

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

Reserved on: 12.03.2014
Date of Decision: 16.09.2014

+ **CM (M) No.697/2012 & CM No.10583/2012**

MS. SHOBHA DHALLA Petitioner
Through: Mr. Shiv Khorana, Adv.

Versus

MRS. KRISHNA LUTHRA Respondent
Through: Mr. Anil Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition has impugned the order dated 30th April, 2012 whereby the petitioner's suit has been dismissed and the respondent's application under Section 8 of the Arbitration and Conciliation Act, 1996 ('the Act' for short) was allowed. The petition seeks reversal of the same.
2. The facts of the case are that the petitioner/plaintiff had filed a suit for possession, mesne profits and injunction with respect to a portion of property bearing No. 197-F, situated in Khasra No. 447 of the Revenue Estate of Village Khirki, Tehsil – Mehrauli, New Delhi. It was submitted by the plaintiff that she had purchased, from one Lachhi Ram, a plot of 555

square yards ('sq. yds.' for short) situated in Khasra No. 447, Revenue Estate of Village Khirki, Tehsil – Mehrauli, New Delhi ('the suit property' for short) by way of a registered GPA, Will, Agreement to Sell, SPA, all dated 17.11.2000 and possession of the same was handed over to the respondent/defendant. Number 197 was subsequently allotted to the plot of land by the Residents Welfare Association, Cariappa Marg, New Delhi. Out of this land, the plaintiff sold 455 sq. yds. to the defendant through GPA, Will, Agreement to Sell and this portion of 455 sq. yds. was numbered as 197-F. Remaining area of 100 sq. yds. was retained by the plaintiff/petitioner. No partition wall could have been built since the Municipal Corporation of Delhi did not allow any construction in the area. The defendant, a permanent resident of London visited Delhi occasionally and stayed in the property No. 197-F; that despite several requests she did not get the sale deed executed from the petitioner/plaintiff. The remaining 100 sq. yds., towards the north of the property was mutually agreed to be used as the passage for the plaintiff to reach in her portion but of late, the respondent/defendant has occupied it and does not allow its use by the plaintiff and her family members. The plaintiff's legal notice of 30.03.2012, seeking settlement of the dispute through arbitration, went unheeded. Hence, the suit was filed.

3. The defendant had sought dismissal of the suit under Order VII Rule 11 of Code of Civil Procedure read with Section 8 of the Act. She relied upon Clause 9 of the Agreement to Sell dated 20.04.2006 which provided for settlement of any dispute between the parties through arbitration. The plaintiff had argued that the arbitration clause pertained only to the 455 sq.

yds. of the plot which was sold to the defendant and which was mutually demarcated at the time of its sale and handing over of possession; that the agreement to sell it did not pertain to the area of 100 sq. yds. which was not sold to the defendant and hence the arbitration clause would not be applicable.

4. After perusing the Agreement to Sell, the Trial Court concluded that the documents did not specify as to which portion of 555 sq. yds. was comprised in the 455 sq. yds. The Court was of the view neither the GPA nor the affidavit nor the SPA provided any description of the 455 sq. yds. which was sold to the defendant; that in the absence of any clarity regarding the location of the 455 sq. yds., land sold within the plot of 555 sq. yds, while allegedly retaining 100 sq. yds. of the said unsold portion with herself coupled with the fact that the petitioner herself had invoked arbitration clause, the case called for reference of the matter to the Arbitrator under Section 8 of the Act.

5. The learned counsel for the petitioner would argue that the impugned order suffers from material irregularity; that it failed to appreciate that the petitioner possessed plot area of 555 sq. yds. of which she sold 455 sq. yds. to the respondent and kept the remaining 100 sq. yds. in her exclusive possession and use and had built a room along with a WC; that the Agreement to Sell dated 21.04.2006 sold and delivered possession of only 455 sq. yds. as evidenced from Clause 2 thereof as well as from its preceding Recital; that Clause 8 of the Agreement referred only to 455 sq. yds. which was the subject matter of the Agreement to Sell and it was not extended to the 100 sq. yds. of the property which was retained by the

landlady and was never sold. Learned counsel for the petitioner also argued that at the time of sale of the 455 sq. yds., the plaintiff clearly demarcated the portions and it has been so used by the respondent till the time that she unilaterally interfered with the petitioner's right apropos the 100 sq. yds. He relied upon the dicta of the Supreme Court in ***Yogi Agarwal v. Inspiration Cloths & U & Ors.* (2009) 1 SCC 372** in support of his contention that the arbitration clause was not applicable to the present case because according to the aforesaid judgment for a document to constitute an arbitration agreement for the purposes of Sections 7 and 8 of the Act, it should satisfy two conditions; first being that the agreement should be between the parties and second that it should be relatable to the dispute. He submits that the subject matter of the suit is not the same as the subject matter of the agreement to sell/arbitration clause, therefore, the relief under Section 8 of the Act could not be granted since the document attached with the application under Section 8 of the Act did not meet the requirements of arbitration agreement under the Act. He further relied upon the judgment of the Supreme Court in ***Sukanaya Holdings (P) Ltd. V. Jayesh H Pandya & another* (2003) 5 SCC 531** to contend that “*when the subject matter of the arbitration includes both subject matter of the arbitration agreement as well as other dispute, it cannot be referred to the Arbitrator since only a part of the dispute was covered under the arbitration agreement. The said judgment held that there is no provision for splitting the cause or the parties and referring the subject matter of the suit to the arbitrators. If bifurcation of the subject matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there*

is no such indication in the language, it follows that bifurcation of the subject matter of an action brought before a judicial authority is not allowed.”

6. The learned counsel for the petitioner further argued that the subject matter of the suit was 100 sq. yds. within the plot of 555 sq. yds., therefore, the suit would be maintainable because this 100 sq. yds. was not sold and could not form the part of the arbitration clause. Accordingly, the entire suit property could not be referred to the arbitrator for settlement of disputes under Section 8 of the Act.

7. The learned counsel for the respondent would argue that the respondent is in possession of only 455 sq. yds. of the plot and she is not in possession of any surplus land; that if the petitioner had any share in the property, she ought to have so mentioned in the agreement to sell; that at site no area belonged to the petitioner by way of demarcation and that the so called red portion in the site plan is an integral part of the respondent's property.

8. The learned counsel for the respondent submits that since the suit has been dismissed on 30th April, 2012, an appeal would lie under Section 96 of the CPC in terms of the decision of this Court in ***Atma Prakash & Ors. V. Roshan Lal & Ors.* 1999 1 AD (Delhi) 815** and ***Kartar Singh v. Shanti & Ors.* 2004 (73) DRJ 361**. Furthermore, the learned counsel for the respondent contended that the petitioner herself had invoked arbitration clause and the respondent too had agreed to settle all disputes through arbitration and had indeed reiterated the same during the pendency of this petition; that the petitioner cannot be permitted to resile from her invocation

of the arbitration clause in the legal notice dated 30th March, 2012; that in the absence of consensus regarding appointment of the arbitrator, the statutory remedy available for the appointment of the arbitrator could have been invoked, but, it was not done so by the petitioner. The learned counsel for the respondent would also submit that in view of the judgment in ***Kal Kishan Bhatia & Another v. R.G. Bhatia* 111 (2004) DLT 153** the suit deserved to be dismissed, hence, this petition too ought to be dismissed with costs.

9. I have heard learned counsel for the parties.

10. This Court is of the view that insofar as there was no clarity with respect to the suit property i.e. 100 sq. yds., as claimed by the petitioner/plaintiff being appurtenant to the 455 sq. yards. having been sold to the defendant/respondent, the agreement to sell would cover the dispute. The said document refers only to the 455 sq. yds. and there is not even a whisper of any 100 sq. yds. in it. Furthermore, the petitioner herself had invoked the arbitration clause, therefore, the matter ought to have been settled through arbitration agreement only.

12. The view taken in the impugned order is plausible in law and the reasoning for arriving at the conclusion is supported from the documents on record. There is no infirmity in the impugned order. Accordingly, the petition is dismissed as being without merit.

NAJMI WAZIRI, J.

SEPTEMBER 16, 2014/acm