

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

% *Date of Judgment: 29.3.2012*

+ **C.R.P. 230/2005**

HOUSING & URBAN DEV. COR. LTD Petitioner
Through: Mr.A.K.Singh, Advocate with
Ms.Sheenu Vats, Law Officer.

versus

ANSAL PROPERTIES & IND. LTD Respondent
Through: Ms.Amrita Singh, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned is the order dated 15.03.2005. The application filed by the defendant in the pending suit under Section 8 of the Arbitration and Conciliation Act (hereinafter referred to as the 'said Act') had been allowed; the dispute pending had been referred to the sole Arbitrator; this was in terms of the arbitration clause contained in the agreement dated 01.08.1995.

2 Record shows that the plaintiff i.e. Housing & Urban Development Corporation Ltd. had filed a suit for mandatory injunction against Ansal Properties; a prayer was made to the effect that the defendant be directed to demolish the pump room and HT panel installed in the area depicted in the site plan marked in blue colour and in red colour. The defendant had offered a consideration of ₹1,68,80,93,200/- to the plaintiff for the allotment of shopping arcade site at HUDCO place, Andrews Ganj, New Delhi on terms and conditions stipulated in the brochure. On 10.03.1995, the plaintiff had issued a letter of allotment on the terms and condition contained therein calling upon the defendant to accept the terms and conditions along with car parking space for 210 cars; the first installment of 50% of the total consideration was required to be paid on or before 06.04.1995; balance was to be paid in two installments as indicated in the allotment letter dated 10.03.1995. In terms of clause 1 of the agreement, 200 square meters of this space could be sub-leased for installation of facilities such as air-conditioning plant and other services. It is not in dispute that 50% of the first installment was paid by the defendant; the agreement to sub-lease dated 01.08.1995 was executed; this was a tripartite agreement

between the President of India, the plaintiff and the defendant; the terms of the allotment letter dated 10.03.1995 was made a part and parcel of this agreement of sub-lease dated 01.08.1995 physical site was handed over to the defendant on 10.11.1995. A shopping arcade was constructed. The respondent was also given 200 square meters in the plant room on license basis on 10.11.1995 in terms of the letter of allotment and in terms of the agreement to sub-lease for the purpose of installation of service facilities such as air-conditioning and other misc. services. Contention of the plaintiff was that the respondent has illegality put up an HT Panel in the area under the possession of the plaintiff. The defendant vide letter dated 03.07.1998 sought permission of the plaintiff to place water tanks and pumps in the underground portion as per the location plan; permission was not granted yet the defendant had installed these tanks as also two pressure pumps; contention of the plaintiff was that this is an illegal and unauthorized user of the said premises. In spite of repeated efforts calling upon the respondent to remove the HT Panel and to demolish the pump room which was in terms of the communications of the plaintiff dated 24.03.2000, 13.06.2000, 22.06.2000, 24.08.2000, 13.09.2000 and CRP No.230/2005

11.10.2000, the respondent did not acceded to this request. The legal notice dated 24.11.2000 was also served upon the defendant as also a subsequent letter dated 18.01.2001. Left with no alternative, the present suit for mandatory injunction was filed by the plaintiff.

3 In the course of cross-examination of the witnesses, the present application under Section 8 of the said Act was filed. The impugned order had allowed this application on 15.03.2005.

4 Vehement contention of the petitioner before this Court is that this order suffers from an illegality; provision of Section 8 of the said Act have not been considered in the correct perspective; this application should have been filed before the first statement was filed on the substance of the dispute; the matter was under cross-examination when this application was filed; the impugned order thus suffers from an illegality; it is liable to be set aside.

5 Arguments have been countered.

6 Record shows that the issues had been framed on 11.03.2002; issued No. 2 reads herein as under:-

“Whether the suit of the plaintiff is not maintainable in view of arbitration agreement between the parties as mentioned in para 2 of the written statement?

OPD”

7 It was at the stage of the evidence of the plaintiff that the application under Section 8 of the said Act was filed. Written statement had been filed in 2001; present application has been filed on 29.10.2004.

8 There is no doubt to the fact that if all the ingredients of Section 8 of the said have been complied with; there is little option left with the Court but to refer the matter to arbitration. The arbitration clause was contained in the agreement dated 01.08.1995.

9 Record shows that the written statement was filed on 25.4.2001. Admittedly a preliminary objection had been taken about the jurisdiction of the civil court; contention being that since there is an arbitration clause and the disputes have to be referred to arbitration. However the averments made in the written statement clearly show that all answers on the merits of the controversy had been answered in this written statement; the filing of this written statement clearly shows that the defendant had submitted himself to the jurisdiction of the civil court. The application under Section 8 of the said Act was filed only on 29.10.2004.

10 The expression “first statement on the substance of the dispute”

contained in Section 8(1) of the 1996 Act is contra distinct from the “written statement” it implies the submission of the parties to the jurisdiction of the judicial authority; there must be a finding that the party has waived its right to invoke arbitration clause; where the party has himself submitted itself to the jurisdiction of the civil court as it was so in the instant case and the written statement filed by the defendant had answered the merits of the dispute; it is clear that the party in fact had waived its right to invoke the arbitration clause. Application under Section 8 of the Arbitration Act was in fact filed much later as noted supra.

11 In this background impugned judgment referring the disputes of the parties to the arbitration has committed an illegality. It is accordingly set aside.

12 Reliance by the learned counsel for the petitioner upon the judgment of Apex Court reported in AIR 2006 SC 280 Rashtriya Ispat Nigam Ltd. Vs. Verma Transport Company in this factual scenario is misplaced.

13 The parties are directed to appear before the District & Sessions Judge, Tis Hazari on 18.4.2012 at 10.30 AM who shall assign the case
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to the concerned court for the disposal of the suit on its merits. With these directions, petition is disposed of.

INDERMEET KAUR, J

MARCH 29, 2012

A/nandan