

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ARB.P. No.28/2008(u/S 11 of the Arbitration Act, 1996)

% Date of decision: 25th September, 2009

M/S ZOOM MOTELS PVT LTD Petitioner

Through: Mr. Dalip Mehra with Ms Akriti,
Advocates.

Versus

**M/S SHERANWALI HOTELS & RESORTS ...Respondent
LTD**

Through: Mr. H.S. Chandhoke with Mr Shiv
Sapra, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The parties are admittedly the parties to an agreement dated 10th August, 2007 providing for resolution of disputes under the Arbitration Act, 1996 with the arbitration proceedings to be held at Delhi.

2. The counsel for the respondent has opposed the petition on three grounds. Firstly on the ground of this court being not the appropriate court having territorial jurisdiction to entertain this petition; secondly on the ground of agreement aforesaid being unstamped and unregistered while being required to be compulsorily registered; and, thirdly on the ground of the agreement having been abandoned by the parties. As far as the first of the aforesaid pleas is

concerned, it is contended that the agreement was for development of the immovable property of the respondent at Jammu by the petitioner in consideration of the petitioner having certain rights in the said property, post development. It is further contended that from the IA.No.691/2008, under Section 9 of the Act filed by the petitioner in these proceedings, it appears that the petitioner is claiming rights in the property and is claiming appointment of arbitrator for adjudication of the said rights. The contention is that the appropriate court within the meaning of Section 2(e) of the Act to entertain this petition would be the court within whose jurisdiction the immovable property is situated.

3. If that be the position, undoubtedly in view of the dicta in ***Harshad Chimanlal Modi Vs DLF Universal Ltd*** (2005) 7 SCC 791 this court would not have jurisdiction. However, the counsel for the petitioner states that he is not claiming any rights in the immovable property and the claims of the petitioner against the respondent, of which arbitration is sought are for breach of agreement by the respondent and consequent losses suffered by the petitioner.

4. Faced with the aforesaid, the counsel for the respondent has contended that Section 16 (d)/(e) of the CPC would still apply. Section 16(d) is for determination of rights in property and Section 16(e) for compensation for wrong to immovable property. The counsel for the petitioner having stated that no claims in immovable property situated outside the jurisdiction of this court are claimed, Section 16(d) does not apply. The claims of the petitioner for breach of contract would not be for compensation for wrong to immovable property.

5. Else the agreement itself states that the same is executed at New Delhi and the parties had also agreed to the venue of arbitration at New Delhi. This court would thus be the appropriate court for the adjudication of the claims for breach of contract.

6. The counsel for the respondent has next contended that the agreement ought to be impounded, being unstamped. Though it is contended that it is compulsorily registrable but neither is it the case that the possession of the property in part performance of the agreement has been delivered to the petitioner either as owner or as a lessee nor is any clause of the agreement found to be such as requires registration. The agreement is a development agreement. The true nature and purport of such an agreement has been adjudicated by this court in ***Ansal Property and Industries Pvt Ltd Vs Anand Nath*** MANU/DE/0824/1991. It has been held that such agreements are to exchange in future and are in the nature of agreements to sell. An agreement to sell without delivery of possession does not require registration. The counsel for the respondent states that though the petitioner claims to be in possession, the respondent does not admit the same; the counsel for the petitioner states that petitioner's case is of only having put its equipment on the property. Such an agreement does not require registration compulsorily. Even otherwise Division Bench of this court has held in ***N.I.I.T. Institute of Information Technology Vs West Star Construction Pvt Ltd*** MANU/DE/0485/2009 that an arbitration clause even in a lease deed requiring compulsory registration although not so registered can be implemented.

7. As far as the request for impounding is concerned, stamp duty payable on an agreement of such nature is Rs 50/- and the counsel

for the petitioner states that he shall deposit the maximum penalty. i.e. ten times together with the deficiency in stamp duty with the Collector of Stamps within four weeks of today.

8. As far as the plea of the agreement being abandoned is concerned that is on the merits of the dispute and cannot be gone into at this stage. There is no material before this court on the basis of which the said plea can be entertained at this stage.

9. Accordingly, Justice Anil Dev Singh (Retd) is appointed as the arbitrator to adjudicate the disputes and differences in terms of the arbitration clause contained in the agreement aforesaid and further limited to the statement aforesaid of the counsel for the petitioner. The counsel for the parties to fix the fee and other expenses of the arbitrator in consultation with the arbitrator and to bear the same equally subject to award as to costs. The parties to appear before the arbitrator with prior appointment on 23rd October, 2009.

RAJIV SAHAI ENDLAW, J

September 25, 2009
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