

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **FAO (OS) No. 196/2009 and FAO(OS) 197/2009**

Reserved on : May 19th , 2009

Date of decision : May 21st , 2009

1. FAO (OS) No. 196/2009

RITIKA JHANJI Appellant
Through : Mr. Viraj Datar, Advocate

VERSUS

RAGHBIR SINGH SEHGAL & ORS. Respondents
Through : Mr. Nishit Kush, Advocate for
Respondent No. 1.

2. FAO (OS) No. 197/2009

RITIKA JHANJI Appellant
Through : Mr. Viraj Datar, Advocate

VERSUS

RAGHBIR SINGH SEHGAL & ORS. Respondents
Through : Mr. Nishit Kush, Advocate for
Respondent No. 1.

CORAM:
HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

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JUDGMENT

VALMIKI J.MEHTA, J.

1. These two appeals arise from two impugned orders of the same date viz. 12.5.2009 passed in petitions being OMP Nos. 530 and 657 of 2008. Petitions were filed under Section 9 of the Arbitration and Conciliation Act, 1996 by the appellant, seeking reliefs against the respondents 1 & 2 herein and who were also respondents 1 & 2 in the original petitions. The learned Single Judge by the impugned orders has dismissed the petitions on two counts. Firstly, it has been held by the learned Single Judge that there is no arbitration agreement between the parties. Secondly, the learned Single Judge has further held that even assuming there is an arbitration agreement, ye, the nature of the disputes raised in the Section 9 petitions do not fall within the scope of the arbitration clause.

2. Briefly the facts are that respondents 1 & 3 were the original owners of the property B-474, New Friends Colony, New Delhi. These respondents entered into a collaboration agreement dated 14.3.2002 with one Sh. Dinesh Gupta. As per the collaboration agreement, in lieu of Sh. Dinesh Gupta reconstructing, at his own cost, the entire property which was to comprise of the

basement, ground floor, first floor and second floor with terrace rights, Sh. Dinesh Gupta, was to get the rights in the basement and second floor with terrace rights of the property. The ground floor was to be owned by the respondent No. 1 Sh. Raghubir Singh Sehgal and the first floor was to be owned by his brother Sh. Narinder Singh Sehgal. The appellant Ms Ritika Jhanjhi w/o Vineet Jhanjhi purchased the second floor vide the sale deed dated 11.2.2005. The sale deed was preceded by an agreement to sell dated 7.10.2002. The first floor which was originally owned by the respondent No. 3, was thereafter, purchased by the respondent No. 2 under a sale deed dated 7.12.2007. The respondent No. 2 is a widow and has two children. That disputes and differences arose between the appellant and the respondent No. 1 (owner of the ground floor) and the respondent No. 2 (owner of the first floor). These disputes pertained to water supply related issues of underground water tank and fixing of booster pumps by the respondents on their municipal line and also with respect to parking of the cars. These disputes resulted in the appellant's filing the two petitions in which the impugned orders have been passed.

3. The counsel for the appellant has urged the same points as pressed before the learned Single Judge that there was an Arbitration Clause which was binding between the appellant and the respondents 1 & 2 and also that the scope of the Arbitration Clause covered the disputes which were the subject matter of the OMPs.

4. In order to appreciate the contention whether the disputes pertaining to water supply issues and parking of cars whether the same are within the scope of the Arbitration Clause, it would be useful to refer to Arbitration Clause which is a clause in the sale deed dated 11.2.2005 entered into between the appellant on the one hand and Dinesh Gupta, acting as the attorney holder of the owners, namely, the respondents 1 & 3 herein on the other hand. As stated above, the second floor was owned by Sh. Dinesh Gupta under the collaboration agreement in lieu of his spending the entire amount on reconstruction of the property. The arbitration clause reads :

“In the event of any dispute arising between the parties with respect to the reconstructions of the building and/or a part of the building on account of any structural defects and/or on account of any damage to the property by an act of God or on account of other circumstances beyond the control of the parties or due to any act of omission and commission of any of the Owners of any flat then in that event the dispute shall be resolved by Arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act 1996. In the event of Arbitrator finding that the damage to the building is on account of an act of omission or commission of any of the flat Owners and/or on account of negligence of one flat owner then in that event the Arbitrator shall be obliged to compel such party to meet the costs of reconstruction and repair to restore the other parties to their original status and to compensate them for their loss and in the event of defaulting party failing to meet the costs such defaulting party's interest in the Building shall be liable to be sold under the directions of the Arbitrator to meet the costs. In the event of damage being caused due to an act of God or such similar circumstances, all parties shall jointly contribute for the restoration of the Building and a party failing to do so shall be liable to have its interest sold as aforesaid. The Arbitrator shall have the right to issue interim directions including appointing contractors etc. and proceed with the work of reconstruction and restoration pending the final Award and on such terms and conditions as the Arbitrator shall deem just and proper in the circumstances. ”

5. A reading of the aforesaid clause makes it clear that the only disputes which are the subject matter of the Arbitration Clause are the disputes which pertain to structural defects or damage to the property either by the act of the parties to the sale deed or on account of circumstances beyond their control. In such a case, the clause provided for arbitration with respect to the reconstruction and repair issues for the structural defects and the damage to the property. Disputes pertaining to water supply or car parking could under no circumstances be the subject matter of this Arbitration Clause. More so, because the sale deed has worked itself out by the title in the second floor of the property having passed on to the appellant under the sale deed, and admittedly, the disputes do not pertain to any issue arising with respect to passing of the title under the sale deed much less within the scope of the Arbitration Clause as reproduced above. Simply because there are disputes between the two parties to a sale deed (assuming that the respondent No. 1 is a party, and which he was not as observed hereafter) cannot mean that those disputes will fall within the subject matter of the Arbitration Clause in the sale deed. The disputes in the present case may be between the appellant and the respondent No. 1 who are parties to the sale deed, but, neither the disputes are such which are the subject matter of the sale deed and nor are they such which fall within the limited scope of the Arbitration Clause which only pertains to disputes with respect to repairs and reconstruction for structural defects and damage to the property.

6. We also agree with the second finding of the learned Single Judge that neither the respondent No. 1 nor the respondent No. 2 can be said to be parties to the Arbitration Clause and, therefore, there is no arbitration agreement between the parties. So far as the respondent No. 2, the owner of the first floor is concerned, the position is very clear that she independently purchased the first floor of the property from the respondent No. 3 and, therefore, there is no arbitration agreement or any agreement/document whatsoever executed by and between the appellant and the respondent No. 2. It is not understood as to how the appellant can urge that the respondent No. 2 is a successor in interest of the respondent No. 3 simply because the respondent No. 3 is a party to the sale deed dated 11.5.2005 entered into between the appellant and Sh. Dinesh Gupta as attorney of respondents 1 & 3. As already stated above not only the sale deed had worked itself out and does not survive as there are no disputes pertaining to the sale deed, also, the subject matter of the sale deed dated 11.2.2005 is the second floor of the property and the subject matter of the sale deed between the respondent No. 2 as purchaser and respondent No. 3 as seller is for a different floor viz the first floor of the property. Though as stated above, the respondent No. 3 was only a nominal party to the sale deed dated 11.2.2005 inasmuch as he was acting through the general attorney Sh. Dinesh Gupta for the reason that to transfer the title in the second floor which had vested in the builder under the collaboration agreement, it was necessary to have the respondent Nos. 1 & 3

have to acted as transferors because without them a complete title would not have passed on to the appellant of the second floor with the proportionate interest in the land, however, that by itself cannot make the agreement of the second floor of the appellant as between the respondents 1 & 3 acting in their own capacity and with the appellant. The disputes which have arisen between the appellant and the respondents 1 & 2 are simply and categorically between two separate apartment owners and which relationship inter se the appellant and the respondents 1 & 2 is not the subject matter of any agreement, much less having an Arbitration Clause therein. So far as the respondent no. 1 is concerned, the same reasoning as applicable to respondent no. 2 will also apply to hold that the respondent no. 1 cannot be said to be the successor in interest of the builder. The disputes are thus between owners of different flats at different floors of the property and governed by different sale deeds and it is not thus permissible to join these documents having different subject matters/different apartments to hold that there is an arbitration agreement jointly between the all the three parties viz the appellant, respondent no. 1 and the respondent no. 2.

7. The counsel for the appellant has cited the case of *Punjab State Industrial Development Corporation Ltd. Vs. Triveni Engineering Industries Ltd. and others* 2009(1) AD (Delhi) 502 in support of his contention that the respondents No.1 and 2 are successors in interest of the builder/respondents No.1 and 3 and, therefore, the Arbitration Clause in the Sale Deeds binds the

parties. We fail to see how this judgment applies to the facts of the case inasmuch as we have already held that not only the Sale Deed has been worked out and nothing remains to be performed thereunder, but also, that the disputes are not between parties with respect to the subject matter under the sale deed and disputes are between different owners of different flats on different floors and each governed by a separate document/sale deed. Additionally the judgment will not apply as we have also held that the disputes which were the subject matter of the Section 9 petitions do not fall in the scope of the Arbitration Clause.

8. We further agree with the learned Single Judge that the petitions under the Arbitration Act were simply filed to avoid paying court fees on a regular suit.

9. The appeals, therefore, are dismissed.

VALMIKI J. MEHTA, J

MUKUL MUDGAL, J

MAY 21 , 2009

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