

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 2779 of 2015

Date of Decision: May 4, 2015

Kamlesh Rani Chauhan and ors.

.....Petitioners

Vs.

Janak Raj (deceased) th. His LRs Raj Kumar and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Puneet Jindal, Sr. Advocate with
Mr. Varun Goyal, Advocate
for the petitioners.

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M.M.S. BEDI, J.

The defendants have preferred this revision petition, aggrieved by the order dated January 30, 2015 dismissing the application under Section 8 of the Arbitration and Conciliation Act, 1996, for short 'the Act', seeking a direction to refer the parties to arbitration on account of an arbitration agreement existing between the plaintiff and the defendants.

Brief facts relevant for the decision of the present petition are that the plaintiff- respondent had filed a suit for possession by way of specific performance of an agreement of sale dated August 12, 2009 of land

measuring 43 $\frac{1}{4}$ marlas comprised in Khasra No. 1044/766 situated in Basti Mithu, Canal Road, Jalandhar, described in heading of the plaint. He also claimed alternative relief of payment of money paid to the defendant-petitioners besides claiming an injunction to restrain the petitioners to alienate the property in dispute. Petitioners filed an application under Section 8 of the Act claiming that the plaintiff- respondent and the defendant- petitioners are party to a partnership deed dated February 27, 2008 to carry on the business of 'Development of properties, construction of flats/ houses, real estate agent and other ancillary business or business' in partnership under the name and style of M/s Ch. Land Developers, at Canal Road, Backside Jammu Hospital, Kapurthala Road, Jalandhar. The terms of the partnership deed stands reduced into writing and as per clause 13, there is an arbitration agreement that in case of any dispute between the parties regarding anything relating to the partnership business or the interpretation of clause of the said partnership deed, the matter shall be referred to an Arbitrator for arbitration under the provisions of the Indian Arbitration Act. The application under Section 8 of the Act has been dismissed by the trial Court observing that the suit is for specific performance of the agreement of sale between the parties and on the face of it, the agreement is not, in any manner, related to the partnership between the parties and no dispute has arisen in context to the partnership of the firm or in regard to the conduct of the business in the partnership firm. The dispute being concerned with

commercial transactions of the firm does not require to be referred to the Arbitrator as per Clause 13 of the partnership agreement between the parties.

Mr. Puneet Jindal, Senior Advocate has drawn my attention to the partnership deed dated February 27, 2008 in which plaintiff- respondent is first partner whereas there are 8 other partners including defendant- petitioners. The defendant- petitioners are 7th, 8th and 9th partners. The terms of the partnership deed indicates the contribution, share and percentage of share of profit and loss in the partnership. Para 13 of the Partnership Deed reads as follows:-

“13. That in case of any dispute between the parties regarding anything relating to the partnership business or the interpretation of clause of the said partnership deed, the matter shall be referred to an Arbitrator for arbitration under the provisions of the Indian Arbitration Act, then in force.”

The counsel for the petitioners has drawn the attention of this Court to a joint affidavit of plaintiff- respondent and six other partners annexure P-2 indicating that the plaintiff and the defendants are holder of plot measuring 8 kanals 13 marlas and that they propose to construct a building over the said plot regarding which plans have been submitted. An attempt has been made by learned counsel to connect the suit property with the property mentioned in the said affidavit. It has not been clarified as to for what purpose the said affidavit dated February 29, 2008 had been used.

The parties seem to have claimed that they are holder of a plot. The purpose and objective of the affidavit is not reflected. Holding a plot does not mean holding the same as owner. Holding of a plot might be in the capacity as owner, tenant, a licensee, even a person in unauthorized possession. The affidavit even if is believed, does not, in any manner, indicate that the suit for specific performance pertaining to the agreement of sale dated August 12, 2008, would mean a dispute between the parties relating to partnership business or a dispute regarding interpretation of any clause of partnership deed. So, the Appellate Court appears to have rightly rejected the application under Section 8 of the Act.

It is pertinent to observe here that had the petitioners got any intention to refer the matter to the Arbitrator as per the arbitration agreement, an application for reference could have been made in view of provisions of Section 8 (3) of the Act. As per said provision, even if an application has been filed under Section 8 (1) of the Act, a party interested in arbitration may commence the arbitration proceedings and continue with the same and even obtain an arbitral award but no steps having been taken till date, the application does not appear to be bonafide warranting any interference which appears to have rightly been dismissed by the trial Court. There does not appear to be any arbitration agreement that in case of any dispute regarding specific performance of any agreement the partners will refer the matter to the Arbitrator. There does not appear to be any arbitration

agreement regarding the settlement of a dispute of specific performance of
an agreement of sale.

Dismissed.

May 4, 2015
sanjay

(M.M.S.BEDI)
JUDGE