

Sanjay Goel Vs Lions Club International and Another

Court: Delhi High Court

Date of Decision: Aug. 9, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 2
Constitution of India, 1950 â€” Article 227

Hon'ble Judges: M.L. Mehta, J

Bench: Single Bench

Advocate: Sudhir Nandajog, with Mr. Rakesh Kumar Garg, for the Appellant; Anil Goel, for the Respondent

Final Decision: Dismissed

Judgement

M.L. Mehta, J.

This petition under Article 227 of the Constitution is directed against the order dated 08.06.2012 of Additional District

Judge (ADJ-05), Central, Delhi, whereby appeal against the order dated 19.05.2012 of Senior Civil Judge-cum-Rent Controller (SCJ-cum-RC),

Central, Delhi, was allowed. In the Execution Petition No. 37/2012 filed by the petitioner herein, the learned Trial Court Judge dismissed the

petitions of the respondent Lion's Club International (LCI).

2. Facts in brief are that the petitioner had filed a suit against the respondent LCI and its District Governor T.S. Arora for permanent and

mandatory injunction to restrain them to conduct elections scheduled on 25th and 26th February 2012 and also for directions to LCI to provide list

of delegates having the voting rights in the said elections as well as the list of members of the club having their dues cleared by 10.02.2012. In the

said suit Mr. T.S. Arora, the District Governor of LCI, appeared in the Court on 7th March 2012 and made a statement to the following effect:

That I am the District Governor of Lions Club International, district-321A-1. My term is going to expire on 30.06.2012. The previous notification

for the election of second Vice-District Governor has been withdrawn for which the elections were scheduled to be held on 25th and 26.02.2012.

The fresh election for the second Vice-District Governor will be held as per constitution of District and International. Prior to the holding of such

election list of eligible and registered delegates will be supplied to the plaintiff before 10 days of such election. The plaintiff has supplied his E-Mail

which is as under:- goyalsanjay43@yahoo.com. I shall start the process for notification of election schedule within 30 days for the post of second

Vice-District Governor, 321A-1.

3. The petitioner Sanjay Goel also made a statement and withdrew his suit. Thereupon the Court disposed of the suit noting as compromised and

withdrawn. It was also recorded that the parties shall be bound by the statements made in the Court.

4. The petitioner being aggrieved, that Mr. Arora did not abide by his statement, moved two contempt applications against the respondents and

Naveli Mahta. Certain orders came to be passed by the Trial Court in those contempt petitions which were assailed in this Court and those orders

of the Trial Court came to be set aside by this Court vide order dated 19th April 2012.

5. On 27.04.2012 the petitioner filed execution of the order of the Trial Court whereby the suit was finally disposed alleging the respondent having

failed to abide by the statement made on 7th March 2012. In the said Execution Petition, objections were filed by the respondents herein; the main

objection being that since there was no decree passed by the Court, the execution was not maintainable. The objections came to be dismissed by

the executing Court vide order dated 19.05.2012. The respondents carried the matter in appeal vide MCA No. 06/2012 which came to be

allowed by the ADJ vide the impugned order of 08.06.2012. This order is challenged by the petitioner in the instant petition in this Court.

6. The only question that arise for consideration of this Court is whether there was a decree passed by the Trial Court while disposing the case as

withdrawn on the statements made by the parties. If it was a decree, then undisputedly, the same could be executed at the instance of the Decree

Holder, namely the petitioner. If it was not, then could the petitioner carry execution of the said order?

7. The learned counsel appearing for the petitioner submits that the suit came to be disposed as withdrawn on the statement made by the

respondent Mr. T.S. Arora on 7th March 2012 in the manner as reproduced above, and this being the adjudication of the controversy of the

subject matter of the suit, it would be within the definition of decree u/s 2 CPC, and thus executable. Learned counsel relied upon Single Judge

decision of this Court in The Kerala State Coir Corporation Ltd. Vs. Delhi Intercontinental (Hotels) (P) Ltd., .

8. The appellate Court of ADJ while holding that the suit was disposed as withdrawn and there being no decree passed by the Trial Court, the

same was not executable, relied upon the Division Bench decision of this Court in Mohd. Amin Vs. Mohd. Iqbal, 158(2009) DLT 531. In the

case of Kerala State Coir Corpn. Ltd. (supra) the contention was raised on behalf of the petitioner that since the suit was withdrawn and there

being no decree in the eyes of law, the same is not executable. It was, however, noticed from the record that the decree had, in fact, been drawn

by the Trial Court and which has not been challenged before the High Court and thus had become final. It was in this context that it was held that

once the decree had been drawn and which had become final, the same becomes executable.

9. The Division Bench of this Court in Mohd. Amin (*supra*) had occasion to deal with similar proposition as before me in the instant petition. In that

case, it was noted that the object of the parties was clear, as it is in the instant case, that they wanted to place on record the compromise arrived at

between the parties, but, did not seek to obtain a decree in terms of the compromise which can be executable. It was in these circumstances that it

was held that though the parties were to be bound by the terms of compromise, but the suit was dismissed as withdrawn and the suit dismissed in

such a way can hardly give rise to execution of decree. The learned Senior Counsel for the petitioner tried to distinguish the decision rendered in

Mohd. Amin (*supra*) by stating that in that case the settlement was arrived at between the parties as per the written agreement, a clause whereof

provided reference of disputes and differences to the Arbitrator. In other words, the submission is that as per the written agreement there was an

alternative mechanism of reference to the Arbitrator, whereas in the instant case the suit was withdrawn on the statements made by the parties. The

contention that is sought to be raised by learned senior counsel is extraneous and misplaced. In that case, what was sought to be referred to the

Arbitrator was the disputes or differences arising out of or in connection with the settlement agreement or the interpretation thereof. In that case

also, as in the instant case, the suit was disposed of as withdrawn and it could not make any difference if the suit was withdrawn by way of a

written agreement between the parties or on their statements made in the Court. In both the cases, the parties had agreed to remain bound by the

terms of the compromise and they never intended to obtain a decree in terms of the compromise. I do not find any reason to differ with the

decision rendered by the Division Bench of this Court in the case of Mohd. Amin (*supra*). Having said so, I do not find any infirmity or illegality in

the impugned order of the appellate Court. The petition has no merit and is hereby dismissed.