

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.2893 OF 2015

AND

C.R.P.No.591 OF 2016

COMMON ORDER :

These two revisions are maintained against the dismissal orders of I.A.Nos.265 and 266 of 2014 in the pending suit O.S.No.52 of 2014 on the file of III Additional District Judge, Ranga Reddy, vide respective separate orders dated 10.11.2014.

2. Undisputedly, between the parties there was Development Agreement-cum-General Power of Attorney, dated 15.03.2007 (for short 'development agreement') and the clauses 12, 17 and 22 mainly placed reliance read as follows:

"12. The second party shall complete the construction of the proposed building within 15 months from the date of this agreement or handing over vacant possession of the schedule property by the first party whichever is later. However, three months grace period shall be given to the second party.

17. Both the parties hereby agree to enter into supplemental agreement in the event of such contingency existing for incorporation of clarification of necessary clauses of this agreement or to meet the needs of the time, but such supplemental agreement shall be in conformity with the spirit of this main agreement.

22. In case of any disputes arises between the parties hereto touching these presents, the matter shall be referred to the arbitrators one chosen by each party and in case of any difference of opinion between such arbitrators, they shall nominate a common umpire and their award shall be final and binding on both the parties and the relevant provisions of the Arbitration Act shall apply."

3. Subsequently, there was a supplemental agreement dated 11.08.2009. The supplemental agreement reference to the main agreement saying allotment respectively of the proposed construction areas to their shares and to reduce the arrangements arrived at pursuant thereto allotted Flat Nos. 101 and 102 to the land owner Sri K.V.Reddaiah in the first floor and allotted Flat Nos.G-2, 201, 202 and 301 to the Developer Sri K.Durga Prasad, which are respectively in ground, first and second floors. There is no controversy in this regard.

4. However, there was a separate Memorandum of Understanding, dated 30.06.2011 between the two parties of which the first party referred as Developer and the second party (Panduranga Rao) as owner of the land, which reads mainly as follows:

“Whereas the first party is the developer and second party is the land owner. Whereas the second party is the sole and absolute owner and peaceful possessor of the property bearing Plot Nos.170 part, 172 part, 173, 174 and 175 part, situated at Bachupally Village, Pragathinagar Grampanchayat, Qutubullapur Mandal, Ranga Reddy District and the first party (first party sic. second party) has given the above said property to the first party for development vide DAGPA document No.5461/2007, dated 15.03.2007 registered at SRO, Medchal. The project should be completed within 18 months, already four years completed (might be to mean already four years completed). Whereas, the first party should complete the construction activity within 90 days from the date of Memorandum of Understanding.

5. The plaintiff being the land owner maintained the civil suit supra for damages towards non-completion of construction from the works kept pending despite the Memorandum of Understanding dated 30.06.2011 supra.

6. In the suit, it is the contest of the defendant by filing the application one to refer the matter to the Arbitrator and the other from the arbitration clause in para 22 of the development agreement supra, dated 15.03.2007 and thereby the suit is not maintainable, but for to refer the matter to Arbitration. It is the submission with reference to the contents in the applications that the Memorandum of Understanding dated 30.06.2011 is nothing but a continuation of the original development agreement dated 15.03.2007. In support of the contention, it is drawn attention to Clauses 17 and 22 referred supra.

7. Whereas, it is the contention of the counsel for the plaintiff, as respondent to the two applications, that the Memorandum of Understanding dated 30.06.2011 for extension of time is nothing to do with the development agreement dated 15.03.2007 and it is not even a supplemental agreement to say any of the clauses of that development agreement dated 15.03.2007 applies and what the clause No.22 therein says is in case of any dispute arises between the parties hereto touching these presents means what is covered by the development agreement, the matter shall be referred to the arbitrator and very clause No.12 speaks of 12 months time to complete the construction and the outer limit of three more months and there is no provision for extension of time even to say if at all there is any provision to enter into further agreement pursuant thereto. Thus, the Memorandum of Understanding supra is independent and not a continuation to the Development Agreement supra and thereby it is once an independent agreement, there is no need of referring the matter to arbitration, much less to hold against maintainability of the suit, much less to say from the development agreement contains

arbitration clause equally applies to the independent Memorandum of Understanding.

8. It is by the impugned orders respectively of even date, the lower Court upheld the contention of the plaintiff/respondent in dismissing both the applications.

9. Heard both the revision petitions for common disposal and perused the material on record.

10. The revision petitioner in support of the respective applications contended before the lower Court referred supra and placed reliance on a Single Judge expression of the Delhi High Court in **S.K.Mehta v Pradeep Saith**^[1] particularly of para 39, which says that from any angle one may examine the matter, one cannot escape from the conclusion that the documents executed between the parties namely, license deed, mortgage deed or the supplementary MOU etc. were integral part of the principal agreement and disputes arising from the main agreement are so interdependent and interlinked that these cannot be determined without referring to or relying upon these documents.

11. The facts of that case shows that there was license deed dated 18.03.1994, MOU and mortgage deed of even date and are ancillary or integral part of the main agreement of even date between the parties for re-development of A.49 or not. The petitioner therein sought for appointment of an arbitrator and respondent resisted the application under Section 11 of the Arbitration Act, 1996, for appointment of arbitrator on the ground that license deed does not contain arbitration clause nor the other documents i.e. MOU and Mortgage Deed. It is therefrom on

interpreting the contents of these documents all of even date, the Court came to such a conclusion from the respective facts. Thus, the decision has no application to the present facts.

12. Here the crux to decide is whether the Memorandum of Understanding dated 30.06.2011 contains any arbitration clause and if not, whether the same can be stretch from the development agreement dated 15.03.2007. Needful to repeat the facts even covered above, what the development agreement clause 12 specifies is completion of construction within 15 months with further grace period of three months and there is no provision for further extension therein even to say therefrom of the memorandum is only in pursuance of the clause in the development agreement. What the clause No.17 of the development agreement says is that parties agreed to enter into supplemental agreement in the event of such contingency existing for incorporation of clarification of necessary clauses of the agreement or to meet the needs of the time, but such supplemental agreement shall be in conformity with the spirit of the main agreement. It is not even stated that it is to extend the time of the period fixed under the development agreement. What at best it speaks is to meet the needs of the time and when it does not mean, in the absence of any clarification from its reading to stretch for extension of time, apart from the said agreement if any shows inconformity with the spirit of main agreement and not with reference to disputes in relation to arbitration clause. Further, what the clause 22 speaks is that, any dispute arises between the parties touching those presents, the matter shall be referred to arbitrator. It is only confining to the development agreement and touching those presents. What even clause 17 supra speaks is of supplemental agreement. No doubt the nomenclature used either

as supplemental agreement or Memorandum of Understanding is not decisive, but for the contents of the document. What the Memorandum of Understanding refers is about earlier entering of the developmental agreement between the parties and the construction was not completed and it speaks therefrom of only 90 days time is extended. Once such is the case, it is difficult to stretch the development agreement terms to the Memorandum of Understanding much less to say it is only a supplemental agreement pursuant thereto. Once such conclusion when rightly arrived by the trial Court, for this Court while sitting in revision, there is nothing to interfere.

13. Accordingly, both the revisions are dismissed. No costs.

As a sequel, miscellaneous petitions, if any, pending in the revision shall stand closed.

Dr.B.SIVA SANKARA RAO,J

23.08.2016
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HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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