

\$~
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

#1, 3 & 20

+

ARB.P. 379/2011

ANIL SAINI

..... Petitioner

Through: Dr. Anurag Kumar Agarwal with
Ms. Chetna Chhikara, Advocates.

versus

RAVINDER KUMAR BHAN

..... Respondent

Through: Ms. Sonia Arora with
Mr. Aushutosh Shahi, Advocates.

O.M.P. 613/2011 & IA 6227, 7336/12, CrI MA 4895/2012

ANIL SAINI

..... Petitioner

Through: Dr. Anurag Kumar Agarwal with
Ms. Chetna Chhikara, Advocates.

versus

RAVINDER KUMAR BHAN

..... Respondent

Through: Ms. Sonia Arora with
Mr. Aushutosh Shahi, Advocates.

 **O.M.P. 303/2012**

RAVINDER KUMAR BHAN

..... Petitioner

Through: Ms. Sonia Arora with
Mr. Aushutosh Shahi, Advocates.

versus

ANIL SAINI

..... Respondent

Through: Dr. Anurag Kumar Agarwal with
Ms. Chetna Chhikara, Advocates.

CORAM: JUSTICE S. MURALIDHAR

4 5

ORDER

24.04.2012

%s

1. A Collaboration Agreement was entered into between Mr. Ravinder Kumar Bhan ('Mr. Bhan'), the Petitioner in OMP No. 303 of 2012 and Mr. Anil Saini ('Mr. Saini'), the Petitioners in Arb. P. No. 379 of 2011 and OMP No. 613 of 2011 on 18th November 2010 whereby Mr. Saini as builder, was to develop, construct and build a residential building consisting of ground, first, second and third floors with terrace together with stilt parking at the site of the property at B-1/60, measuring 200 sq. yds., situated in the layout plan of Wazirpur Residential Scheme, presently known as Ashok Vihar, Phase-II, Delhi. The existing structure had to be demolished and the aforementioned structure had to be erected according to the sanctioned building plans.

2. Clauses 6, 7 and 8 of the Collaboration Agreement read as under:-

"6. That in addition to the entire costs and expenses to be incurred on the construction of the aforesaid four storeyed building together with the stilt for parking, the Second Party shall also be liable to pay a sum of Rs.64,50,000/- (Rupees sixty four lac and fifty thousand only) as non refundable security amount. Out of the said amount, a sum of Rs 15,00,000/- (Rupees fifteen lac only) has been received by the First Party from the Second Party as part payment at the time of execution of this Agreement and the balance amount of Rs.49,50,000/- (Rupees forty nine lac and fifty thousand only) shall be paid by the Second Party to the First Party in the following manner:-

- a) Rs. 20,00,000/- (Rupees twenty lac only) within or up to 45 days from the date of execution of this Collaboration Agreement and on payment the First Party shall deliver the actual physical peaceful vacant possession of the aforesaid property to the

5 b

Second Party immediately to carry out the work of construction and development; and

- b) Rs. 29,50,000/- (Rupees twenty nine lac and fifteen thousand only) at the time of completion of structure of the entire building, who immediately execute and sign a proper Sale Deed in respect of Second Party's share i.e. entire Second Floor (without its roof rights) and shall get the same registered before the concerned Sub-Registrar, Delhi.

7. That the Second Party, in consultation with the First Party, shall engage and employ the Architect or Architects of repute at his own costs, expenses and responsibilities for preparation, submission and obtaining approvals for developing, promoting, constructing and completing the proposed residential building on the said plot of land. The Second Party shall for and on behalf of and in the name of the First Party apply to the concerned authorities for permissions, sanctions, approvals for the construction on the said plot of land.

8. That the entire amount required for carrying out construction, development, completion of the said building including the charges and fees of the architect for preparation of the plans and all the other statutory and other fees and/or demands shall be wholly born by the Second Party.

3. Disputes arose between the parties at the stage of implementing Clause 6(b) of the Collaboration Agreement with Mr. Bhan stating that the structure of the building was not complete and Mr. Saini contending to the contrary. Mr. Bhan further stated that Mr. Saini has not been paying him a sum of Rs. 30,000/- per month for the delayed period up to a maximum period of eighteen months from the date of the sanctioning of the building plan in terms of Para 19 of the Collaboration Agreement. On the other hand, Mr. Saini stated that Mr. Bhan was not letting the construction proceed and was creating hindrances in completing the construction in

Arb.P. No. 379 of 2011 *Page 3 of 7*

6

terms of the Collaboration Agreement. He contended that despite the structure being complete, Mr. Bhan has not come forward to sign the sale deed in respect of the second floor of the building which is to be given to Mr. Saini.

4. Mr. Saini has in OMP No. 613 of 2011 under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') sought interim directions restraining Mr. Bhan from creating third party rights in respect of the second floor of property in question and dispossessing Mr. Saini therefrom. An interim direction to this effect was passed by this Court in OMP No. 613 of 2011 on 23rd August 2011. In the said petition a direction was issued on 28th November 2011 appointing one Mr. P.B. Vijay, Civil Engineer as Local Commissioner (LC) to inspect the premises and to ascertain if the ongoing construction was in accordance with the Collaboration Agreement. Mr. Vijay has since submitted his report to which objections have been filed by both Mr. Saini as well as Mr. Bhan.

5. Mr. Vijay has, instead of confining his observations to the ongoing construction, also taken on the task of actually determining the *inter se* disputes between the parties and of deciding what amount should be paid by one party to the other. This was undoubtedly beyond the mandate of the LC appointed by this Court. However, the LC has made certain observations on some of the objections of Mr. Bhan as regards the defective work of construction. The LC has wrongly recorded the name of the architect of the builder, i.e., Mr. Saini to be M/s A.S.V. Associates when in fact it is the name of the firm of Mr. Saini's lawyer. Consequently, this Court directs that the report of the LC need not be acted upon by the parties, more particularly since the directions are hereunder

7 8

being issued for appointment of an Engineer to supervise the construction with the consent of the parties.

6. Counsel for the parties have agreed that this Court can appoint any engineer to supervise the construction work and also fix the fee of such engineer. As regards the fee of such engineer, counsel for Mr. Bhan points out to Clause 7 of the Collaboration Agreement in terms of which an architect was to be engaged by Mr. Saini at his cost and expenses. There is a controversy as to whether Mr. Saini's Architect Mr. Raj Kumar is continuing as such. However, this Court does not propose to decide that issue as in any event an independent engineer is being appointed to supervise the construction. In terms of Clause 7 of the Collaboration Agreement the fees of the said engineer will be paid by Mr. Saini.

7. This Court appoints Mr. S.S. Agarwal, 263, Rajouri Apartments, Rajouri Garden, New Delhi-110064 (Mob. 9811239155) as an independent Engineer for the project. His fees is fixed at Rs. 1 lakh which will be paid by Mr. Saini to him in two instalments of Rs. 50,000/- each, of which the first instalment of Rs. 50,000/- will be paid within a period of four weeks from today and the remaining within a further period of four weeks thereafter. It is estimated that the construction will be completed within six months from today. If the construction extends beyond that period Mr. Agarwal should be paid additional fees pro rata by Mr. Saini for the extended period. Mr. Agarwal is requested to be available at the site at least two days in a week on a mutually convenient time. He will supervise whether the construction is taking place in accordance with the sanctioned building plan and in terms of the Collaboration Agreement. If Mr. Bhan has any specific grievance in this regard, he will bring it to the attention of

§
/ a

Mr. Agarwal who will then take it up with Mr. Saini for appropriate corrective action. In the event there is any difficulty in complying with these directions, it will be open to either party to file an application for directions before the sole Arbitrator who is being appointed under this order.

8. The interim directions passed on 28th November 2011 in OMP No. 613 of 2011 and the interim direction passed on 30th March 2012 in OMP No. 303 of 2012 will continue till such time the learned Arbitrator disposes of the application of either party under Section 17 of the Act.

9. It is further directed that once Mr. Agarwal certifies that the construction as specified in the Annexure to the Collaboration Agreement is completed, then the parties will act upon Clause 6(b) of the Collaboration Agreement without any delay. Any further interim directions in that regard can be sought by either party from the learned Arbitrator. As regards the payment of Rs. 30,000/- per month as claimed by Mr. Bhan, he can seek appropriate directions in this regard before the learned Arbitrator in an application under Section 17 of the Act. He can also make it a subject matter of his claim/counter-claim before the learned Arbitrator.

10. In view of the above directions, the allegations in Crl. M.A. No. 4895 of 2012 filed by Mr. Bhan under Section 340 Cr.PC are not dealt with at this stage. The application is disposed of.

11. With the consent of the counsel for the parties, the disputes between

9 10

them, including their claims and counter-claims, are referred for adjudication to the sole arbitration of Mr. Dinesh Dayal, a retired Additional District Judge, 9 Upper Bela Road, Civil Lines, Delhi – 110054 (Mob: 9810100200). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules. It is further agreed that the arbitration proceedings can be held under the aegis of and as per the Rules of the Delhi High Court Arbitration Centre ('DHCAC').

12. The petitions and all pending applications are disposed of in the above terms. A copy of this order be delivered to the learned Arbitrator, Mr. S.S. Agarwal and the Co-ordinator, DHCAC forthwith.



S. MURALIDHAR, J

APRIL 24, 2012

akg

- From IA 9892/12 for direction (P-9 part II A)

\$~
*
39
+

16
IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P. 303 of 2012

RAVINDER KUMAR BHAN Petitioner
Through Dr. Anurag Agarawal with Mr. Umesh
Mishra and Mr. Anchit Oswal, Advocates.

versus

ANIL SAINI Respondent
Through Ms. Sonia Arora, Advocate.

And

12+

O.M.P. 613 of 2011

ANIL SAINI Petitioner
Through Ms. Sonia Arora, Advocate.

versus

RAVINDER KUMAR BHAN Respondent
Through Dr. Anurag Agarawal with Mr. Umesh
Mishra and Mr. Anchit Oswal, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER
28.05.2012

%

IA No. 8494 of 2012 (for exemption) in OMP No. 613 of 2012

Exemption allowed subject to all just exceptions.

The application is disposed of.

11

IA No. 9892 of 2012 (for direction) in OMP 303 of 2012
IA Nos. 8280 of 202 (for clarification of order dated 24th April 2012) &
10196 of 2012 (for appointment of another Architect) in OMP No. 613
of 2012

1. The present applications by Mr. Ravinder Kumar Bhan seek a clarification regarding directions issued by this Court in para 9 of its order dated 24th April 2012. It also seeks the appointment of another Architect in place of Mr. S.S. Agarwal who was in para 7 of that order appointed by this Court as an independent Architect to supervise the completion of the construction.

2. Both counsel confirm that for some reason Mr. Agarwal has not been able to carry out the directions in para 7 of the order dated 24th April 2012. Consequently, this Court appoints Mr. R.K. Gupta, retired Chief Engineer, DSIIDC, GNCTD, r/o C-127, Shakti Nagar Extn., Ashok Vihar, Phase-III, Delhi – 110052 (Mobile No. 9811154458) as an Independent Architect to carry out the directions contained in para 7 of the order dated 24th April 2012 and on the same terms as mentioned in the said order.

3. As regards the clarification of the direction issued in para 9, it is pointed out by learned counsel for Mr. Ravinder Kumar Bhan that under Clause 6 (b) of the Collaboration Agreement ('CA'), a sale deed was to be executed

in respect of Mr. Bhan's share i.e., the entire second floor in favour of the nominee of Mr. Bhan by the Respondent Mr. Anil Saini upon completion of the 'Structure' of the entire building as described in annexure to the CA. It is further pointed out that under the caption 'Structure' in the Annexure to the CA, the work described under Clauses (a) to (g) therein had to be completed. Once the work as specified therein is certified to have been completed by the Architect appointed by this court, then Mr. Saini should execute the sale deed in respect of the second floor in favour of the nominee of Mr. Bhan.

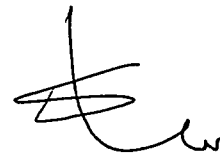
4. The apprehension expressed by learned counsel for Mr. Saini is that Mr. Bhan may abandon the work on the building, including the wood work flooring, etc. as specified in the Annexure and therefore, this prayer should not be acceded to.

5. Learned counsel for Mr. Bhan on the other hand allays this apprehension by stating that Mr. Bhan, who is present in Court, will give an undertaking to this court by way of an affidavit that Mr. Bhan will continue the work in the building even after the execution of the sale deed in his nominee's favour by Mr. Saini in respect of the second floor and complete the work as envisaged

13
in the Annexure to the CA.

6. Subject to Mr. Bhan filing in this Court an undertaking to the above effect within one week from today, it is clarified that once the Architect appointed by this Court certifies the 'Structure' as defined in the Annexure to the CA is completed, Mr. Saini will execute the sale deed in respect of the second floor in terms of para 6 (b) of the CA in favour of the nominee of Mr. Bhan within four weeks of such certification Further interim directions in this regard can be sought by the parties from the Arbitrator already appointed by the Court in its order dated 24th April 2012.

7. The applications are disposed of. Order be given dasti. Certified copies of the order dated 24th April 2012 and the present order will be sent by Special Messenger to Mr. R.K. Gupta forthwith.



S. MURALIDHAR, J

MAY 28, 2012

rk