

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
#5.

+ FAO 84/2008

Date of decision: 19.10.2010

VIRENDER KUMAR GUPTA & ANR Appellants
Through: Mr.Sudhir Nandrajog, Sr.Adv. with
Mr.Siddharth Bambha, Ms.Saahila
Lamba, Advs.
versus

VORA PROPERTIES P.LTD. Respondent
Through: Ms.Kanika Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: MOOL CHAND GARG, J. (Oral)

1. Suit No.235/2005 was filed by the appellant in Delhi seeking a declaration that the agreement dated 29.08.2003 is a nullity inasmuch as no such agreement was executed by the appellant with the respondent and for seeking cancellation thereof.
2. The respondent in their written statement have taken a stand that no agreement dated 29.08.2003 was executed between the parties in Delhi. According to them an agreement was executed between the parties on 02.09.2003. It is not their case that the agreement dated 02.09.2003 is in fact the agreement dated 29.08.2003.
3. In these circumstances, the learned ADJ after taking note of the pleadings of the parties and the evidence which came on record dismissed the suit filed by the appellant vide order dated 12.11.2007.
4. Against the aforesaid order, the present appeal has been filed.

It has been averred on behalf of the appellant himself that in respect of an agreement dated 02.09.2003, a suit under Section 11 of the Arbitration and Conciliation Act, 1996 was filed by the respondent wherein on their application under Section 8, an Arbitrator has been appointed by Bombay High Court after hearing the parties.

5. It is not understood as to how the present appeal survives. Once the basic plea of the appellant that there was any agreement dated 29.08.2003 entered into between the parties is denied by the defendant, the question of any apprehension on the part of the appellant regarding any harm which may be caused to their interest if such an agreement remains in existence is no more.

6. Learned counsel for the defendant in this Court has categorically stated that there is no agreement entered into between the parties on 29.08.2003 in Delhi. They are denying that the agreement dated 02.09.2003 is the same agreement which is being referred to by the appellant as the agreement dated 29.08.2003. Moreover nothing has been brought to the notice of this Court. The respondents also states that they have never acted upon the agreement dated 29.08.2003. They are also not going to get any benefit out of the same or would use the said agreement against the interest of the appellant.

7. According to the appellant a forgery has been committed by the respondents regarding change of dates in the agreement dated 29.08.2003 whereby making that as the agreement dated 02.09.2003. However, there is nothing on record which may show that the appellant has filed any application for amendment of their suit to claim that the agreement dated 02.09.2003 be also declared as null and void. They are already before the Bombay Court insofar as the agreement dated 02.09.2003 is the same which is the agreement dated 29.08.2003. In case they are able to establish that forgery has been committed by the respondent they are entitled to take such plea before the Bombay Court and can even seek review of the order appointing an Arbitrator by moving appropriate application. They are also entitled to take other appropriate action against the respondent in accordance with law.

8. In view of the aforesaid stand of the defendant in the Suit No.235/2005 subject matter of the present appeal nothing survives because once there is no agreement in existence dated 29.08.2003 no relief can be granted to the appellant either in the suit or in this appeal.

9. Accordingly the appeal is disposed of with no order as to costs.

10. TCR be sent back along with a copy of this order.

MOOL CHAND GARG,J

OCTOBER 19, 2010

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