110039", which is admittedly an asset of the firm. If Petitioner would instead prefer to lease the said premises, he would be at liberty to approach

the Arbitral Tribunal for appropriate directions. Therefore, at this stage, the direction for payment of occupation charges from 2019 onwards,

contained in order dated 12th October, 2021, is suspended.

21. The Tribunal shall endeavour to determine issues apropos the use and exploitation of assets, stocks, furniture, fixtures and goodwill of Respondent

No. 2 firm expeditiously, and shall, proceed to liquidate such assets in case the same are of no use to either of the parties.

22. Needless to say, it shall be open to the parties to seek appropriate interim measures from the Arbitral Tribunal, if so required, including directions

qua valuation and sale of the assets of the firm, and/or directions for interim payment(s), as available in law, if so advised.

23. The present Order, as well as the Order dated 24th September 2019 shall continue to operate, for a period of four weeks from the date the

Arbitral Tribunal enters upon the reference. Within such time, parties shall move an appropriate application under Section 17 of the Act seeking

interim measures, if so advised. In case an application under Section 17 of the Act is not filed, the protection granted by the Court via its previous

Orders and this order will stand automatically dissolved.

24. The learned Arbitrator shall be free to modify, extend or vacate the directions given by this Court. It is made clear that, the Arbitral Tribunal would

decide the application(s) and disputes on merits, uninfluenced by any of the observations made hereinabove.

25. With the above directions, the present petition is disposed of along with other pending applications.

CCP(O) 27/2020 & CRL.M.A. 10482/2020

26. List on 09th March, 2022.