

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

+ **ARB.A. 21/2014**

Judgment reserved on: 01.12.2014

Judgment pronounced on: 09.12.2014

ARDEE INFRASTRUCTURE PVT. LTD. Appellant
Through: Mr.Anil Kr.Mishra, Advocate alongwith
Mr.Saurabh Mishra, Advocate.

versus

ANURADHA BHATIA Respondents
Through: Mr.Kirti Uppal, Sr.Advocate alongwith
Ms.Aastha Dhawan, Advocate.

AND

+ **ARB.A. 22/2014**

ARDEE INFRASTRUCTURE PVT. LTD. Appellant
Through: Mr.Anil Kr.Mishra, Advocate alongwith
Mr.Saurabh Mishra, Advocate.

versus

YASHPAL AND SONS Respondents
Through: Mr.Kirti Uppal, Sr.Advocate alongwith
Ms.Aastha Dhawan, Advocate.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide this judgment, I dispose of both the appeals as the matter in issue is involved in both the cases is the same and both the cases are between the same parties and facts are also similar in both the cases.

2. The present appeals have been filed against the order of the arbitrator dated 10.07.2014 whereby the arbitrator has directed the appellant to furnish the security to the extent of claim in dispute in favour of the respondents. The facts of the present cases which led to the arbitration proceedings in short are as under:

3. In both the cases, there were two separate Flat Buyer Agreements between the respondents and the appellant for sale of two flats measuring 15000 sq. ft. on the second floor in Plaza Gardenia, Ardee City, Gurgaon for a total consideration of Rs.45 lacs each. On the same day, two separate Memorandums of Understanding (MOU) were also drawn between the parties and according to the said MOUs the sale consideration of Rs.45 lakhs was to be paid by the respondents to the appellant by transfer of certain lands owned by the respondents in the name of the appellant company. It was agreed in the said MOUs that the appellant would continue to pay rental compensation of Rs.3,75,000/- per month in each MOU to the respondents till the time the possession of the said flats at Plaza Gardenia, Ardee City, Gurgaon is handed over to the respondents. Appellant paid the rental compensation in terms of the MOU till

16.09.2010 and thereafter they stopped paying the money. The respondents invoked the arbitration clause of each MOU vide arbitration petitions no.239/2011 & 240/2011 and also filed a petitions under Section 9 of the Arbitration and Conciliation Act (hereinafter referred to as 'the Act') as O.M.P.Nos.583/2011 & 584/2011. This court disposed of the OMP No.583/2011 & 584/2011 filed under Section 9 of the Act with direction that the petitioners can seek the interim relief before the arbitrator in terms of Section 17 of the Act. In Arb.P.Nos.239/2011 & 240/2011 the arbitrator was appointed by this court. The arbitral proceedings had started before the arbitrator and the petitioner also filed the applications under Section 17 of the Act. The said applications were disposed of by the arbitrator on 05.03.2014 whereby the appellant was directed to pay to the respondents the compensation amount as agreed between the parties in the MOUs from October, 2010 onward. The said order was challenged by the appellant vide Arbitration Appeal Nos.18/2014 & 19/2014. Meanwhile the arbitrator passed another order dated 10.07.2014 in both the arbitral proceedings, which amounts to modification of the order and the order dated 05.03.2014 culminated

into the said order. The appellant had withdrawn the Arbitration Appeal Nos.18/2014 & 19/2014.

4. Vide the present appeals, order dated 10.07.2014 has been challenged by the appellant before this court on the ground that the arbitrator has no authority to modify his order dated 05.03.2014 and that the order amounts to deciding the dispute finally which is not permissible under the law and that the arbitrator was not authorised to appreciate the documents and evidence at this interim stage and the application has been decided without considering the contentions of the appellant. It is further submitted that arbitrator has wrongly held that the land were duly transferred to the appellant by the respondents whereas the documents show that the respondents did not fulfil their part of obligations and since they have not performed their part of obligation under the MOUs the respondents cannot enforce their performance upon the appellant. On these facts it is submitted that the said order is liable to be set aside.

5. Reply has been filed by the respondents. It is submitted that arbitrator is fully empowered under Section 17 of the Act to direct the appellant to furnish security at an interim stage. It is further

submitted that farm lands which were to be transferred to the appellant already stood transferred through General Power of Attorney and therefore, the respondents have complied with the terms and conditions of the MOUs. It is further submitted that the appeals have no merit and are liable to be dismissed.

6. I have heard the arguments and have perused the relevant record.

7. It is clear from the above narrated facts that the respondents had filed a petition under Section 9 of the Act seeking interim protection from this court by way of O.M.P.Nos.583/2011 & 584/2011. The court while disposing of the said OMPs had directed the respondents to approach the arbitrator under Section 17 of the Act. Pursuant to that the respondents had filed the applications under Section 17 of the Act before the arbitrator. During the course of the arguments, learned counsel for the appellant has argued that the applications of the respondents under Section 17 of the Act is dated 15.3.2012 and the arbitrator has disposed of them only on 05.03.2014 i.e. after two years and it has been done at the stage when the matter was ripe and was already fixed for final arguments and part of the final arguments have

also been heard. It is argued on behalf of the respondents that Section 17 of the act empowers the arbitrator to pass an interim order at any stage during the arbitral proceedings. It is submitted that arbitral proceedings were already going on and that it was the appellant who had been seeking adjournments from the arbitrator for settlement and on 14.02.2014 they even informed the arbitrator that they were taking expeditious steps to restore the monthly rent/compensation and hence it cannot be said that the arbitrator has intentionally delayed the disposal of the applications under Section 17 of the act. It is submitted that the arbitrator is empowered to pass an interim order on applications under Section 17 of the Act at any stage of the proceedings. It is further argued that while vide 05.03.2014 the arbitrator had directed the appellant to make the payment of the rent/compensation under MOUs with effect from October, 2010, the said order has been modified by the arbitrator to the benefit of the appellant whereby the appellant has only been asked to secure the said money by furnishing security to the satisfaction of the Coordinator, Delhi International Arbitration Centre.

8. I have given careful consideration to the rival contentions and

arguments of the parties.

9. It is pertinent to take note of the proceedings before the arbitrator since one of the contentions of the appellant is that the arbitrator had unduly delayed the disposal of the applications of the petitioner under Section 17 of the act and when the case was fixed for final arguments instead of passing any order for interim measure ought to have disposed of the matter finally. This court is considering the proceedings before the arbitrator in relation to the application under Section 17 of the Act. The proceedings before the arbitrator dated 28.05.2012 show that the respondents did not file their reply to the application under Section 17 of the Act and also did not deposited the charges of the arbitrator fee etc. and therefore, the arbitrator adjourned the matter for the next date i.e. 03.07.2012. On 03.07.2012, the respondents had filed the reply to the applications under Section 17 of the Act as well as reply to the statements of claim and rejoinder was also filed. The arbitrator thereafter adjourned the matter to 26.07.2012 for argument hearing on the applications under Section 17 of the act and for framing of issues. The arbitral proceedings of 26.07.2014 shows that the arbitrator was informed that the parties

were desirous of settlement, for which they had fixed up time and place for their meeting. On this basis, the arbitrator adjourned the matter for hearing for 28.08.2012. Arbitral proceedings dated 28.08.2012 show that the parties had informed the arbitrator that they were in the process of settling their dispute and sought adjournment. The arbitrator fixed up the matter for 12.10.2012. On 12.10.2012, issues were framed and the matter was fixed for evidence. Therefrom the proceedings before the arbitrator continued till 06.08.2013, during which period evidence etc. were recorded. The matter was fixed for final arguments on 05.09.2013. On that date, adjournment was sought on behalf of the respondents and the matter was again fixed for 21.09.2013 for final arguments. On 21.09.2013 the arguments could not be concluded and the matter was fixed for 18.11.2013. The proceedings dated 18.11.2013 clearly show that on that day the appellant's counsel represented to the arbitrator that they were still in the process of settling their dispute with respondents and for that purpose Mr.Amit Kaicker, consultant of appellant also met Mr.Yashpal Mehra, the respondent and discussed some proposal and adjournment was sought and also represented that in case efforts of

settlement fails, the arbitrator could take up the matter for final disposal including the question of interim order regarding payment of compensation as provided in agreement. The arbitrator thereafter adjourned the matter and the date was fixed as 05.12.2013. Arbitral proceedings dated 28.01.2014 show that the parties were still engaged in the process of settling their disputes. The arbitrator listed the matter again for 14.02.2014. The proceedings before the arbitrator dated 14.02.2014 clearly show that the appellant had informed the arbitrator that they were taking expeditious steps to restore the payment of monthly rent/compensation. The relevant portion of the order dated 14.02.2014 of the arbitrator is reproduced hereunder:

“Mr.Mishra on instructions states that after the meeting between claimants and one of the directors of the respondents there appears to be an agreement on the part of respondents to take expeditious steps to restore the payment of monthly rent/compensation. On the tribunal’s insistence and on instructions Mr.Mishra states that concrete schedule of payment and the rent/compensation will be conveyed within ten days from today to the claimants. Mr.Mishra submits that above is without prejudice to respondents’ pleas in defence. Mr.Mehra, one of the claimants is not opposed to ten days time being given. He submits that date when the payment will commence should also be communicated forthwith. Counsel for respondents states that such date will also be communicated within 10 days from today. The schedule of dates of payment should also cover the

arrears, if any. Other items in dispute will be taken up and dealt with before this tribunal after 10 days.”

10. The proceedings dated 05.03.2014 show that the parties could not reach to any settlement regarding fixing up the schedule of payment of arrears of monthly rent/compensation and the arbitrator proceeded to deal with the question of interim relief to the respondents and thereafter directed to make the payment of monthly rent/compensation starting from October, 2010 till date to the respondents. Thereafter, arbitrator in modification of his order dated 05.03.2014 directed the appellant to furnish the security of the Coordinator of Delhi International Arbitration Centre instead of making the payment to the respondents. The above proceedings before the arbitrator clearly show that the parties have been constantly seeking time for settling their dispute. It is apparent from the proceedings that the arbitrator refrained himself from passing any interim order since parties were interested in settling their dispute, and arbitrator has been facilitating them in their efforts. It is also reflected in the proceedings dated 14.02.2014 that the appellant pursuant to a meeting between the claimants and the directors of the appellant appeared to have been in agreement to take expeditious

steps to restore the payment of monthly rent/compensation. It, therefore, cannot be said that delay on the part of the arbitrator in taking up the matter for taking interim measures have in any way caused any prejudice to appellant. Also the modification of the order dated 05.03.2014 of the arbitrator is not prejudicial to the interest of the appellant since while vide order dated 05.03.2014 they were directed to make the payment of the rent/compensation from October, 2010 to the respondents, by modification order dated 10.07.2014, they were directed to secure the said amount. Section 17 of the Act empowers the arbitrator to pass any order as part of interim measures for protection of the subject matter of the dispute. In the present case, one of the subject matter of the dispute is payment of rent/compensation under MOU to the respondents. The order of the arbitrator protecting the subject matter of the dispute therefore is not contrary to law. This order does not amount to final adjudication of the dispute between the parties because the arbitrator has directed the appellant to secure this amount with the Coordinator, Delhi International Arbitration Centre.

11. For the reasons discussed above, it is apparent that there is no force in the appeals. The appeals are, therefore dismissed with no order as to costs.

DEEPA SHARMA, J

DECEMBER 09, 2014
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