

SAO No.1 of 2015 (O&M)

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**SAO No.1 of 2015 (O&M)
Date of decision:06.01.2015**

Haryana Urban Development Authority and another ...Appellants

Versus

M/s Fort Estate Pvt. Ltd. ...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ajay Kumar Kansal, Advocate,
for the appellants.

Rakesh Kumar Jain, J.

This appeal has been filed with a delay of 39 days against the judgment of the lower Appellate Court dated 07.08.2014 by which the order dated 17.01.2014 passed by the trial Court has been set aside with a direction to dispose of the Civil Suit in accordance with law.

Counsel for the appellants has submitted that Showroom No.45, Sector-11, Panchkula was auctioned on 04.02.2002 and the allotment letter No.2841 dated 25.02.2002 was issued in favour of the plaintiff being the highest bidder. The appellants had served a notice under Section 17(3) of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the "HUDA Act") on account of illegal construction by the plaintiff which was challenged by it by way of suit for declaration and permanent injunction. In this suit, the appellants had filed an application under Section

SAO No.1 of 2015 (O&M)

[2]

8 of the Arbitration and Conciliation Act, 1996 (here-in-after referred to as the “Act”) on the basis of Clause 20 of the allotment letter and contended that the dispute between the parties is arbitrable and, therefore, the Civil Suit is not maintainable.

The trial Court allowed the application vide order dated 17.01.2014 and ordered for return of the plaint under Order 7 Rule 10 of the Code of Civil Procedure, 1908. However, in appeal, the said order has been reversed.

Counsel for the appellants has argued that as per Clause 20 of the allotment letter, all the disputes and differences arising out of or in any way touching or concerning the allotment are referable to the arbitrator who would be the Chief Administrator or any other officer appointed by him. It is submitted that the suit filed by the plaintiff is thus not maintainable.

After hearing learned counsel for the appellants and considering the available record, I am of the considered opinion that there is no error in the order of the lower Appellate Court setting aside the order of the trial Court as the plaintiff had challenged the action of the appellants initiated under Section 17(3) of the HUDA Act on account of HUDA Regulations, 1979. There is no doubt that where there is an arbitration clause, the Civil Suit is not maintainable, subject to the condition that as to whether the dispute between the parties is arbitrable or not.

From the facts and circumstances of this case, it is clear that the issue raised by the plaintiff in the suit is not arbitrable as it has challenged the notice issued by the appellants under Section 17(3) of the HUDA Act.

SAO No.1 of 2015 (O&M)

[3]

Counsel for the appellants has failed to cite any precedent in support of his contention.

Thus, in view of the aforesaid discussion, I do not find any merit in the present appeal and hence, the same is hereby dismissed.

January 06, 2015
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(**Rakesh Kumar Jain**)
Judge