

PETITIONER:
NARAINDAS LILARAM ADNANI

Vs.

RESPONDENT:
NARSINGDAS NARAINDAS ADNANI & ORS.

DATE OF JUDGMENT 16/12/1994

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
AHMADI A.M. (CJ)
MOHAN, S. (J)

CITATION:
1995 AIR 763 1995 SCC Supl. (1) 312
JT 1995 (1) 257 1994 SCALE (5) 310

ACT:

HEADNOTE:

JUDGMENT:

1. The deceased appellant Naraindas Lilaram Adnani was the original petitioner. Respondents 1 and 2 are his sons by his first wife. The 5th respondent is also the son of the appellant by his first wife. Respondent No. 3 is the wife of the first respondent. The 6th respondent Devibai Naraindas Adnani is the second wife of the appellant. Respondents 7 and 9 are the sons of the appellant by his second wife.

2. After filing of the Special Leave Petition the appellant died on 15.4.1988. The 9th respondent has filed IA No. 1/1989 for being substituted as the appellant in place of the original appellant. In the said application which is under Order 22 Rule 3 of the Code of Civil Procedure read with relevant rules of this Court, the 9th respondent has stated that the deceased appellant has left a Will under which respondent no. 9 is the sole executor of the Will. Under the said Will the appellant has left his entire estate to respondent no. 6 i.e. his second wife. Respondents no. 9 has, therefore, prayed that he should be impleaded in his capacity as the executor of the Will of the deceased appellant and as his legal representative. The Will, however, has not been probated so far. In view of Section 213 of the Indian Succession Act, respondent no. 9 cannot, therefore be, impleaded in his capacity as the executor of the will of the deceased appellant. It is, however, an accepted position that the legal representatives of the original appellant are already on record. We therefore, do not see an, , , difficulty in transposing respondent no. 9, one of the legal representative of the deceased appellant, as the appellant. For the sake of convenience, however, the original appellant will be hereinafter referred to as the appellant and the transposed appellant will be referred to as respondent no. 9.

3. At all times material to these proceedings there were

three partnership firms of which the appellant and some of his family members were partners. One was the firm of 'Naraindas Sons'. The second firm was 'N. Sukhdev and Company' and the third firm was 'Lilaram Kewalram (India)'. On account of differences and disputes between the appellant and the various members of his family, the parties agreed to refer their disputes to the sole arbitration of Shri D.N. Abhichandani, Advocate, under a Deed of Reference dated 17th of September, 1973. The Deed of Reference states that all disputes and differences between the parties are referred to the arbitration of Shri D.N. Abhichandani. Pursuant to the Deed of Reference the said Arbitrator entered upon the reference, heard the parties and made and published his Award dated 15th of March, 1979. The award has been filed in the Bombay High Court being Award No. 46/1979.

4. Four petitions were filed in the Bombay High Court challenging this Award. The 6th respondent, Devibai 260

Naraindas Adnani, filed Arbitration Petition No. 102/1979. Respondent no. 7 filed Arbitration Petition No. 103/1979. The 9th respondent filed Arbitration Petition No. 104/1979 and the appellant filed Arbitration Petition No. 105/1979. All these petitions were heard and disposed of by a learned Single Judge by his common judgment and order dated April 20/21, 1983, under which all the four petitions were dismissed. Being aggrieved by this order the appellant preferred an appeal before a Division Bench of the High Court being Appeal No. 563/83. No appeal was filed in the other three petitions which were also dismissed by the said judgment and order. The Division Bench has, by its judgment and order dated 10th of November, 1987 dismissed the appeal. Hence the appellant filed a special leave petition before this Court which has been granted.

5. The grievance of the appellant relates to the failure of the Arbitrator to give certain consequential reliefs in his Award. One of the properties which was the subject-matter of dispute before the Arbitrator was a property known as Narain Niwas situated at Vile Parle. Respondents 1 and 2 contended that this was a partnership property of the firm of Lilaram Kewalram (India). They claimed a 1/3rd or 28% share in the said property as partners of the said firm. Their contention was negatived by the Arbitrator who held that Narain Niwas at Vile Parle was the exclusive personal property of the appellant Naraindas. Having held so, the Arbitrator considered what should be the consequential relief which could be granted to the appellant. The Arbitrator noted that a part of this property was in the possession of respondents 1 and 2 while the remaining property was in the possession of the appellant. The Arbitrator has stated in his Award at paragraph 61 as follows:

"With my aforesaid decision that the said "Narain Niwas" is the exclusive personal property of the Naraindas my jurisdiction stops there as the relationship between Naraindas, Narsingdas and Parshotamdas as regards the said possession of Narsingdas and Parshotamdas will be governed by the provisions of the Bombay Rent Act which possession however, shall not be disturbed except by due process of law. "

The appellant contends that the Arbitrator, having held that Narain Niwas was his exclusive personal property, should have granted the consequential relief of possession. It is submitted by the appellant that there is no question of the

provisions of Bombay Rent Hotel & Lodging House Rates Control Act (hereinafter referred to as the 'Bombay Rent Act') being attracted in this case. It is nobody's case that either the 1st or the 2nd respondent (Narsingdas and Parshotamdas) are tenants in respect of the portions of the said property in their possession. Nor was it anybody's case that either the 1st or 2nd respondent were protected licensees in respect of it. It was also not contended before the Arbitration that any rent or any compensation was being paid by the 1st and/or the 2nd respondent in respect of their occupation of portions of the said property. The only case of respondents 1 and 2 was that this property was a partnership property; and because respondents 1 and 2 were partners in the partnership firm of Lilaram Kewalram (India), they had a 1/3rd or 28% share in the said property. This having been negatived by the Arbitrator, the Arbitrator ought to have granted the consequential relief possession.

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6. There is much force in this contention. The above passage in the Award clearly indicates the reasons why the Arbitrator has not granted possession to the appellant. The learned Arbitrator seems to have been under a mistaken impression that the right to possession of the portions of the property occupied by respondents 1 and 2 would be governed by the provisions of the Bombay Rent Act. He has, therefore, observed that their possession shall not be disturbed except by due process of law. Since it is clear that the provisions of the said Act are not attracted at all, the Arbitrator ought to have granted the consequential relief of possession to make his Award complete and effective.

7. During the pendency of the appeal before the Division Bench of the High Court, the appellant, in view of the above quoted observations of the Arbitrator, filed two suits for possession of the portions of the said Vile Parle property in the possession of respondents 1 and 2, being Suit nos. 1338/83 and 1339/83. In the Memorandum of Appeal in Appeal No. 563/83 filed by the appellant it has been stated that these suits are being filed without prejudice to the rights and contentions of the appellant in the appeal. Even otherwise, in the context in which the suits have been filed, it is clear that these suits have been filed by the appellant *ex abundanti cautela*.

8. The Division Bench of the High Court, however, declined to grant the consequential relief of possession as these suits for possession had been already filed. In the present case, the Arbitration Award was made as far back as on 15th of March, 1979. It would not now be fair to direct the appellant to seek his remedy of possession through the two suits which he has filed and which may take considerable time to be finally disposed of, when the consequential relief of possession could have been granted to him under the Award itself.

9. Under Section 15(b) of the Arbitration Act, 1940, the Court may, by order, modify or correct an Award *inter alia* where the Award is imperfect in form, or contains any obvious error which can be amended without affecting such decision. Obviously the court cannot substitute its own order for the Award of the Arbitrator. But any obvious error in the Award can be corrected by the court provided it does not affect the decision given by the Arbitrator. In the present case the decision of the Arbitrator is clear, namely, that the Narain Niwas property is exclusively the personal property of the appellant Naraindas. It is also clear that respondents 1 and 2 cannot claim any part of it

by virtue of their being partners in the firm of Lilaram Kewalram (India). The only reason why the Arbitrator has not granted any consequential relief seems to be his impression that the possession of respondents 1 and 2 was governed by the provisions of the Bombay Rent Act. This being clearly a mistake, it is possible to correct the same without affecting the decision of the Arbitrator. After all, the Award must be couched in a form which would lead to finality. It should not be in a form which compels the parties to embark upon further litigation. If the mistake of the Arbitrator is allowed to stand as it is, it would clearly lead to further litigation between the parties although their rights, inter se, are clearly decided by the Arbitrator. The mistake, therefore, can be corrected under Section 15(b) of the Arbitration Act 1940.

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10. It was contended by learned Advocate for respondent no. 1 that the Award should be remitted to the Arbitrator under Section 16 of the Arbitration Act. In the first place, the learned Arbitrator has also expired. Secondly, the Award has not left any matter undetermined. It has clearly decided the rights of the appellant and respondents 1 and 2 in the Narain Niwas property. Hence the provisions of Section 16 are not required to be invoked in the present case. The appellant being entitled exclusively to the said property, is entitled to possession thereof since respondents 1 and 2 do not have any right, title or interest in the said property or any part thereof and have no right to possession thereof. The respondents 1 and 2 shall accordingly hand over possession of the portions of the said property in their occupation to the present appellant i.e., respondent No. 9 who shall hold the same for and on behalf of the estate of the deceased appellant. respondents 1 and 2 have asked for time to hand over possession. Considering the period that has elapsed since the Award during which period respondents 1 and 2 have enjoyed possession of the portions of the said property, we are not inclined to grant a long time but we direct that each of them shall hand over possession of the portions of Narain Niwas in his possession within 6 months from today.

11. The next property which is the subject-matter of dispute in this appeal is a tenanted property, being room no. 13 of the second floor of Vasantwadi, Kalbadevi road, Bombay. The appellant had contended that the tenancy rights in the said room belonged to him exclusively. Respondents 1 and 2, however, claimed the tenancy rights in the said room as a partnership asset of Lilaram Kewalram (India).

12. At the time when Appeal no. 563/ 83 was heard by the Division Bench of the High Court, learned counsel appearing for respondents 1 and 2 had stated that in order to put an end to the dispute relating to this property, respondents 1 and 2 were agreeable either (a) to buy out the share of the appellant or (b) to get the property valued by a Valuer and to pay off the appellant's share or (c) that the property may be auctioned inter se and be taken over by the highest bidder. Learned Advocate for the appellant, however, stated that he was unable to express any view in the matter.

13. It is necessary to note that the first respondent has 40% share in this property, the second respondent has 17% share in this property while the appellant has 43% share in the said property. Respondent No. 1 in possession of the said room. The respondents 1 and 2 have stated before us that the present appellant i.e. respondent no. 9 may state the value of the said property and respondents 1 and/or 2 should be given the first option either to accept the said

property on the valuation as made by the present appellant and pay off the share of the present appellant on the basis of the said valuation, or in the alternative, they or either of them would be free to accept their respective shares in the said property in monetary terms on the basis of the said valuation. On such amounts being paid they would hand over the possession of the said property to the present appellant. In our view, this seems to be a very fair offer. We, therefore, direct the parties to act accordingly. The present appellant, i.e., respondent No. 9 shall state his valuation of the said property in monetary terms in writing and convey the same to respondent nos. 1 and 2

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the same in writing to the present appellant or his advocate within 8 weeks thereafter. The consequential payments shall be made within 2 weeks thereafter and the possession be either retained by respondents 1 and/or 2 or handed over to respondent no. 9 as heir and legal representative of the original appellant, as the case may be. In the latter case respondent no. 9 shall retain possession of the said property for and on behalf of the estate of the deceased appellant.

14. The last property which is required to be 'considered' is the property at Ganeshpuri. The present appellant has no objection to handing over possession of the portion of this property originally in the occupation of the appellant to respondents 1 and 2, although the Arbitrator has held that the appellant, the first respondent and the second respondent are owners of the said property having an equal share therein. He shall, therefore, do so within 4 weeks.

15. The appeal is, therefore, allowed to the above extent. There will be no order as to costs.

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