

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

% *Order delivered on: July 31, 2013*

+ **CM(M) No.765/2013**

NEERAJ CHOPRA Petitioner
Through Mr.Tarun Rana, Adv. with Mr.Puneet
Dhawan, Adv.

versus

BEENA S. AGGARWAL & ORS. Respondents
Through Mr.Santosh Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

Caveats No.656/2013 & 657/2013

Since the counsel for the respondents has appeared, caveats stand disposed of.

CM No.11682/2013

Exemption allowed, subject to all just exceptions.

The applications are disposed of.

CM(M) No.765/2013 & CM No.11681/2013

1. The petitioner Neeraj Chopra has filed the present petition under Article 227 of the Constitution of India for setting aside the impugned order dated 20th July, 2013 by the Additional District Judge, Patiala House Courts, New Delhi, in Suit No.172/2013 whereby the application filed by the

petitioner under Section 8 of the Arbitration and Conciliation Act, 1996 was dismissed.

2. Brief facts of the case are that on 29th March, 2011 a lease deed was registered between the parties i.e. petitioner and respondent No.1 in respect of the suit property. The rate of rent was fixed at ₹50,000/- per month. Upon service, the petitioner on 5th June, 2013 filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 along with Memorandum of Understanding dated 10th March, 2011 alleging that there is an arbitration clause in the said MOU and thus, the suit was liable to be stayed. By the impugned order the said application of the petitioner was dismissed as the respondents denied the execution any memorandum of understanding as well as containing any arbitration clause.

3. The learned counsel for the respondents has argued that the memorandum of understanding (photocopy of which was submitted by the petitioner) is forged and fabricated document as the same was never signed by the respondents. According to him, there is only registered leased deed dated 29th March, 2011 executed between the parties which does not contain any arbitration clause. He further submits that under the mandatory provision of sub-section 2 of Section 8 of the Arbitration and Conciliation Act, 1996 the petitioner was supposed to file the original arbitration agreement i.e. MOU but the same was finally not produced before court nor is it shown to his client.

4. Counsel argued that no averment was made by the petitioner in his application under Section 8 of the Arbitration and Conciliation Act, 1996 that the original agreement was lying with the respondents, however, after thought in a clever manner it is alleged in the subsequent proceedings that

the original agreement is lying with the respondents which is specifically denied. Counsel for the respondents did not deny having received the notice under Order 12 Rule 8 from the petitioner side to file the original MOU. As the respondents denied the existence of alleged MOU, the question of discovery of the document does not arise. He further submits that even otherwise the said document i.e. MOU dated 10th March, 2011 is prior to the execution of registered lease deed which is dated 29th March, 2011. In the absence of said document, the application has been rightly rejected by the trial court.

5. In the case of *Atul Singh and Ors. v. Sunil Kumar Singh and Ors.*, (2008) 2 SCC 602, it was held:

“19. There is no whisper in the petition dated 28.-2-2005 that the original arbitration agreement or a duly certified copy thereof is being filed along with the application. Therefore, there was a clear non-compliance with sub-section (2) of Section 8 of the 1996 Act which is a mandatory provision and the dispute could not have been referred to arbitration. Learned counsel for the respondent has submitted that a copy of the partnership deed was on the record of the case. However, in order to satisfy the requirement of sub-section (20 of Section 8 of the Act, Defendant 3 should have filed the original arbitration agreement or a duly certified copy thereof along with the petition filed by him on 28-2-2005, which he did not do. Therefore, no order for referring the dispute to arbitration could have been passed in the suit.

6. Counsel for the petitioner is unable to give specific answer to the point raised by the respondents. There is no reference about the prior document i.e. MOU in the lease deed. Original document is not available with petitioner. Thus, the application under Section 8 is not maintainable in the absence of original MOU as alleged by the petitioner.

7. Considering the overall facts and circumstances of the case and after having gone through the impugned order passed by the learned trial court, I am of the considered view that the present petition is totally false and frivolous. The same is filed in order to delay the proceedings of the trial court. The petition is dismissed with cost of ₹20000/- which shall be paid by the petitioner to the respondents on the next date before the trial court.

(MANMOHAN SINGH)
JUDGE

JULY 31, 2013