

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 947 OF 2015

Niraj J.Vora

..... Petitioner

VERSUS

Dharmendra Gandhi & Anr.

..... Respondents

Mr.Kevic Setalwad, Senior Advocate, a/w. Ms.Sneha Munj, Ms.C.Shukla, i/b. Mr.Vinod Juwale for the Petitioner.

Mr.Sanjay Jain, a/w. Mr.Manthan Unadkat, i/b. Mr.S.G.Lakhani for the Respondent No.2.

CORAM : R.D. DHANUKA, J.

DATED : 2nd SEPTEMBER, 2015

P.C.

By this petition filed under section 9 of the Arbitration and Conciliation Act, 1996 the petitioner seeks injunction in respect of the property described in the Memorandum of Understanding dated 31st October, 2014.

2. It is the case of the petitioner that the petitioner along with Ms.Kavita Mayank Varia had entered into an agreement for sale with respondent no.2 in respect of the office premises bearing No. G-001, on the ground floor of 'B' Wing admeasuring about 1750 sq.ft. situated in the building known as '340 Mahalaxmi Centre' Swami Vivekanand Road, Kandivali (West). It is the case of the petitioner that though the consideration mentioned in the said agreement was Rs. 3.21 crores, the actual consideration was Rs.10.51 crores.

3. Mr.Setalwad, learned senior counsel for the petitioner invited my attention to the agreement for sale dated 13th August, 2014 and Memorandum of

Understanding dated 14th August, 2014 and 31st October, 2014. It is submitted that the respondent no.2 and her husband were party to the negotiations between the petitioner and the respondent no.1 and were aware of the two Memorandum of Understanding dated 14th August, 2014 and 31st October, 2014. He submits that the fact that the respondent no.2 was not handed over possession of the suit property till 31st October, 2014 when the second Memorandum of Understanding was entered into between the petitioner and the respondent no.1, clearly indicates that the respondent no.2 was aware of the transaction between the petitioner and the respondent no.1. He submits that it is not in dispute that the negotiation meeting between the petitioner and the respondent no.1 was attended by the husband of the respondent no.2 and also by her. He submits that the respondent no.2 has not denied this fact alleged by the petitioner in the correspondence exchanged between the parties.

4. Learned senior counsel submits that since the respondent no.2 who was a party to the negotiation in the Memorandum of Understanding entered into between the petitioner and the respondent no.1 and has not paid the balance consideration, the petitioner is entitled to seek interim measures in respect of the suit property.

5. Mr.Jain, learned counsel appearing for the respondent no.2 invited my attention to the agreement for sale dated 13th August, 2014 and would submit that the consideration mentioned in the said agreement between the petitioner and the respondent no.2 has been admittedly paid by the respondent no.2 to the petitioner. He submits that the said agreement was a registered document and appropriate payment of stamp duty has been paid. My attention is invited to the said documents and more particularly at page 55 of the petition. It is submitted that the

market value according to the Stamp Office in respect of the said property was at Rs. 2,62,50,365/- whereas the consideration agreed to be paid by the respondent no.2 to the petitioner was Rs.3,21,00,000/-. It is submitted by the learned counsel that insofar as other two Memorandum of Understanding alleged to have been executed between the petitioner and the respondent no.1 are concerned, the respondent no.2 is admittedly not a party to the said documents. He submits that the said documents are not even stamped as required under the provisions of the Maharashtra Stamps Act.

6. It is submitted by the learned counsel for the respondent no.2 that even under the said two Memorandum of Understanding alleged to have been entered into between the petitioner and the respondent no.1 the alleged balance consideration was agreed to be paid by the respondent no.1 and not by the respondent no.2. My attention is invited to the cheques alleged to have been issued by the son of the respondent no.1 which were alleged to have been dishonoured. He submits that the respondent no.2 was in no way connected with the alleged transaction between the petitioner and the respondent no.1.

7. It is submitted by the learned counsel for the respondent no.2 that since the respondent no.2 is not a party to the Memorandum of Understanding entered into between the petitioner and the respondent no.1, even if the petitioner files any arbitration proceedings, no relief in respect of the agreement for sale dated 13th August, 2014 can be granted by the learned arbitrator. He submits that thus no interim measures can be granted by this court against the respondent no.2. He invited my attention to the averments made in paragraph (6) of the arbitration petition and would submit that even in the arbitration petition, it is not the case of the petitioner that the respondent no.2 was liable to pay the balance consideration

under the Memorandum of Understanding entered into between the petitioner and the respondent no.1 to the petitioner. He submits that in the Memorandum of Understanding dated 31st October, 2014, the respondent no.1 has been described as the purchaser and not the respondent no.2. It is submitted that though under the said Memorandum of Understanding the respondent no.1 has alleged to have been offered some security of some other property in favour of the petitioner, no relief has been sought by the petitioner in respect of such properties in the present proceedings. He submits that the ad-interim relief granted by this court shall be vacated.

8. A perusal of the agreement of sale dated 13th August, 2014 clearly indicates that the same was between the petitioner and the respondent no.2. Is it not in dispute that the consideration mentioned under the said agreement has been fully received by the petitioner. It is however the case of the petitioner that the actual consideration of sale of the said property was at Rs.10.51 crores. It is not in dispute that respondent no.2 was not a party to the other two Memorandum of Understanding alleged to have been entered into between the petitioner and the respondent no.1. If according to the petitioner the actual consideration in respect of the suit property was not Rs.3.21 crores but was Rs.10.51 crores, the petitioner ought to have joined the respondent no.2 also as a party to the Memorandum of Understanding or atleast a confirming party.

9. In my view even if the petitioner files any arbitration proceedings on the basis of the alleged arbitration agreement recorded in the Memorandum of Understanding dated 31st October, 2014, the petitioner cannot seek any relief against the respondent no.2 and in respect of the agreement for sale dated 13th August, 2014. Since the petitioner cannot seek any final relief against the

respondent no.2 in respect of the agreement for sale dated 13th August, 2014, in my view the petitioner cannot seek any interim measures in respect of the said property in the present proceedings.

10. A perusal of the agreement dated 13th August, 2014 clearly indicates that the said agreement is duly stamped. The consideration mentioned in respect of the said property in the said agreement is much more than the market value calculated by the Stamp Office. In my prima facie view there is thus no substance in the submission of the learned senior counsel for the petitioner that the actual consideration in respect of the said property was at Rs.10.51 crores and not Rs.3.21 crores. The respondent no.2 has been already placed in possession in respect of the said property under the said agreement for sale dated 13th August, 2014 which is admittedly a registered and stamped document.

11. Even if this court considers the alleged MOU entered into between the petitioner and the respondent no.1 on its face value, it is clear that the respondent no.1 was described as the purchaser of the property and had agreed to pay the balance consideration. The respondent no.2 was admittedly not a party to the said MOU. The respondent no.1 had agreed to provide security in respect of some other property. If the petitioner has any cause of action, in my prima facie view the same would be against the respondent no.1 and in respect of the such security agreed to be provided by the respondent no.1 in favour of the petitioner. The petitioner has not prayed for any interim measures in respect of such property alleged to have been agreed to be provided as and by way of security by the respondent no.1.

12. Insofar as submission of the learned senior counsel for the petitioner that the

respondent no.2 has not disputed her presence along with her husband in the negotiation meeting which would indicate that the MOU entered into between the petitioner with respondent no.1 was with the knowledge and consent of the respondent no.2 and her husband is concerned, in my view there is no substance in this submission of the learned senior counsel for the petitioner. Even if the respondent no.2 or her husband were present in the meeting, that would not improve the case of the petitioner.

13. In my view there is thus no merit in the arbitration petition and the same is accordingly dismissed. No order as to costs.

14. Mr. Setalwad, learned senior counsel for the petitioner prays for continuation of the ad-interim order granted by this court on 8th May, 2015 which is vehemently opposed by Mr.Jain, learned counsel for the respondent no.2. Considering the facts of this case, I do not propose to continue the ad-interim order of this court. Application for continuation of the stay is rejected.

[R.D. DHANUKA, J.]

CERTIFICATE

“ I certify that this order uploaded is a true and correct copy of original signed order.”

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