

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

+ CM(M)No. 553/2013

% **29th September , 2014**

JAGTINDER SINGH Petitioner
Through: Mr. Kanwal Chaudhary and Mr.
Sachin Bhardwaj, Advocates.

VERSUS

P.K.KHANNA & ORS. Respondents
Through: Mr. Sanjay Mann, Adv. for R-1 and
2.
Mr. Dinesh Priani, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 227 of the Constitution of India impugns the judgment of the trial court dated 21.2.2013 by which the trial court has dismissed the application filed by the petitioner/defendant no.2 under Section 8 of the Arbitration and Conciliation Act, 1996 (in short 'the Act').

2. The facts of the case are that the plaintiffs/respondent nos. 1 and 2 filed the subject suit for declaration, possession, damages etc stating that the documents dated 7.2.2004 executed by the plaintiffs in favour of defendant no.1/respondent no.3 were neither executed for consideration and nor meant to be acted upon for transferring of the suit property being Car Garage no.22, Pocket-1, Sector-1, Dwarka, New Delhi-110075 to the defendant no.1/respondent no.3. Plaintiffs/respondent nos. 1 and 2 deny the validity to the documents dated 7.2.2004 on the grounds that they were executed without consideration and also that they are unregistered and therefore could not be looked into. In the suit, after making averments of questioning the validity of the documents dated 7.2.2004, the following reliefs were prayed for:-

“PRAYER

It is, therefore, respectfully prayed that a decree may kindly be passed in favour of the plaintiffs and against the defendants to the following

- (i) a decree thereby declaring the plaintiffs the absolute owners of Car Garage no. 22, Pocket-1, Sector-1, Dwarka, New Delhi-110075, explicitly marked as “red” in the attached site plan attached hereto;
- (ii) a decree for possession in respect of Car Garage no. 22, Pocket-1, Sector-1, Dwarka, New Delhi-110075, explicitly marked as “red” in the attached site plan attached hereto;

- (iii) a decree for recovery of Rs.2,75,000/- (Rupees Two Lac Seventy-Five Thousand only) along with interest at the rate of 24% per annum, on account of mesne profits/damages/unauthorized use and illegal occupation charges, together with notice charges, from the date of filing of the suit till its final realization.
- (iv) an enquiry within the meaning of order 20 rule 12 C.P.C. may be directed for determining the future mesne profit for illegal and unauthorized retention of the suit property by the defendants and their persons, attorneys, representatives, agents etc. and payment thereof be paid to the plaintiffs for which the plaintiffs undertake to pay necessary court fee at the time of passing of the decree;
- (v) a decree of permanent injunction in favour of the plaintiffs and against the defendants, thereby restraining the defendants, their agents, representatives etc. from creating a third party interest with respect to Car Garage no. 22, Pocket-1, Sector-1, Dwarka, New Delhi-110075 by way(s) of transferring of possession, outright sale etc., specifically marked RED in the attached plan, in any manner;
- (vi) costs of these proceedings may also be awarded in favour of the plaintiffs and against the defendants;
- (vii) such other or further orders or directions which this Hon'ble Court deems fit and proper as may do complete justice in the facts and circumstances of the case may also be granted in favour of the plaintiffs and against the defendants."

3. Defendant no.1 in the suit, and the respondent no.3 herein, as per the plaint had transferred rights in the suit property to the defendant no.2 and who is the petitioner before this Court.

4. Petitioner/defendant no.2 pleads that in the documents which were executed on 7.2.2004 by the respondent no.1 and 2/plaintiffs in favour of the defendant no.1/respondent no.3, there is an arbitration clause and consequently the disputes between the parties should be referred to arbitration and for which purpose, the application under Section 8 of the Act was moved before the trial court and which has been dismissed by the impugned order. Trial court has dismissed the application by making the following observations in the impugned order dated 21.2.2013:-

“I have seen the application, file and my inference is that the application of defendant no.2 u/s 8 of the Arbitration and Conciliation Act deserved to be dismissed on following grounds:-

- i) The agreement dtd 7/2/2004, GPA dtd 7/2/2004, SPA dtd 7/2/2004 were executed by plaintiff in favour of defendant no.2 by which it is stated in the agreement that plaintiff has given the possession of car garage no.22 Pocket-1, Sector-1, Dwarka, New Delhi-110075 to defendant no.2 vide agreement to sell dtd 12/7/2011. Defendant no.2 confirm the same right in favour of defendant no.1 by agreement to sell. All these documents are unregistered. Under section 17 of the Indian Registration Act these documents required compulsory registration. It is further required that appropriate/advolurum stamp duty has to be

affixed on these documents which has not been done by the parties at the time of executing these documents.

- ii) In Suraj Lamp & Industries (P) Ltd. Vs. State of Haryana and Another, it has been held by the Lordship of the Supreme Court that GPA, receipt and WILL are no longer valid and cannot confirm or pass any property which are subject matter of GPA/receipt/WILL. Hence on the face of it the agreement executed by parties appears to be suffer from illegality. For section 8, the agreement should be legal and valid.
- iii) Plaintiff has filed the present suit for possession, mesne profits and injunction. In my view an ordinary civil court would be more competent to decide the issue as the matter is technical in nature deciding the legality and validity of document executed by the parties.

Accordingly, application of defendant no.2 u/s 8 of the Arbitration and Conciliation Act stands dismissed.”

5. A reading of the aforesaid paras shows that essentially the application has been dismissed because the documents dated 7.2.2004 have been held to be invalid and rightly so because w.e.f 24.9.2001 on the coming into force of the Act 48 of 2001, documents being an agreement to sell envisaged under Section 53A of the Transfer of Property Act, 1882 would not be legally valid unless it is/was stamped and registered. Stamping has to be on 90% of the consideration fixed for sale. Once the documents dated 7.2.2004 are invalid, the arbitration clause stated therein also will fall and in

my opinion it is not correct on behalf of the petitioner/defendant no.2 to argue that arbitration clause is a collateral agreement. An arbitration clause will be a collateral agreement if the main document itself is a legal document in the eyes of law and can be referred to. If the main document and all the clauses of the main document cannot be referred to then surely arbitration clause being part of an illegal document also goes alongwith the documentation dated 7.2.2004. Trial court therefore rightly has dismissed the application.

6. In view of the above, I do not find any error in the impugned judgment of the trial court dismissing the application under Section 8 of the Act. There is no merit in the petition and which is therefore dismissed, leaving the parties to bear their own costs.

SEPTEMBER 29, 2014
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VALMIKI J. MEHTA, J.