

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

Date of Reserve: 26.5.2009

Date of Order: July 01, 2009

OMP No. 471/2008

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01.07.2009

M/s DLF Home Developers

... Petitioner

Through: Mr. Sanjay Suri, Sr. Advocate with
Mr. Sonal Sinha, Advocate

Versus

VIBES Developers Pvt. Ltd. & Anr.

... Respondents

Through: Mr. J.P.Sengh, Sr. Advocate with
Mr. Gaurav Bahl, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

This application/petition has been made under Section 9 of the Arbitration & Conciliation Act, 1996 by the petitioner alleging that the petitioner had given an amount of Rs.20 crore to the respondent no.1, a Private Limited Company registered under the Companies Act, in terms of an agreement dated 9.11.2006 entered into between the parties. Under the agreement, the respondent no.1 in the first stage was to look for around 320 bighas ($\pm 15\%$) of

contiguous land located approximately 4 kms from DPS and on the same side of Jaipur-Ajmer Highway in Village Sarangpura, Govindpura, Ramchandpura, Tehsil Sanganer Fagodiawala, Jaichandpura, jaibhawanipura, Thikarya, Govindpura and Bichpudi Tehsil, District Jaipur with minimum two frontages of 700 feet and 700 m each and abutting/along/adjacent to the main Jaipur-Ajmer National Highway. After identifying this land, the petitioner was to purchase this land from the rightful owners at an average price per bigha (1.6 bigha = 4840 sq. yards = 1 acre) as given in the agreement. The respondent was to get consolidation fees of a sum equivalent to 4% of the average value of the land. The petitioner in terms of this transaction gave a sum of Rs.20 crore as advance to the respondent company. Out of this advance, the respondent company was to pay to the different farmers/land owners a part of the sale consideration and was also to adjust the expenses. It was agreed that after such deduction of advances as made by the respondent out of this amount to the land owners, the petitioner was to pay the balance consideration to the land owners and execute the transfer deeds. The respondent was to provide to the petitioner a statement of land owners with the shareholding and the amount already paid and payable along with all necessary land registry record as may be required to ascertain the status of ownership of the land sought to be conveyed. The respondent company in order to secure the interest of the petitioner had issued two post dated cheques of Rs.10 crore each to the petitioner after receiving advance of Rs.20 crore from the petitioner. It is submitted by petitioner that this amount of Rs. 20 crore was

deposited by respondent company in its account. The petitioner when checked the account of the respondent found that out of the amount of Rs.20 crore received by respondent company from the petitioner the respondent deposited Rs.15 crore with the Registrar General of this Court towards purchase of a property in Golf Links viz. 208, Golf Links, New Delhi through Court auction instead of spending this amount for the purpose for which it was given. Remaining Rs.5 crore was also not spent by the respondent in discharge of its liability under the agreement. In support of this contention, the petitioner has placed on record the auditor's report, balance sheets and other accounts of the respondent company as obtained from the Registrar of Companies. The petitioner's contention is that the respondent miserably failed in discharge of its liability as per clause 4 b) of the agreement, wherein it was provided that the time was essence of this agreement. The First Party (respondent) had assured the Second Party (petitioner) that it would arrange the entire procurement of subject land within a period not exceeding 150 days from date of this agreement. Stage I would be completed within 100 days and Stage II will be completed in 125 days and Stage III was to be completed within overall maximum period of 150 days of the agreement. He submitted that in view of the fact that respondent had violated the terms of the agreement and had in fact utilized the money, which was given for assimilation of land, towards other heads, the respondent should be asked to give security and the bank account of the respondent wherein the respondent had received back a part of Rs.15 crore be attached. It is argued by

the petitioner that it had learnt that one of the owners had already refunded an amount of approximately Rs.7.5 crore, which is lying in the account of the respondent company. The petitioner's case in nutshell is that funds given by the petitioner to the respondent no.1 were diverted by the respondent no. 2 for his own purposes instead of procuring the land for the petitioner.

2. The learned Counsel for the respondents on the other hand submitted that the respondents had acted sincerely in discharge of the agreement. He submitted that respondents had paid huge sums to various land owners for their lands on Jaipur-Ajmer Highway in accordance with the agreement, but it was the petitioner who failed to enter into transfer documents with the land owners. He alleged that after the petitioner was given information by the respondent about different land owners, the petitioner directly contacted the land owners in order to bypass the respondents and tried to enter into sale deeds with them directly. The petitioner was not even having funds to purchase the entire land as was sought to be procured with the help of the respondent. The petitioner had also filed a company petition before the Company Court for winding up of the respondent company and before the Company Court the respondent had filed around 10,000 documents showing that the respondent had paid advances to different land owners and had acted in compliance of the agreement.

3. The respondent no.1 in this case is a private limited company having obligation under law to maintain proper accounts and to show all expenses and revenue in its books of accounts. The plea taken by the respondent that it had spent crores of rupees in terms of the agreement is not supported by the accounts of the company. When the learned Counsel for the respondent was confronted with the accounts of the company, the learned Counsel stated that the respondent had got white money from the petitioner and used this white money for purchase of a property through Court auction and in lieu thereof respondent no.2 spent from his own pocket to pay the farmers/land owners to identify the land in terms of the agreement and to verify the title documents and to pay advances to the land owners. The respondent had failed to place on record any accounts either of the respondent no.1 or of respondent no.2 showing that any amount was spent by respondent no.1 out of the funds made available to it by the petitioner for the purpose of the agreement. The petitioner had not advanced funds to the respondents to enter into illegal transactions in the name of its Director. The petitioner had entered into a lawful agreement with the respondent whereunder the respondent no.1, a private limited company was to pay the land owners a part of the consideration amount on behalf of petitioner and respondent no.1 was to receive lawful commission/profits out of the transaction. It was not agreed by the petitioner and the respondents that the funds made available by the petitioner would be used by the respondent no.2 as white money for his own transaction and he shall induct

some black money and would pay the farmers in his own name. All agreements with the farmers were to be entered into for the benefit of the petitioner and the agreements entered with the farmers were to reflect this. I consider that the plea taken by the respondent no.2 that he had spent black money/unaccounted money from his own pocket in order to procure/fulfill the terms of the agreement cannot be entertained by the Court. If such a plea is entertained that would amount to Court legalizing the illegal acts and transactions entered into by respondent no.2 and shall also put a stamp of validity of using unaccounted money by the respondent. If such a plea is entertained the Court shall in fact be acting as a money launderer. I consider that such a plea cannot be entertained. All transactions were to be done by the respondent no.1 lawfully out of the money provided to it for the purpose.

4. The balance sheet of respondent no.1 company shows that the respondent no.1 had in fact diverted the funds provided by the petitioner from the very beginning and the intention of the respondents had been just to take the petitioner for a ride.

5. In view of circumstances explained above, the petition of the petitioner is allowed to the following extent:

1. Respondents No. 1 & 2 are restrained from operating their bank account bearing no. 051-405918-001 at HSBC Limited Branch at 24, Ashok Estate, Barakhamba Road, New Delhi.

2. The respondents are directed to furnish a security of immovable property to the Registrar General of this Court worth Rs.20 crore within 30 days by submitting title deeds of immovable property. In alternate, the respondents are directed to furnish a bank guarantee to the tune of Rs.20 crore in favour of the petitioner to the Registrar General of this Court which shall be forwarded to the Arbitrator once the arbitration proceedings start. After, the bank guarantee/security of immovable property is furnished, the respondents would be at liberty to operate the aforesaid bank account.

With these directions, the petition stands disposed of.

July 01, 2009
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SHIV NARAYAN DHINGRA, J.