

IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P. 441 of 2006

Reserved on: 9th May 2012

Decided on: 1st June 2012

U.S. RAJORA

..... Petitioner

Through: Mr. Sherry Chathly, Advocate.

Versus

C.K. BEDI (DECEASED) THROUGH LRS Respondents

Through: Mr. Sunil Magon, Advocate.

WITH

O.M.P. 479 of 2006

U.S. RAJORA

..... Petitioner

Through: Mr. Sherry Chathly, Advocate.

Versus

GURDEEP KAUR & ANR.

.... Respondents

Through: Mr. Sunil Magon, Advocate.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

01.06.2012

1. The challenge in these petitions under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') is to two Awards dated 5th July 2006 of the sole Arbitrator in the disputes between the parties arising out of agreements entered into between them for development and construction of a building consisting of independent and self contained flats/apartments on a freehold plot of land admeasuring 1005 sq. yards at W-19, Greater Kailash-II, New Delhi.

2. An agreement dated 28th September 1990 was entered into by Smt. C.K. Bedi with her real sister Smt. Gurdeep Kaur for the construction of a four storeyed building consisting of self contained residential flats/apartments on the said plot. On the basis of the aforesaid authority Smt. Gurdeep Kaur entered into an agreement dated 15th October 1990 with the Petitioner Shri U.S.Rajora for development and construction of the building consisting of independent and self contained flats/apartments according to modern liking, design and architecture at the said plot. A Memorandum of Understanding ('MoU') dated 1st November 1990 was also entered into between the Petitioner and Smt. C.K. Bedi recording that cost of construction was payable at the rate of Rs. 350 per sq. ft. of covered area on each floor. The Petitioner was also to be paid 50% of the amount earned by the owner.

3. Disputes arose between Smt. Bedi and Smt. Gurdeep Kaur. In terms of the settlement of such disputes, the agreement dated 15th October 1990 between Shri Rajora and Smt. Gurdeep Kaur stood cancelled. A fresh agreement was entered into between Shri U.S. Rajora and Smt. C.K. Bedi on 19th August 1992. Smt. Bedi had also executed a General Power of Attorney ('GPA') in favour of Shri U.S. Rajora. According to Shri Rajora, the construction work was started soon after sanction was obtained for the building plan. According to him, by the time the agreement dated 19th August 1992 between him and Smt. Bedi was executed, most of the work except finishing work was completed. The total of 16 flats i.e., four flats on lower ground floor, four flats on the ground floor, four flats on the first floor and four flats on the second floor were constructed. One flat being G-1 was given by Smt. Bedi to Smt. Gurdeep Kaur. Another flat being F-4 was retained by Smt. Bedi for herself. The remaining 14 flats were sold by Smt. Bedi to different buyers in the beginning of 1993. According to Shri Rajora, the total covered area

constructed by him was 15,364.63 sq. ft. for which Rs.350 per sq. ft. was payable by Smt. Bedi to Shri Rajora. He accordingly claimed that an amount of Rs.53,77,620 was payable to him by Smt. Bedi towards the cost of construction and Rs.56,61,188 being the 50% profit as per the agreement.

4. Smt. Gurdeep Kaur filed in this Court Suit No.1782 of 1993 against Smt. Bedi and Shri Rajora seeking reliefs in relation to the aforementioned property including recovery of money. By an order dated 28th September 2001, the said disputes were referred to the learned sole Arbitrator for adjudication. Shri Rajora had also filed Suit No.1780 of 1994 in this Court against Smt. Gurdeep Kaur and Smt. Bedi for recovery of money arising out of transaction pertaining to the same property. The said disputes were also referred to the same learned Arbitrator by an order dated 13th February 2002. In the Arbitration Application No.178 of 1996 filed by Shri Rajora under Section 11 of the Act against Smt. Bedi, this Court by an order dated 10th April 2002 again appointed the same learned Arbitrator to adjudicate the dispute.

5. During the pendency of the arbitral proceedings, Smt. Bedi died on 8th November 2004. By virtue of a Will executed by Smt. Bedi on 19th March 1999, Smt. Gurdeep Kaur inherited the flat G-1 to the exclusion of the other legal heirs of Smt. Bedi who also accepted the said position.

6. Based on the pleadings, documents and evidence led before him, the learned Arbitrator in the impugned Award dated 5th July 2006 held as under:

(a) Both parties admitted that the sale consideration shown in the sale deeds for the various flats were incorrect. While both parties admitted that the actual price was Rs. 25 lakhs per flat most sale deeds showed

the sale consideration to be only Rs. 9 lakhs leading to the inference that the balance cash component was around Rs. 2 crores. Mr.Rajora on the strength of the GPA negotiated the deals with the various flat buyers. He would have ensured that his cost of construction was first covered by the payments made and in any event he would not have handed over two flats to Smt.Bedi without receiving any money towards cost of construction.

(b) The three cheques of Rs. 2 lakhs each issued by Shri Rajora which when presented by Smt. Bedi for payment were dishonoured, were not stolen from him by her as alleged. These were probably issued by him and handed over to her at the time of settlement of accounts. His claims against Smt. Bedi were therefore liable to be rejected.

(c) As a result of the developments that took place in 1992, a fresh agreement was entered into between Smt. Bedi and Smt. Gurdeep Kaur in terms of which Smt. Gurdeep Kaur was given flat being G-1. Smt. Gurdeep Kaur cancelled her agreement with Shri Rajora and Smt. Bedi thereafter entered into an agreement directly with Shri Rajora.

(d) Smt. Gurdeep Kaur was unable to prove that the above documents were got executed from her by exercise of threat, coercion or undue influence. Shri Joginder Singh, husband of Smt. Gurdeep Kaur, who was to look after the flat of Smt. Bedi did not act fairly and entered into an agreement with his wife for transfer of the flat in question for a very low price. This raised serious questions about his integrity.

(e) The documents executed between the parties and the sale deeds had

to be read together. The non-production of the agreement of March 1992 was of no consequence since the dispute concerned the documents executed in August 1992. The MoU was a valid document and binding on the parties. It could not be said that Smt. Bedi had not complied with its terms.

(f) The report of the Local Commissioner appointed by Smt. Gurdeep Kaur affirmed the existence of 16 flats in the building and Smt. Gurdeep Kaur was very much aware of the structure of the flat G-1 which was agreed to be taken by her. Therefore, it could not be said that a complete flat being G-1 was not handed over to her. Smt. Gurdeep Kaur failed to establish that either the agreements executed in August 1992 or the MoU executed in March 1998 were not valid documents. Smt. Gurdeep Kaur had no right left in the building in question. Accordingly, all the claims of Smt. Gurdeep Kaur were rejected.

(g) As regards Shri Rajora's claim against Smt. Gurdeep Kaur, it was held that there was no evidence to prove the value of the structure at site along with certain building materials which were taken over by him. In the event the same was valued at around Rs.5 lakhs as alleged by Smt. Gurdeep Kaur, then there was no amount left out of the security which could be refunded to Shri Rajora. Which is perhaps why when the documents were executed in August 1992 he was not particular about the refund of the security amount to him either by Smt. Gurdeep Kaur or by Smt. Bedi. Accordingly, the claims of Shri Rajora were also rejected.

7. O.M.P. No.479 of 2006 has been filed by Shri Rajora insofar as his claims against Smt. Gurdeep Kaur had been rejected. O.M.P. No.441 of 2006 has been filed by him insofar as his claims against Smt. Bedi had also been rejected by the impugned Award.

8. According to Shri Rajora, the learned Arbitrator erred in rejecting his claims against Smt. Bedi despite accepting that the cost of construction at Rs.350 per sq. ft. on the covered area constructed which was 15,364.63 sq. ft. worked out to Rs.53,77,620. It is submitted that the observation that Shri Rajora would not have handed over the possession of the flats to the Respondents without receiving payments was incorrect since the possession of the flats was not with Shri Rajora. Reliance was also placed on the cross-examination of Smt. Bedi to urge that it was only in November 2004 that they were alleged to have come to know about the payment of cash by the purchasers to Shri Rajora. Therefore, this was only a presumption without proof. It is further pointed out that the observation of the learned Arbitrator that Smt. Bedi or her husband would not have allowed Shri Rajora to take over whole of the cash components received from the purchasers was contrary to the observation that Shri Rajora did in fact receive the amounts over and above the cheque amounts. It is further pointed out that in the cross-examination in 2004, it was stated by the Respondents that the taking of cash by the Petitioner was 8-9 years earlier which means 1994 whereas the transactions were in January 1993. Moreover, it was admitted by Smt. Bedi in her cross-examination that she had not mentioned anywhere in writing that Shri Rajora told that he had received cash from the buyers. Reference is made to the specific answers given in cross-examination by Shri Bedi to this effect. It is submitted that there was no plea by Smt. Bedi in respect of the three cheques of Shri Rajora in favour of Smt. Bedi, despite which the learned

Arbitrator rejected Shri Rajora's claims. It is submitted that Shri Rajora's claims against Smt. Bedi could not have been rejected particularly because there were no documents produced by Smt. Bedi to prove her claim.

9. As far as the Award in respect of Shri Rajora's claims against Smt. Gurdeep Kaur is concerned, it is submitted that with the work admittedly having been completed, there was no occasion to forfeit the deposit of Rs.8 lakhs. The only defence available to Smt. Gurdeep Kaur was that after the payment of Rs.2.5 lakhs remaining amount was adjustable against the materials lying on site for which there was no evidence to prove its value, therefore, this presumption by the learned Arbitrator was on the basis of surmises and conjectures.

10. At the outset it may be mentioned that the scope of interference by the Court in a petition under Section 34 of the Act is restricted. This Court is, while exercising jurisdiction under Section 34 of the Act, not acting as an appellate court. It is not expected to re-appreciate the evidence only to come to a different conclusion because it is possible to do so.

11. A perusal of the impugned Award reveals that the learned Arbitrator examined in great detail not only the pleadings and the documents but the depositions of the witnesses, both in examination-in-chief and cross-examination. The view taken by the learned Arbitrator on the said evidence cannot be said to be improbable or perverse. The close relations between the parties and the manner in which the earlier agreements were cancelled and substituted by the agreement of August 1992 have been set out in great detail by the learned Arbitrator. He has also examined the implications of these transactions.

12. Shri Rajora referred to the following cross-examination of Shri Bedi to urge that the finding that Shri Rajora had accepted cash was based on presumptions:

“I do not know whether the area of the flats sold is mentioned in the agreement to sell or not”.

“I have no idea as to what could be the cost of building”.

“I did not know at the time as to how much money the claimant was receiving over and above the cheques from the buyers and this payment would not cover the cost of construction and cost of land.”

“Now I know that Mr. Rajora has taken much more in cash even beyond the amount due to him. We came to know about it 8-9 years back and at the time we had written a letter to the claimant but we have no record of having sent that letter.”

13. The learned Arbitrator has discussed the above evidence and held as under:

“12. The power of attorney given to Mr. U.S. Rajora clearly contemplated that Mr. U.S. Rajora could negotiated the deals on behalf of Mrs. C.K. Bedi but the sale proceeds were to be received directly by Mrs. C.K. Bedi and so Mr. U.S. Rajora was not given any authority by Mrs. C.K. Bedi to have any sale proceeds from the prospective vendees. It is not credible that without having seen any power with Mr. U.S. Rajora to receive the sale proceeds any prudent prospective vendee would have paid particularly cash components to Mr. U.S. Rajora. Mr. U.S. Rajora who has completed the construction was to hand over the possession of the flats to the owners. It is not probable that Mr. U.S. Rajora would arrange all deals and would wait for his cost for construction to be paid and he would hand over the possession of all the flats either to the prospective vendees and two flats to Mrs. C.K. Bedi. Mr. U.S. Rajora is an experienced builder and his anxiety at first must have been to get the cost of construction from the sale proceeds before he would proceed further to hand over the possession of the flats to the prospective vendees or even to Mrs. C.K. Bedi.

13. Mr. U.S. Rajora has not given any reason either in the pleadings or in his evidence as to why he gave possession of the two flats to Mrs. C.K. Bedi when he has not received any penny towards his cost of construction and part of the profit amount. Mrs. C.K. Bedi also is not right in stating that she had blind faith in Mr. U.S. Rajora and she allowed Mr. U.S. Rajora to take away cash component without giving any account. Admittedly, she knew that cost of construction payable to Mr. U.S. Rajora was around Rs.54 lac and she was also aware of the amount of the profit being earned which was to be shared with Mr. U.S. Rajora. Probably Mrs. C.K. Bedi or her husband would not have allowed Mr. U.S. Rajora to take away whole of the cash component admittedly received from the vendees.

14. In all probability, I am of the view that Mr. and Mrs. Bedi and Mr. U.S. Rajora while completing these transactions must have settled the accounts and Mr. U.S. Rajora must have been paid his dues out of cash component and remaining cash component must have been paid to Mrs. C.K. Bedi and her husband and without any demur documents were signed and transactions were completed and possession of the flats were handed over to respective vendees and two flats to Mrs. C.K. Bedi. The claimant did not till February 1994 gave any notice to Mrs. C.K. Bedi pointing out that his accounts are yet to be settled.”

14. The above conclusions of the learned Arbitrator are based on a detailed analysis of the evidence. The view taken was a possible one. The learned Arbitrator also discussed the three cheques of Shri Rajora coming to the hands of Smt. Bedi and came to the conclusion that his plea that the said cheques were stolen or misappropriated by Smt. Bedi was unsubstantiated. The learned Arbitrator has categorically held that the cheques “must have been issued by Sh. Rajora and given to Smt. C.K. Bedi”. The above findings are based on proper analysis of the evidence on record and cannot be faulted.

15. As regards claims of Shri Rajora against Smt. Gurdeep Kaur, the learned

Arbitrator has in the impugned Award pertaining to Arbitration Case No.307 of 2002 observed as under:

“52. I need not to repeat the facts given in detail. This particular claim of Mr. Rajora is against Mrs. Gurdeep Kaur and Mrs. C.K. Bedi for return of the security amount. In terms of the agreement arrived at between Mrs. Gurdeep Kaur and Mr. U.S. Rajora. Rs.8 lac was to be paid as security amount by Mr. U.S. Rajora to Mrs. Gurdeep Kaur. Rs.7 lac admittedly was paid by way of cheques and Mr. U.S. Rajora claims to have paid Rs.1 lac by way of cash. There is no receipt obtained by Mr. U.S. Rajora as far as cash is concerned but at no point of time this fact was disputed by Mrs. Gurdeep Kaur that full security amount has not been paid. Even when MoU was executed on 1st November 1990 between Mr. U.S. Rajora and Mrs. Gurdeep Kuar, there was no mention that full security amount has not been received. Only question arising for consideration is whether Mr. U.S. Rajora is entitled to recover security amount, if so, from which of these Respondents namely; Mrs. Gurdeep Kaur and Mrs. C.K. Bedi. In the documents, which have been executed between Mr. U.S. Rajora and Mrs. Gurdeep Kaur in August 1992, it is clearly mentioned that Mr. U.S. Rajora would not be entitled to recover any amount from Mrs. Gurdeep Kaur. If that is so, this claim made by Mr. U.S. Rajora against Mrs. Gurdeep Kaur for recovery is misconceived.

53. In between Mr. U.S. Rajora and Mrs. C.K. Bedi, agreement arrived at shows that Mr. U.S. Rajora would recover the security amount from Mrs. Gurdeep Kaur and thus there is no liability of Mrs. C.K. Bedi to refund any security to Mr. U.S. Rajora. It is also pertinent to mention that Mr. U.S. Rajora claims to have already received Rs.2,50,000 and has asked for payment of balance Rs.5,85,000. The previous developer not out of place to mention that there existed some structure at the site along with certain building material leaves it and the same was taken over by Mr. U.S. Rajora and the value of the same was to be ascertained. Mrs. Gurdeep Kaur has pleaded that value of the same was in excess of Rs.5 lac. There is no evidence on record to prove the value of the same. So, it is evident that in case the value of the same was around Rs.5 lac as alleged by Mrs. Gurdeep Kaur, there was no amount left out of the security, which could be refunded to Mr. U.S. Rajora. That is why in these

documents executed in August 1992, Mr. U.S. Rajora was not very particular about the security amount be refunded either by Mrs. Gurdeep Kaur or Mrs. C.K. Bedi. In view of the above findings, I find no merit in this claim of Mr. U.S. Rajora.”

16. There was no inconsistency in the above findings of the learned Arbitrator. Shri Rajora does not claim that the value of the materials at the site which was taken over by him was not in excess of Rs.5 lakhs. He was not able to produce any evidence to show what the value of those materials was. In the circumstances, the influence drawn by the learned Arbitrator was not improbable.

17. No grounds have been made out to interfere with either of the Awards dated 5th July 2006. Both petitions are dismissed but in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

JUNE 1, 2012

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