

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.6850 of 2013

Date of Decision.29.07.2015

Bhagwan Vanaspati Mills Ltd.

.....Petitioner

Versus

M/s DLF Universal Ltd. and another

.....Respondents

Present: Mr. Sudhir Aggarwal, Advocate
for the petitioner.

Mr. Chetan Mittal, Senior Advocate with
Mr. Harsh Bungar, Advocate
for respondent No.1.

Ms. Madhu Daryal, Advocate
for respondent No.2.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The plaintiff who has filed a suit for declaration that cancellation of allotment made by the 1st defendant was illegal, was confronted with an objection by the defendant through an application under Section 8 of the Arbitration and Conciliation Act for a reference relating to a term of the contract of allotment that any dispute between the parties will be referred to arbitration.

2. The contention that has been taken before the Court below appears to have been that the original terms of contract was only with the plaintiff's assignor Ashish Gupta and payment had been made. The Court rejected that contention and the revision petition is filed against

the said order.

3. Learned counsel appearing on behalf of the petitioner states that the suit is not merely for relief against the defendant but he has made a specific averment in the plaint that the 2nd defendant-Bank which was responsible for making the payment of installments for the balance of sale consideration had failed in doing so and it has resulted ultimately in the cancellation of allotment. It is also the contention of the plaintiff that the 1st defendant has paid the installments after the assignment in his favour to the Bank and the Bank would not have been beneficiary of such payment. Learned Senior Counsel appearing on behalf of the defendant states that the amount to the bank had been paid only by virtue of understanding between the parties that in the event of cancellation of allotment, for, whatever reason, the company would refund the amount only to the bank that is borne out through the letter of the 1st defendant dated 31.03.2010 issued to the bank. The senior counsel would also argue that there is no prayer against the 2nd defendant and the issue is only for declaration relating to the cancellation of allotment made by the 1st defendant. This is to meet the point raised by the plaintiff that there cannot be an arbitral reference for a situation where one of the parties was not a party to the arbitral agreement. The allusion is to the bank being not a privy to the contract of allotment and that, therefore, the relief claimed by the plaintiff cannot be considered by the Arbitrator.

4. There can be no objection to a fundamental proposition that an arbitral reference is possible only if there is an arbitral agreement in writing between the parties and all the parties brought before the

Arbitrator shall be persons who had been signatories to the agreement.

It is an admitted fact that the bank is not a party to the arbitral agreement and an arbitral reference would involve compelling a bank to join proceedings before the Arbitrator. The plaintiff is at all times the *dominus litus* and he cannot be compelled to give up a particular defendant. I have gone through the plaint and I have no doubt in my mind that the bank was a necessary party in the suit where the plaintiff was complaining that the bank had committed a default that has ultimately resulted in the cancellation of allotment itself. It can be that the plaintiff was not specifically praying for return of the balance of consideration recovered by the bank from the 1st defendant but if ever the plaintiff were to fail in his plea for annulling the cancellation of allotment made by the 1st defendant, the plaintiff cannot be left high and dry. He should have the benefit of recovery of the amount collected by the bank from the 1st defendant to the extent it is possible in law. The Court will also be competent to grant such a relief as a measure of equity even if specific prayer is not brought. This relief will be possible in the manner contemplated by the Specific Relief Act.

5. Under the circumstances detailed above, I do not think it will be possible for the plaintiff to be compelled to an arbitral reference where the suit is not merely against the parties to the arbitral agreement but also with reference to bank who was not a party. None of the observations made above will leave the plaintiff with any advantage that he will not be bound by any of the terms of the contract or he cannot be compelled to do anything which his assignor was compelled to do under the terms.

6. The impugned order is set aside and the trial court will decide the case on the several contentious issues brought before it in accordance with law. The civil revision is allowed with above observations.

(K. KANNAN)
JUDGE

July 29, 2015
Pankaj*