Akshay Kapur And Ors. vs Rishav Kapur And Ors. on 2 May, 2006

Author: Madan B. Lokur

Bench: Madan B. Lokur

JUDGMENT

Madan B. Lokur, J.

1. The Plaintiffs have filed a suit for a decree of declaration to the effect that the Report of the Valuation of Kapur Family Group as at 31st March, 2002 (circulated in January, 2003) is invalid and/or void. The Plaintiffs have also prayed for a decree of permanent injunction restraining the Defendants from taking any steps pursuant to the impugned report. Quite a few applications have been filed in the suit (by both sides) and by this order, I propose of decide those applications, the main one being for continuing the ex parte ad interim injunction granted on 13th January, 2003.

2. The family tree of the Kapur family is of some relevance. Janki Das Kapur had three sons, namely, B.D. Kapur, Jai Dev Kapur and Jagdish Kapur.

3. B.D. Kapur had three sons, namely, Arun Kapur, Vikram Kapur and Rajiv Kapur.

4. The Plaintiffs are Arun Kapur and his two sons Akshay and Ashwat. The Defendants are his two brothers Vikram Kapur, Rajiv Kapur and their children; Jai Dev Kapur (his uncle), his children and grandchildren; and the children of Jagdish Kapur. They are Defendants No. 1 to 9. Defendant No. 10 (Mr. Memani) is the author of the impugned report while Defendant No. 11 is an internationally reputed firm with whom Mr. Memani is associated.

5. One of the main assets of the Kapur family is M/s Atlas Cycle Industries Ltd. (Atlas Cycles) in which they are the major shareholders. There are other entities also in which they have a considerable interest.

6. Atlas Cycles has three units at Sonepat (Haryana), Sahibabad (U.P.) and Malanpur (M.P.).

7. The Kapur family agreed, some time in 1999, to split their assets into three groups headed by B.D. Kapur, Jai Dev Kapur and Jagdish Kapur. Pursuant to this decision, they executed a Memorandum of Understanding (MOU) dated 8th January, 1999.

8. In this MOU, the assets of the Kapur family were noted down and it was agreed that it would be prudent to split the ownership, management and/or control of the companies and assets in three

equal shares and to allot one share to each group of the Kapur family. The broad guidelines that were agreed in principle in the MOU indicated that:

> One cycle unit would fall to the share of each group.
>
> The market areas for sales in India and exports for each separate unit shall be clearly identified, demarcated and equated. In case any benefit is to be given to any group/groups, the same could be given in the form of net worth/assets. This would be ascertained on the basis of detailed working to be done by Mr. K.N. Memani (Defendant No.10).
>
> All the assets would be divided into three equal baskets after proper valuation at the present market price as per the accepted principles of accountancy.
>
> Mr. Memani was required to confer jointly with the three groups regarding the valuation and thereafter declare the value, which would be final and unchallengeable by the parties or even the Arbitrator.
>
> The three groups would mutually prepare three baskets based on the valuation made by Mr. Memani and the same would be distributed amongst the three groups by a draw of lots in the presence of a Sole Arbitrator.
>
> Justice A.M. Ahmadi, retired Chief Justice of India was unanimously selected by the three groups as the Sole Arbitrator and he would be required to adjudicate upon any matter in which the parties could not arrive at a settlement, including on the issue of preparation of baskets.

9. For the sake of convenience, some of the clauses of the Memorandum of Understanding are reproduced below:

> 3(a) One Cycle Unit falls to the share of each of the three groups. The division is to be made in such a manner that the production facility including machinery, Painting and Plating Plants etc. and that of services including Tool Room, Maintenance, Electrical, Generators, Research & Development, Heat Treatment etc. of each cycle unit is more or less equal.
>
> 3(c) the Market areas for sales in India and exports for each separate unit shall be clearly identified, demarcated and equated. In case any benefit is to be given to any group/groups the same could be given in the form of networth/assets. This should be ascertained on the basis of detailed working to be done by Shri KN Memmani of M/s Ernst and Young, Chartered Accountants before draw of lots to avoid unhealthy competition. It is of course understood that each of the three groups shall be entitled the use of ATLAS brand as well as the LOGO on the products with an additional name for identification and differentiation as may be permissible under legal

regulations. The three names be chosen and placed in the three baskets before the draw of lots.

4. That this MOU incorporates only the broad guidelines to be followed for arriving at a final settlement between the parties. The essence of the mutual understanding is that all the assets and the Companies referred to above shall be divided in the three equal baskets after the same has been properly evaluated at the present market Price. The valuation of all the assets, Companies, trusts and Firms shall be done by Shri K.N. Memani of Messrs Ernst & Young, Chartered Accountants who shall value the Companies, Private Limited Companies, Partnership Firms, Charitable Trusts and other assets at market price as per the accepted principles of accountancy. Shri K.N. Memani will confer jointly with the three groups regarding the valuation of all the Companies/Firms/Trusts etc. and thereafter declare the value. Shri K.N. Memani's valuation will be final and un-challengable by the parties or even the Arbitrator.

6. In case of difference of opinion on any matter and a settlement is not arrived at, the matter will be referred to the arbitration of Shri A.M. Ahmadi, retired Chief Justice of the Supreme Court of India, who has been unanimously selected by the three groups as the Sole Arbitrator. The three parties mutually on their own will prepare three baskets based on valuation made by Shri K.N. Memani and the same be distributed amongst the three groups by the draw of lots in the presence of the sole arbitrator referred to above. Similar exercise be done to deal with Charitable Trusts. In case, within a reasonable time the parties are unable to arrive at a mutual settlement amongst themselves then the matter will be referred to the sole arbitrator for arbitration. The arbitrator shall take into account the understanding between the parties as mentioned in the MOU above and the valuation made by Shri K.N. Memani and accordingly prepare the three baskets to be distributed amongst the three groups by way of a draw. While making the award the arbitrator shall keep in mind to conform to the spirit of understanding mentioned above, thus not in derogation to the Memorandum of Understanding. The management and control be handed over the same instance after the lots are drawn; the formal ownership to change hands legally as early as possible. Before the draw of lots, a system be devised for the interim period with the assistance of Shri K.N. Memani to ensure smooth transition and to avoid misappropriation. A continued audit to detect any misappropriation be undertaken under his guidance till the split is legally complete and his report in writing be sent to the three groups every month.

10. It appears that before the Memorandum of Understanding could be given effect to, B.D. Kapur (head of the Plaintiff family) passed away on 16th August, 2000. As a result of this, his three children, that is, Arun Kapur, Vikram Kapur and Rajiv Kapur entered into a Memorandum of Understanding dated 28th August, 2000 in which they entered into an interim inter se arrangement until a final settlement of all disputes under the MOU dated 8th January, 1999. Thereafter on 10th September, 2000, Terms of Settlement for Interim Arrangement were arrived at between the senior-most members of the three groups, that is, Arun Kapur, Jai Dev Kapur and Jagdish Kapur. In

terms of this interim arrangement, a Joint Management Committee consisting of these three persons, being the senior most members of each group, was constituted to facilitate the effective functioning of Atlas Cycles pending implementation of the MOU dated 8th January, 1999.

11. For deciding the various applications pending in this case, it is not necessary to advert to the Memorandum of Understanding dated 28th August, 2000 or the Terms of Settlement dated 10th September, 2000. Suffice it to say that at the material time, Arun Kapur was managing the Malanpur unit of Atlas Cycles and was also in-charge of the Production, Tool Room, Corporate Law, HRD and Security Department of Atlas Cycles, Sonepat and the functioning of Limrose Engineering Works Pvt. Ltd.

12. Some time in March, 2001, Arun Kapur was excluded from the management and affairs of the Malanpur unit of Atlas Cycles. He filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (the Act) challenging his exclusion and it appears that despite an interim measure directing status quo on 5th April, 2001 the Board of Directors of Atlas Cycles removed him and his children from the affairs of the Malanpur unit. Arun Kapur then filed a contempt petition alleging violation of the interim measure granted by this Court on 5th April, 2001 but eventually it appears that the petition under Section 9 of the Act filed by Arun Kapur was rejected and an appeal against the rejection has since been withdrawn.

13. The reason for excluding Arun Kapur from the affairs of Atlas Cycles was that he had allegedly defalcated and siphoned off huge amounts to the tune of over Rs. 10 crores. In fact, by an interim order/Award dated 31st May, 2002, the Arbitrator directed Arun Kapur to deposit over Rs. 5 crores, but this order has been challenged by Arun Kapur and an appeal against it is pending in this Court.

14. Be that as it may, Mr. Memani proceeded to carry out his duties as required by the MOU dated 8th January, 1999 and value the assets of the Kapur family. Eventually, in December, 2002, Mr. Memani prepared a draft report, which was circulated to the parties to this litigation and their comments invited. After Mr. Memani received the comments, he prepared his final report dated 3rd January, 2003 which is under challenge in this suit.

15. The grievance of the Plaintiffs is three-fold. Firstly, even though Mr. Memani was required to hold joint conferences with the three groups, the Plaintiffs were excluded from such conferences. Secondly, since the Plaintiffs were excluded from the affairs of the Malanpur unit of Atlas Cycles, they did not have any access to any records or accounts pertaining to this unit and, therefore, they could not effectively participate in the conferences and valuation process initiated by Mr. Memani. Thirdly, Mr. Memani did not follow the accepted principles of accountancy, which he was required to follow while preparing the impugned report.

16. On 14th January, 2003 when the suit came up for preliminary hearing, summons were issued and on the injunction application IA 388/2003 filed by the Plaintiffs, notice was issued and an interim order was passed to the effect that the Defendants are restrained from taking any steps or acting in pursuance of the impugned report. This ex parte ad interim injunction has continued till today. Feeling aggrieved by the ex parte ad interim injunction, Defendants No.8 and 9 have filed IA

2377/2003, which is an application under Order XXXIX Rule 4 of the CPC for vacating the ad interim injunction.

17. In addition, Defendants No.2, 3 and 7 have filed an application being IA 8775/2003, which is an application under Order VII Rule 11 of the CPC seeking rejection of the plaint.

18. The Plaintiffs have also filed an application being IA 3968/2003 under Order XXXIX Rule 2A of the CPC alleging violation of the interim injunction granted by this Court on 14th January, 2003.

19. In 2005, the Plaintiffs moved four more applications. They filed IA 10329/2005 which is an application under Order VI Rule 17 of the CPC for amendment of the plaint, IA 10330/2005 which is an application under Order I Rule 10 of the CPC to implead Atlas Cycles as one of the parties to the litigation, IA 10331/2005 which is an application under Order XXXIX Rules 1 and 2 of the CPC in which a prayer is made that Atlas Cycles should not alienate its assets and finally IA 9855/2005 which is an application under Order XI Rule 12 of the CPC for discovery on oath of certain information as mentioned in paragraph 4 of the application. I propose to dispose of all these applications by this decision.

20. Before going into the individual applications, I think it will be appropriate to consider the impact of a Family Settlement.

21. In Ram Charan Das v. Girja Nandini Devi , it was said that a family arrangement is binding on the parties, particularly if it is acted upon; Courts give effect to a family settlement on the broad and general ground that its object is to settle existing and future disputes regarding property amongst members of a family. Similarly in K.K. Modi v. K.N. Modi the Supreme Court said in paragraph 52 of the Report, A family settlement which settles disputes within the family should not be lightly interfered with especially when the settlement has been already acted upon by some members of the family. In the present case, from 1989 to 1995 the Memorandum of Understanding has been substantially acted upon and hence the parties must be held to the settlement which is in the interest of the family and which avoids disputes between the members of the family. Such settlements have to be viewed a little differently from ordinary contracts and their internal mechanism for working out the settlement should not be lightly disturbed Prima facie, therefore, a family settlement should be given due respect and regard not only by the parties but also by the Courts. In the present case, admittedly, the MOU was a family settlement containing a decision of all members of the Kapur family to have the assets valued by Mr. Memani and that his valuation would be final and would not be challengeable by the parties. Consequently, even if the impugned valuation report contains a few errors here and there, it should not be interfered with, as long as the errors are not substantive - a family settlement should be allowed to take its full effect. In this regard, the observations of the Supreme Court in Kale and Ors. v. Deputy Director of Consolidation and Ors. are important.

22. In paragraph 9 of the Report, the Supreme Court discussed in general the effect and value of family arrangements with a view to resolving disputes once and for all. Reference was made to Kerr on Fraud and it was held that family arrangements are governed by a special equity peculiar to them

and would be enforced if honestly made. Kerr makes a distinction between an ordinary compromise between strangers and family arrangements, which will be enforced if honestly made. The Supreme Court expressed the following view:-

> The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family.... The courts have, therefore, leaned in favor of upholding a family arrangement instead of disturbing the same on technical or trivial grounds.

23. Similarly, in paragraph 18 of the Report, the Supreme Court referred with approval to the following statement in S. Shanmugam Pillai v. K. Shanmugam Pillai :-

> If in the interest of the family properties or family peace the close relations had settled their disputes amicably, this Court will be reluctant to disturb the same. The courts generally lean in favor of the family arrangements.

24. Summing up the case law, the Supreme Court held in paragraph 19 of the Report as follows:-

> Thus it would appear from a review of the decisions analysed above that the courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the courts is that if by consent of parties a matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous or untenable grounds.

25. In this view of the law laid down by the Supreme Court, it is clear that since the parties had agreed to be bound by the valuation given by Mr. Memani, they should accept the impugned report as a matter of grace rather than pick small loopholes in it. Similarly, the Courts should be very slow in interfering with the impugned report. Of course, it is another matter if Mr. Memani had gone way off the mark and come out with a report that was absurd.

26. So, the question now is, is the impugned report absurd? First of all, given the circumstances, I don(tm)t think it is at all appropriate to go into the contents of the impugned report. Even otherwise, if the impugned report were absurd, it would have been summarily rejected by all the groups and perhaps would not have even seen the light of day. More importantly, the impugned report has been accepted by two groups completely, that is, the Jai Dev Kapur group and the Jagdish Kapur group. As far as the B.D. Kapur group is concerned, it has been accepted by 2/3rd of this group, that is, by Vikram Kapur and Rajiv Kapur. It is only Arun Kapur and his two children, who represent 1/3rd of the B.D. Kapur group and 1/9th of the family of Janki Das Kapur who do not accept the impugned report. Prima facie, therefore, the impugned report does not seem to be so absurd as to make it unacceptable, and in any case, this was not even contended by the Plaintiffs.

27. Should the Plaintiffs then be allowed to stall implementation of the impugned report? I think at this stage, it is necessary to be clear about one important fact. The MOU is between three groups and not between several individuals. The Plaintiffs seem to believe that they are independent of the B.D. Kapur group and so they can act independently. I am afraid this is not so the opening sentence of the MOU reads "This Memorandum of Understanding made at New Delhi this the 8th day of January 1999, between the three groups all of whom reside at 3, Aurangzeb Lane, New Delhi as follows: It appears to me that this is the basic fallacy in the approach of the Plaintiffs " they are members of, and a part and parcel of, the B.D. Kapur group and are not outside of it, and they must realize it.

28. In any case, since most members of the Kapur family have acted upon the family settlement by going through and concluding the valuation process and then by accepting the impugned report, I think it should be implemented and some members of one group of the Kapur family should not be permitted to unsettle the entire family arrangement.

29. Nevertheless, since the Plaintiffs say that the impugned report is biased against them, their primary reason for saying so is being adverted to, which is that Mr. Memani has noted that Arun Kapur had defalcated a sum of Rs. 10.45 crores and for this the liability should fall entirely upon him. The result of this would be that Arun Kapur and his family would be poorer by a sum of Rs. 10.45 crores while this will not affect anybody else, including Vikram Kapur and Rajiv Kapur. This is really the meat of the matter.

30. I do not propose to collaterally investigate the merits of the impugned report " indeed that is not the function of this Court, but would only indicate (for the record) how Mr. Memani came to this conclusion. In the first place, he has made a reference to the audited financial statements of Atlas Cycles for the year 2001-02. Note 14 forming a part of the accounts reads as follows:-

> During the financial year the statutory auditors of the company were dissatisfied with certain irregularities which occurred at the Malanpur Unit. The said irregularities were perpetrated by the unit head, who did not give any explanation to these irregularities to the statutory auditors. The amount which was involved in these irregularities amounted to around Rs. 5.00 crores (previous year Rs. 5.95 crores). The company will initiate legal proceedings for the recovery of the above stated amount, however, the company has made a specific extraordinary provision for the above stated amount which has been reflected in the attached financial accounts and the above amount has been reflected under the heading "Loans and Advances recoverable The unit head at that time was Arun Kapur.

31. Mr. Memani then considered what would be the position if the amounts were due from a third party and what, in his opinion, should be done since Arun Kapur was one of the signatories to the MOU. Mr. Memani opined as follows:-

> In a normal case, if the amounts had been due from any third party, the above extraordinary items would be netted off the valuation. However, in the current case,

> the amount is due from one of the signatories of the Memorandum of Understanding. Therefore, given the context of the valuation exercise, we have considered it appropriate to assume that the above would be recoverable from the said signatory of the Memorandum of Understanding i.e. Mr. Arun Kapur. Therefore, we have assumed Rs. 1,045.3 lakh (Rs.545.0 lakh of extra-ordinary revenue loss and Rs. 500.3 lakh of provision) to be recoverable from him. Atlas Cycles has already claimed a tax deduction on the extra-ordinary revenue loss so booked earlier. The tax deduction amounts to Rs. 194.6 lakh at the marginal tax rate. Therefore, a net amount of Rs. 850.7 lakh is added to the valuation. We have not assumed any interest income that may arise on account of delayed recovery of this amount.

32. Finally, the covering letter sent by Mr. Memani while forwarding the impugned report is very relevant in this context. According to Mr. Memani, the two objections that Arun Kapur had raised to the draft report were his inability to verify the authenticity of information since he and his family were excluded from the affairs of Atlas Cycles and that the draft report is biased to the extent of a sum of Rs. 10.45 crores recoverable from Arun Kapur. Mr. Memani clarifies in the covering letter that:

> The amount siphoned off was considered "recoverable because it is not a bad debt in the normal course of business nor is it a defalcation by a third party.
>
> The defalcation was by Arun Kapur, a promoter and one of the signatories to the MOU, and this was also referred to and quantified in the audited financial statements of Atlas Cycles as at 31st March, 2002.
>
> He was not forming a view on the genuineness of the allegations but only addressing the issue from the viewpoint of valuation for the purposes of settlement among the Kapur family.
>
> The amount was parked in the Malanpur unit of Atlas Cycles since it was due to the said unit.
>
> At the time of basket formation, the amount may appropriately be taken into consideration.
>
> This opinion is acceptable to everybody except Arun Kapur and his family, and for obvious reasons. This is what Mr. Memani had to say in his covering letter:-
>
> Let me clarify that the treatment of alleged defalcation of Rs. 1045.3 lakhs by Mr. Arun Kapur is considered "recoverable because it is not a bad debt in the normal course of business nor is defalcation by a third party/employee in normal course. Allegations are against the promoter and one of the signatories of the Memorandum of Understanding, and have been referred to and quantified in the audited financial statements of Atlas Cycles (Haryana) Ltd. for the year ended 31st March 2002. I am

> not forming view on the genuineness of the allegation but am only addressing the issue from the viewpoint of valuation of certain businesses for the purpose of settlement among the Kapur family group, and as desired by the order of Hon'ble Justice A.M. Ahmadi, Sole Arbitrator of 30th November 2002. I am of the opinion the said treatment is fair and proper. This amount has been parked in Malanpur, as it is due in the said unit. At the time of basket formation, this amount may appropriately be taken into consideration.

33. A perusal of the above would show that Mr. Memani has merely given his opinion without forming a view on the genuineness of the allegations made against Arun Kapur. The issue of defalcation was addressed from the viewpoint of valuation of certain businesses for the purpose of settlement among the Kapur family. Mr. Memani has only suggested that at the time of basket formation, this amount may appropriately be taken into consideration.

34. Since Mr. Memani has not given a final and binding opinion, which indeed he was not competent to, I cannot appreciate why the Plaintiffs are making a grievance of bias. As per the MOU dated 8th January, 1999, only the valuation arrived at by Mr. Memani was binding upon the parties. On all other issues, in case there was a difference of opinion, the same were required to be considered by the learned Arbitrator. Even the preparation of the baskets was to be done by the parties and if this was not possible, then the learned Arbitrator was required to prepare the baskets for distribution by draw of lots. Consequently, there is no basis for Arun Kapur to assume that the opinion of Mr. Memani would have any binding force. In any event, this could have been discussed by the three groups at the time of formation of baskets and if the controversy could still not be resolved at that stage, it could have been referred to arbitration. In other words, whichever way one looks at the problem, it hardly merits any consideration by this Court. In that sense, there is really no cause of action that has accrued in favor of the Plaintiffs so as to approach this Court for any relief. As already mentioned above, only the valuation given by Mr. Memani is final and binding; any expression of opinion by Mr. Memani on other issues is not final and binding.

35. Having dealt with the broad contours of interference, it is necessary to deal with the three specific grievances of the Plaintiffs, since they would be relevant for deciding the injunction applications. So far as the first grievance that Mr. Memani held joint conferences to the exclusion of the Plaintiffs, I do not find any substance in this grievance. The averments made by the Plaintiffs in this regard are extremely vague. The only averment made is in paragraph 15 of the plaint and that reads as follows:-

> It is further stated that defendant Nos. 10 and 11 have held meetings with other defendants to the exclusion of plaintiffs for the purpose of evaluation of all Units. It is further stated that defendant Nos.10 and 11 also circulated review reports to other defendants to the exclusion of the plaintiffs.

36. It would at once be seen that the allegation is devoid of any material particulars and is only a bald allegation. It is not indicated which meeting was held to the exclusion of the Plaintiffs, and when. Even during the course of oral submissions before me, learned Counsel for the Plaintiffs could

not indicate any meeting that Mr. Memani held with the Defendants to the exclusion of the Plaintiffs. Under the circumstances, I am not inclined to give any credence to this grievance voiced by the Plaintiffs.

37. Paragraph 16 of the plaint makes a reference to a letter dated 7th August, 2002. Having perused this letter, I find that there is only one sentence in paragraph 4 thereof in which it is stated that Mr. Memani has been holding meetings with the other two groups and discussing the business evaluation of all the units of the family. Again, this is an extremely vague sort of an allegation without any material particulars at all.

38. In this context, it may also be mentioned that the MOU required Mr. Memani to confer jointly with the three groups for the purposes of valuation. There was no requirement that he should confer jointly with every member of the three groups. If a member of one of the groups were absent at the joint conference, it would really make no difference at all as long as another member from that group was present. This view flows from the plain reading of the MOU, which was between groups and not individual members of the Kapur family.

39. Consequently, even if Arun Kapur or his children were excluded from a particular conference, it would make no difference, if some other member of the B.D. Kapur group were present and participating in the conference. In other words, for the Plaintiffs to substantiate their claim of exclusion, they would have to show that all members of the B.D. Kapur group were excluded from the joint conferences. This is not the case set up by them and indeed it cannot be so set up because there is no grievance of exclusion by the other members of the B.D. Kapur group. The purpose of the exercise was to involve all the groups, and not its individual members. Who represented each group was a matter that had to be decided inter se. All that was required was a representation of all the three groups and it is not the case of the Plaintiffs that the B.D. Kapur group was excluded from all or any of the joint conferences. Therefore, there is no substance in the first grievance made by the Plaintiffs.

40. In this context, it is worth pointing out that the Plaintiffs made this grievance before the learned Arbitrator also, and it was found to be baseless. In the meeting held on 23rd August, 2002 the learned Arbitrator held as follows:

> It was complained by Ms. Gupta that her client was not called to the Family Meetings and that the others met behind his back. This allegation is denied by the other groups. At the request of the parties Mr. K.K. Dewan was appointed an observer and I find from his minutes that meetings were held during March and April 2002 which were attended by Arun Kapur and whenever he had any reservation on any decision, he was allowed to make the same in writing. I pointedly asked Ms. Gupta to tell me which meeting was held without intimation to him but she could not name any. She merely stated that since they live in the same house his client could gauge from the movements that a meeting was taking place. I think this is just a wild guess on the part of her client. I therefore do not see any substance in this contention either.

41. In so far as the second grievance is concerned, it is a matter of record that the Plaintiffs were excluded from the affairs of Malanpur unit of Atlas Cycles some time in March, 2001. By a letter dated 18th April, 2002, Atlas Cycles (Haryana) wrote to Defendants No. 10 and 11 to refrain from forwarding any information regarding the said company to Arun Kapur since his services were terminated by the Board on 17th April, 2002. On this basis, it is the contention of the Plaintiffs that even if they participated in the joint conferences, the participation would have been only proforma because they had no access to relevant information and accounts, and so they could not assist Mr. Memani in arriving at a correct valuation of the assets in terms of the MOU.

42. I find no substance in this contention of the Plaintiffs. It has been stated by Defendants No. 10 and 11 in their written statement, and this is not denied by the Plaintiffs by filing a replication, that initially the data and/or information was supplied by the representatives or members of the three groups and subsequently by two coordinators, Mr. M.R. Aggarwal and Mr. Vipin Gupta, being the representatives of the group companies. It is further stated that Plaintiffs No. 1 and 3 in a meeting held on 11th March, 2002 with other members of the Kapur family, jointly and unanimously assigned the task of providing information/data to these two coordinators. Before that, pursuant to the consent given by all the parties concerned, including the Plaintiffs, pursuant to a meeting with the learned Arbitrator, Mr. K.K. Dewan was appointed an independent observer on 5th March, 2002 so as to smoothen the process of resolving all issues, including completing valuation of the assets. This is what Defendants No. 10 and 11 say in their written statement:-

> 2. That the answering Defendant No.11 while applying the accepted tenets of valuation and settled principles of accountancy has diligently and conscientiously accomplished the assignment of valuing, inter-alia, the Assets, Companies, Firms, Trusts etc. of the three groups of Kapur Family and furnished the said Valuation Report dated 03.01.2003. The said Valuation Report has been prepared on the basis of the data and/or information supplied by the representatives/members of three groups of the Kapur family to the Defendant No.11 and subsequently by the Co-ordinators, Mr. M.R. Agarwal and Mr. Vipin Gupta, being the representatives of the group companies (which have been valued). The members of the Kapur family including Plaintiff Nos. 1 and 3 in the meeting dated 11.03.2002 jointly and unanimously assigned the task of providing the information/data to the said Co-ordinators. Further, the Ld. Arbitrator pursuant to the consent of all the parties including the Plaintiffs herein appointed on 05.03.2002 an independent observer, Shri K.K. Dewan so as to smoothen the process of resolving all the issues (including the completion of Valuation) between the parties to the said MOU dated 08.01.1999.

Minutes of some of the meetings held by Mr. Dewan on 11th and 21st March and 10th April, 202 have been laced on record and they show the presence of Arun Kapur.

44. It is quite clear from the above that the task of evaluating the assets was quite daunting. In fact, it seems to have taken Mr. Memani a considerable amount of time to prepare the impugned report. Even the parties to this litigation realised the massive nature of the task and, therefore, decided to appoint coordinators who would give all necessary information to Mr. Memani. To avoid any

allegation of any kind and also to smoothen the process, the learned Arbitrator appointed Mr. Dewan, with the consent of all the parties, as an independent observer. Under these circumstances, the question of all relevant information not being made available to Mr. Memani simply does not arise. It must be remembered that Mr. Memani was only valuing the assets of the Kapur family and was not adjudicating or determining any dispute about valuation, which would require compliance with any principle of natural justice.

45. However, the grievance of the Plaintiffs is not that Mr. Memani did not have the requisite information, but that they did not have access to relevant information and accounts. If it is so, I think they have themselves to blame. In the first place, if Arun Kapur had defalcated amounts, as alleged against him, he can hardly expect anybody to pass on relevant information to him or his family. Once trust is lost, particularly in financial matters, it is extremely difficult, it not impossible, to redeem that trust. The allegations of defalcation against Arun Kapur may or may not be true, but those who made the allegations believe them to be true and then to expect them to give further information to Arun Kapur is to expect them to be foolish. Secondly, if the Plaintiffs had some information which was not being considered or presented before Mr. Memani, they could have certainly done so themselves. Nobody prevented them from giving information that they had to Mr. Memani so that a proper valuation could be arrived at. There is no allegation made by the Plaintiffs that they gave information to Mr. Memani which was not considered by him. Thirdly, whatever information was available to the parties would have been, I expect, discussed in the joint conferences and the Plaintiffs would naturally have had their say in these conferences. In any case, the other members of the B.D. Kapur group have no complaint about lack of adequate information. Finally, what was the information required by the Plaintiffs? They say that they required information to verify the accounts, but they have pointed out no discrepancy in the accounts. The objection raised by them was in the letter dated 7th August, 2002 which was suitably replied to by Ernst & Young through their letter dated 9th September, 2002. After this, no further grievance appears to have been made with respect to non-supply of information.

46. The issue of non-supply of some reports was raised before and considered by the learned Arbitrator in the hearing held on 23rd August, 2002. It was held that supply of the external audit reports was a matter for the Board of Directors of Atlas Cycles to decide since it pertained to the accounts of that Company from whose employ Arun Kapur was removed and ha was no more concerned with the management of the unit.

47. What is also sought to be conveyed by the Plaintiffs is that since they did not have access to information, they could not effectively participate in the conferences. Even if it is so, all other members of the B.D. Kapur group, that is, Vikram Kapur and Rajiv Kapur had access to this information. They are equally concerned with their interest and they have not made any grievance about the valuation being incorrect due to lack of adequate material. As already mentioned above, Arun Kapur and his children are not distinct from the B.D. Kapur group but are a part of it. Moreover, the Plaintiffs have not been able to point out anything in the impugned report which is per se incorrect, let alone incorrect due to the absence of adequate information with the Plaintiffs. Learned counsel for the Plaintiffs gave no instance of any incorrect valuation made by Mr. Memani.

48.The only "error" emphasized by learned Counsel for the Plaintiffs during the course of oral arguments was the discrepancy between the draft report and the impugned report with respect to the table appearing in paragraph 2.1 dealing with the Net Assets Value Based Valuation. It was pointed out that there is a considerable difference in the figures that have been given in the two tables.

49. While it is not necessary or even proper to go into the detailed accounts, it may be mentioned that the net assets valuation has been dealt with in detail in Chapter 5 of the impugned report and the detailed computation of the net assets value of each entity has been given in Annexure-1 to Annexure-21 of the impugned report. It is only after a study of Chapter 5 of the impugned report along with 21 annexures that will give the reasons for the discrepancy between the draft report and the impugned report. Suffice it to say for the present, by way of illustration, that one of the additional factors taken into consideration in the impugned report was the adjustment for equalizing the group companies(tm) holding in Atlas Cycles. It appears that the aggregate holding of the family members via some companies such as Milton, Corona, JDSPL and Limrose is different. The members of the Kapur family wanted the various clusters to have the same shareholding in Atlas Cycles via these companies. Accordingly, they planned to gift excess shares held by one faction to the other faction with lesser shares in Atlas Cycles. This had some impact on the net worth attributable to the donor and donee entities. Similarly, some built up area in the Sonepat factory of Atlas Cycles would become redundant after completion of the ongoing settlement. This and other attendant changes pertaining to the Sonepat division would have an impact on the value of the factory building, which was discounted by a redundancy discount of 50%. The net assets value has been also adjusted for a few matters like the proposed VRS costs of the Sonepat division, sales tax benefits available to the Malanpur division, etc.

50. It is clear from the above that it is not as if the changes between the draft report and the impugned report came out of the hat of Mr. Memani. The draft report was circulated to the Kapur family and discussions were held on this basis and comments invited in December, 2002. The Plaintiffs attended the discussions and gave their comments and it is only thereafter that changes were made in the impugned report. It appears to me that this argument has really been taken by the Plaintiffs only to cause some sort of a prejudice and to suggest some jugglery of figures without proper appreciation of the complete draft report or the impugned report.

51. The final grievance of the Plaintiffs is that Mr. Memani did not follow proper accounting procedures. There is not a single procedure pointed out by the Plaintiffs that has not been followed by Mr. Memani and in fact I find from a reading of the plaint that no such allegation has been made therein. In any case, the Plaintiffs have made no specific allegation and, therefore, even this grievance of the Plaintiffs is not well founded. The least one would have expected is a reference to some standard treatise on the subject, but that was not to be.

52. At this stage, it is appropriate to consider the individual applications filed by the Plaintiffs.

53. This is an application filed by the Plaintiffs under Order VI Rule 17 of the CPC for amendment of the plaint. The Plaintiffs seek to add several paragraphs after paragraph 24 of the plaint. The facts

sought to be incorporated, by way of an amendment, deal with events that have occurred subsequent to the submission of the impugned report. The burden of the amendments is that the impugned report has more or less been given effect to by the Defendants. The Plaintiffs seek to place on record their point of view about how and why they say that the impugned report has been virtually implemented by the Defendants. The Plaintiffs also seek to add certain consequential prayers.

54. No written statement has been filed by any of the Defendants, except Defendants No.10 and 11. Consequently, since the suit is still at a very preliminary stage, no harm would accrue to any of the Defendants if the amendments prayed for by the Plaintiffs are allowed.

55. However, the Plaintiffs seek to make some averments directed against Atlas Cycles and also some prayers concerning Atlas Cycles.

56. As already noted above, the suit has arisen out of a valuation report prepared pursuant to an MOU entered into between the three groups of the Kapur family on 8th January, 1999. While the members of the Kapur family may have a large shareholding in Atlas Cycles, that entity is a completely independent legal and juristic entity that has nothing to do with the MOU entered into between the groups of the Kapur family. Under the circumstances, the attempt of the Plaintiffs is to unnecessarily rope in Atlas Cycles into the controversy and if this is permitted, over a dozen entities with which the Kapur family is concerned would also have to be roped in to the litigation. All this is not only totally unnecessary but has no concern to the MOU entered into between the groups of the Kapur family.

57. Consequently, while allowing the amendment, I reject the addition of all the prayers sought to be incorporated to the extent that they pertain to Atlas Cycles. In other words, any reference made to Atlas Cycles in the proposed prayers (c), (d), (e), (f) and (g) is rejected. It is made clear that the prayers in the amendment application will be limited only to Defendants No.1 to 9.

58. The application is partly allowed. The amended plaint be filed within four weeks from today.

59. This is an application filed by the Plaintiffs under Order I Rule 10 of the CPC for impleading Atlas Cycles as Defendant No.12 in the suit.

60. I have already expressed my opinion that Atlas Cycles has got nothing to do with the MOU dated 8th January, 1999 which is the foundation for the suit filed by the Plaintiffs. Under the circumstances, Atlas Cycles is neither a necessary nor a proper party to the proceedings and is being dragged in by the Plaintiffs without any valid justification. The presence of Atlas Cycles is not at all necessary to effectually and completely adjudicate upon and settle all the questions involved in the suit, namely, the correctness of the impugned report and its implementation by the Defendants.

61. Under the circumstances, IA 10330/2005 is dismissed.

IA 388/2003, 10331/2005 & 2733/2003

62. The first two applications are filed by the Plaintiff under Order XXXIX Rules 1 and 2 of the CPC while the third application has been filed by Defendants No.8 and 9 under Order XXXIX Rule 4 of the CPC for vacating the ad interim injunction dated 14th January, 2003.

63. I have already dealt with the substantive issues that have been raised by the Plaintiffs as well as the Defendants in the main body of the judgment. For the reasons indicated therein, I find that the Plaintiffs have made out absolutely no prima facie case for the grant of any interim injunction.

64. The Kapur family had agreed to accept the valuation given by Mr. Memani with regard to its assets. I am of the view that the parties are required to abide by and adhere to the family settlement and that none of them is entitled to challenge the valuation arrived by an expert whose nomination was agreed by all members of the Kapur family. Even if any one of the members of the Kapur family would like to challenge the valuation report prepared by Mr. Memani, I am of the view that this Court should not interfere in the valuation because of the family settlement arrived at between the members of the Kapur family. Even otherwise, I am of the view that there is nothing intrinsically or substantively wrong with the impugned valuation report.

65. The Plaintiffs have not been able to show any balance of convenience in favor of their prayer being granted. The Plaintiffs represent only 1/9th of the Kapur family and if the balance 8/9th of the family accepts the impugned valuation report without demur, surely, the impugned report must be fully implemented, more particularly since there is no intrinsic or substantive error in the impugned report.

66. I also find that no irreparable damage or injury will be caused to any of the Plaintiffs if the impugned valuation report is implemented. The impugned report has been prepared pursuant to a family settlement. All the three groups of the Kapur family (except Arun Kapur and his children) find the impugned report to be eminently just and reasonable. If there are any creases that have to be ironed out, the Kapur family is expected to, as per the MOU, sit across the table and sort it out or else use the good offices of the learned Arbitrator for this purpose. By halting implementation of the impugned report, the damage and injury that is likely to be caused to the whole family would be far greater, long term and more widespread than it would be if the impugned report is allowed to be implemented. There are a vast majority of shareholders of Atlas Cycles who must be anxiously looking for an amicable resolution of the disputes between the Kapur family groups so that business can go on as usual rather than to have it stalled by a handful of disgruntled members of the Kapur family.

67. Undoubtedly, the grant of an injunction is a discretionary and equitable relief. The Plaintiffs have not been able to show why discretion should be exercised in their favor. On the contrary, the Plaintiffs have shown that they are only interested in obstructing the smooth working of the MOU dated 8th January, 1999 and an amicable settlement of all family disputes. The conduct of the Plaintiffs, particularly Arun Kapur, in allegedly defalcating a huge amount of money from Atlas Cycles cannot be easily overlooked since it forms a part of the annual report of Atlas Cycles for the year 2001-02. For this reason also, equity does not lie in favor of any of the Plaintiffs and there is absolutely no reason why the ex parte ad interim injunction should be allowed to continue.

68. Under the circumstances, both the applications for injunction, that is, IA No.388/2003 and IA No.10331/2005 are dismissed and the ex parte ad interim injunction granted on 14th January, 2003 is vacated. IA No.2733/2003 is allowed.

69. This is an application filed by Defendants No.2, 3 and 7 under Order VII Rule 11 of the CPC seeking rejection of the plaint.

70. Since an amendment of the plaint has been allowed, this application has become infructuous. It is dismissed as such. However, liberty is granted to Defendants No.2, 3 and 7 to file a fresh application under Order VII Rule 11 of the CPC for rejecting the amended plaint.

71. This is an application filed by the Plaintiffs under Order XXXIX Rule 2A of the CPC alleging violation of the interim injunction granted by this Court on 14th January, 2003.

72. The interim injunction granted on 14th January, 2003 reads as follows:-

> Notice for the date fixed.
>
> I have heard learned Counsel for the Plaintiff and am satisfied that if the Interim Orders prayed for are not immediately granted, the purpose of filing this Suit shall be rendered infructuous. The Plaintiff has disclosed a prima facie case in which the balance of convenience is in his favor. Unless the injunction prayed for is granted forthwith, irreparable injury shall be caused to the Plaintiff. Till the next date of hearing, the Defendants are restrained from taking any steps or acting in pursuance to the impugned Report. The compliance be made within three days.
>
> dusty as prayed for.

73. According to the Plaintiffs, the impugned report has been implemented by the alleged contemnors, including Defendants No.1 to 11 inasmuch as they have divided the family concerns exactly as suggested in the impugned report, the only difference being that the Plaintiffs have been excluded from getting their share of the assets.

74. The Plaintiffs have also relied upon an office order dated 31st August, 2003 issued by Atlas Cycles (Haryana) Ltd., Sonepat concerning the smooth and effective functioning of the company and the setting up of management committees. It is said that this Office Order is proof of implementation of the impugned report.

75. It appears to me that all that has been done by the alleged contemnors is restructuring the management of Atlas Cycles and other concerns. The impugned report would have been implemented if the draw of lots as postulated by the impugned report had taken place either mutually between the three groups of the Kapur family or under the auspices of the learned Arbitrator, but that has not been done nor is there any such allegation made by the Plaintiffs. The interim injunction granted on 14th January, 2003 was not intended, as indeed it could not have

been intended, to completely paralyze the working of Atlas Cycles and all other concerns of the Kapur family. Day to day activities, including organizational and managerial activities are necessary for any ongoing concern, particularly a large cycle manufacturer as Atlas Cycles. There was no injunction affecting Atlas Cycles and as a matter of fact, Atlas Cycles is not even a party to these proceedings and, therefore, no injunction could have been granted against it or for that matter against any of the concerns of the Kapur family. But, without going into this technicality, all that was intended by the order dated 14th January, 2003 was that the impugned report should not be acted upon and, therefore, the baskets need not be made. Realizing this position, none of the Defendants have prepared the baskets as postulated by the impugned report and so much so, I am told that even the learned Arbitrator has adjourned the proceedings before him sine die because otherwise he would have been required to prepare the clusters and hold the draw of lots.

76. There has been no transfer of ownership in terms of the impugned report and, therefore, I do not find that the alleged contemnors have violated any orders passed by this Court. In any case, since contempt proceedings are a matter between the Court and the alleged contemnors, I am prepared to give the alleged contemnors the benefit of doubt inasmuch as they appear to have acted in the best interests of the assets of the Kapur family. In this regard, the view of the Supreme Court in R.N. Dey v. Bhagyawati Pramanik may be mentioned: "Further, an aggrieved party has no right to insist that the curt should exercise such jurisdiction as contempt is between the contemner and the court.

77. Exercise of contempt jurisdiction by a Court is entirely discretionary. In Baradkanta Mishra v. Justice Gatikrushna Misra the Supreme Court, while dealing with criminal contempt, held in paragraph 5 of the Report, It has always been regarded as well-settled law that as far as criminal contempt is concerned, it is a matter entirely between the Court and the alleged contemner. No one has a statutory or common law right to say that he is entitled as a matter of course to an order for committal because the alleged contemner is guilty of contempt. All that he can do is to move the Court and draw its attention to the contempt alleged to have been committed and it will then be for the Court, if it so thinks fit, to take action to vindicate its authority and commit the alleged contemner for contempt. It is for the Court in the exercise of its discretion to decide whether or not to initiate a proceeding for contempt. Even if the Court is prima facie satisfied that a contempt has been committed, the Court may yet choose to ignore it and decline to take action. There is no right in any one to compel the Court to initiate a proceeding for contempt even where a prima facie case appears to have been made out. The same position obtains even after a proceeding for contempt is initiated by the Court on a motion made to it for the purpose.... So far as the contempt jurisdiction is concerned, the only actors in the drama are the Court and the alleged contemner. An outside party comes in only by way of drawing the attention of the Court to the contempt which has been committed: he does not become a part to the proceeding for contempt which may be initiated by the Court.

78.Under the circumstances, the application is dismissed.

79. This is an application filed by the Plaintiffs under Order XI Rule 12 of the CPC for discovery on oath of certain information as mentioned in paragraph 4 of the application. This application proceeds on the assumption that the Defendants have implemented the impugned report. I have

already held that the impugned report has not been implemented by the Defendants and have dismissed an application filed by the Plaintiffs under Order XXXIX Rule 2A of the CPC. Since this application proceeds on a mistaken assumption, I reject it because I am not satisfied that the discovery of information as prayed for by the Plaintiff is necessary at this stage of the suit.

Costs

80. The Supreme Court in Salem Advocates Bar Association, Tamil Nadu. v. Union of India has said in paragraph 68 of the Report as follows:-

> So far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory in as much as the liberal attitude of the Courts in directing the parties to bear their own costs had led parties to file a number of frivolous cases in the Courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on number of other issues or points which were unnecessarily raised, costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to rules in force. If any of the parties has unreasonably protracted the proceedings, the Judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.

81. Keeping in view the law laid down by the Supreme Court, I am of the view that actual costs should be imposed on the Plaintiffs since the main bone of contention was the injunction application filed by the Plaintiffs. Since hearing in this case went on for seven days, on 19th to 21st, and 24th to 27th April, 2006 and the injunction applications filed by the Plaintiffs (the main bone of contention) have been dismissed, I impose costs on the Plaintiffs of Rs. 1,10,000/-. Each of the Defendants will be entitled to a total of Rs. 10,000/- from the Plaintiffs.