

\$~2

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

%

Judgment delivered on: 04.07.2017

+ ARB.P. 234/2017

TAXMANN PUBLICATIONS PRIVATE LIMITED Petitioner

versus

VINEET SODHANI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Saurabh Kansal, Advocate.

For the Respondents : Mr Amresh Anand, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner has filed this petition seeking appointment of an Arbitrator under Section 11(6) of the Arbitration & Conciliation Act, 1996 (herein referred to as 'the Act').

2. As per the petitioner, respondent No.1 as an Author approached the petitioner (a publisher) in the year 2012 with the intention of exploring the possibility of developing and publishing some of his works.

3. An Agreement dated 26.06.2012 was entered into.

Subsequently, respondent No.2 was also inducted as the Author.

4. It is the case of the petitioner that after the Agreement dated 26.06.2012, Agreements dated 15.01.2013 and 28.10.2014 were signed between the parties.

5. Disputes have arisen. Notice dated 16.02.2017 was issued by the petitioner under section 11 of the Act, nominating their arbitrator and calling upon the respondents to nominate their arbitrator in terms of the Arbitration Agreement.

6. Accordingly, the petitioner has filed this petition contending that there is an arbitration agreement contained in Agreements dated 15.01.2013 and 28.10.2014. The disputes are sought to be resolved in terms of Agreement dated 28.10.2014.

7. The Arbitration Agreement as contained in Clause 14 of the Agreement dated 28.10.2014, *inter alia*, reads as under:-

“14. Court's Jurisdiction: In case of any dispute arising as to interpretation of terms of this agreement or in case of violation of this agreement by any party, the matter shall --

- a. first of all, be attempted to be solved amicably through mediation or conciliation; and*
- b. if said attempts fail, the matter will be referred for arbitration to a tribunal comprising of three members, one member being appointed by publisher, second one being appointed by author*

and third one to be appointed by the first two members.

Subject to above, all legal proceedings shall be subject to Delhi Jurisdiction.”

8. Learned counsel appearing for the respondent submits that though Agreements were executed on the dates, as referred to by the petitioners, he disputes the contents of Agreements dated 15.01.2013 and 28.10.2014. He submits that the Agreements executed on 15.01.2013 and 28.10.2014 were on the same lines as the Agreement dated 26.06.2012.

9. He submits that the Agreement dated 26.06.2012 is not denied, however, the dispute is with regard to Agreements dated 15.01.2013 and 28.10.2014. He submits that both the Agreements did not contain an Arbitration Clause. Learned counsel also admits that the signatures appearing on the last page of Agreements dated 15.01.2013 and 28.10.2014 as that of the respondents.

10. It is contended by the learned counsel for the respondent that the petitioner, in the first notice dated 03.01.2017, had though referred to the Agreement dated 28.10.2014, but had not specifically stated that there was an arbitration clause or proceedings under the Act, would be taken, on the contrary, the petitioner had stated that petitioner would pursue appropriate legal proceedings in the Court of Law implying thereby that there was no Arbitration Agreement.

11. Learned counsel further submits that the respondents do not have a copy of the Agreements dated 15.01.2013 and 28.10.2014, as none were supplied to the respondents.

12. Learned counsel for the respondent submits that the Agreement dated 15.01.2013 is apparently a forged document inasmuch as the address mentioned on the document dated 15.01.2013 of the respondents is that of a property that they neither owned nor possessed at that point of time. He submits that the said property was acquired by the respondents much later towards the end of 2013.

13. Learned counsel, however, fairly concedes that the document annexed as Agreement dated 26.06.2012 is not disputed by the respondent.

14. The dispute raised by the respondent is with regard to the existence of an arbitration clause in the Agreements dated 15.01.2013 and 28.10.2014. The respondents candidly admit that they do not have copies of the Agreement in their possession.

15. It is admitted by the respondents that Agreements dated 15.01.2013 and 28.10.2014 were executed between the petitioner and respondents, however, the case of respondent is that there was no arbitration clause in the said Agreements.

16. Since the respondents do not have copies of the Agreements dated 15.01.2013 and 28.10.2014 in their possession, as none was

allegedly supplied, there is no basis for the respondents to contend that the contents of the said agreements are not what they had signed in the year 2013 and 2014 respectively.

17. The respondents admittedly have signed on the last page of the Agreement. It is not their case that they had signed on all pages and only the last page has been produced and the initial pages have been replaced, but their case is that admittedly they signed on the last page. If a party signs only on the last page of a document and not on all the pages, the party cannot thereafter be permitted to deny the contents of the document merely because the pages are not signed. More so in a case where the party has not even bothered to obtain a copy for its record.

18. It is also not the case of the respondents, that post 15.01.2013 (the date of the Agreement) till 06.01.2017, when reply to the legal notice of the petitioner was sent, they ever demanded from the petitioner a copy of the Agreements or the petitioner declined to supply the same.

19. Since the respondents are not in a position to produce, a copy of the Agreements dated 15.01.2013 or 28.10.2014, the objection raised by the respondents is not sustainable.

20. Since the petitioners have filed this claim based on the Agreement dated 28.10.2014 by which date admittedly the respondents had already purchased the property, the address of which

is mentioned in the Agreement dated 28.10.2014, the contention that the address of the respondent mentioned on agreement 15.01.2013 establishes that the said document is forged would not ipso facto make the agreement dated 28.10.2014 as a forged document.

21. There is no other objection raised by the respondents with regard to the agreement dated 28.10.2014.

22. In view of the above, I am unable to accept the contention of the respondents that there is no Arbitration Agreement between the parties.

23. Learned Counsel for the petitioner submits that as the disputes are not substantial, the petitioner have no objection to appointment of an independent sole arbitrator to adjudicate their disputes. Learned counsel for the respondent submits that without prejudice to his rights and contentions, since his pleas have been rejected, and as the disputes are not of a very high value, a Sole Arbitrator be appointed.

24. Accordingly, Mr G.P.Thareja, Additional District Judge (Retd.) (Mobile No.9899664642), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

25. The Arbitral Tribunal shall examine the claims of the petitioner and the counter claims, if any of the respondents. Subject to the Arbitrator making the necessary disclosure under Section 12 of the Act not being ineligible under Section 12(5) of the Act.

26. The Arbitrator shall fix his fee in consultation with the learned counsel for the parties.

27. The parties are at liberty to approach the learned Arbitrator for elucidating the necessary disclosures and for further proceedings.

28. The petition is accordingly disposed of.

29. Order *dasti* under signatures of the Court Master.

JULY 04, 2017 *sd'*

SANJEEV SACHDEVA, J

