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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: May 08, 2009
Date of Order: May 12, 2009

+ OMP 657/2008

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Ritika Jhanji

12.05.2009

...Petitioner

Through : Mr. Viraj Datar, Advocate

Versus

Raghubir Singh Sehgal

...Respondent

Through: Mr. Nishit Kush, 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

1. This petition has been filed under Section 9 of the Arbitration & Conciliation Act, 1996 by the petitioner on the strength of an arbitration clause contained in the sale deed executed in her favour by the erstwhile owner of the flat. The petitioner had purchased this flat situated at second floor of the building through a sale deed dated 11th February 2005. The sale deed contained the following clause in respect resolving of disputes.

The arbitration clause reads as under:

“ In the event of any dispute arising between the

parties with respect to the reconstruction 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 even 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 commissions of any of the flat Owners and/or on account of the negligence of one flat owner then in that event the Arbitrator shall be obliged to compete such party to the meet the costs of"

2. The respondents in this case are not the owners who sold the property to the petitioner. The respondents are the owners of the first floor and ground floor of the same building, who independently purchased the properties from the erstwhile owner. There is no dispute that there is no arbitration agreement inter se between petitioner and respondents. The petitioner has relied upon the above arbitration clause and filed this petition. The disputes between the parties are qua parking of cars, installation of water pumps in the water pipeline and visit of respondents to terrace for the purpose of rectifying the sanitary/ plumbing problems. The arbitration clause relied upon by the petitioner is not binding upon the respondent. Even if the erstwhile

owner had sold the flats to two different persons with the same clause, that would not create a contract between the flat owners inter se. Even otherwise, the above clause relied upon by the petitioner dealt with altogether different kinds of disputes and not the disputes which are racked up by the petitioner like parking of cars, installation of water pumps and going to terrace for rectification of plumbing works.

3. This petition is deliberately filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 instead of filing a proper suit with proper court fees. The petition is liable to be dismissed with costs. The petition is accordingly dismissed with costs of Rs.20,000/- to be paid to the respondent.

May 12, 2009
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SHIV NARAYAN DHINGRA J.