

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3901 of 2013 (O&M)

Date of Decision: 12.04.2016

M/s IREO Victory Valley Pvt. Ltd.

... Petitioner(s)

Versus

Shatanu Bhowmick and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Sanjeev Sharma, Senior Advocate
with Mr. Vikram Vir Sharda, Advocate
for the petitioner(s).

Mr. Harmeet Oberoi, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 21.5.2013, whereby learned Civil Judge (Junior Division), Gurgaon dismissed the application filed by the petitioner/defendant under Section 8 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act").

For the sake of convenience, parties are being referred to as per their status before the Court below.

Facts relevant for the purpose of decision of the petition that plaintiffs filed a civil suit for permanent injunction and mandatory injunction for restraining the defendant/petitioner from cancelling, de-allotting or in any manner divesting the plaintiffs of their rights, title or interest in the proposed unit. During pendency of the proceedings, an application was filed by the defendant/petitioner under Section 8 of the Act for referring the matter to the arbitrator. The Court below, after obtaining reply from the plaintiffs and hearing both the parties, dismissed the application vide order dated 21.5.2013 and present petition is challenge thereto.

Learned counsel for the petitioner mainly submitted that the Court below fell in error while deciding the application because as per the provisions of the agreement between the parties, it was obligatory for the Court to refer the parties to arbitration in terms of the Act and nothing remains to be decided in the original action. Petitioner had filed an application under Section 8 of the Act along with duly notarized copy of application form dated 9.8.2012/arbitration agreement as required under the said section. More so, reference of the matter to the arbitration would result into quick disposal of the case. Infact, plaintiffs just wanted to delay the matter thereby causing loss to the petitioner and in the absence of sale consideration, project of the petitioner cannot be developed well in time and the Court below completely ignored this fact while passing the order under challenge and the same be set aside.

Learned counsel for the respondents submitted that the

Court below has rightly taken a view that application is not maintained and dismissed the same and present petition is also liable to be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record and the impugned order, this Court is of the considered view that main contention of the plaintiffs was that the agreement of sale has never been signed by the parties and no document has been placed on the record. Plaintiffs had taken a specific stand that as per the application for booking of the property in dispute, it has been specifically mentioned in clause 5 that the terms are indicative and not conclusive. As the final agreement itself has not been executed between the parties, there was no question of filing of agreement along with application under Section 8 of the Act. Plaintiffs have also taken a stand that infact Apartment Buyers Agreement has not been signed by the plaintiffs and as such the terms & conditions of the agreement are all one sided and not fair.

The Court below has rightly taken the view that as per provisions of Section 8 of the Act, application must be accompanied by original arbitration agreement or duly certified copy thereof. For ready reference, the essential conditions for applicability of Section 8 reads as under:

- "(i) *Existence of an Arbitration Agreement between the parties to the suit;*
- (ii) *Application under Section 8 must be filed before submitting first statement on the substance of*

dispute;

(iii) *Application U/2 8 shall be accompanied by original Arbitration Agreement or a duly certified copy thereof".*

The above mentioned provisions of Section 8 of the Act have not been complied with as certified copy of the agreement has not been attached with the application. The Court below, while passing the impugned order, rightly placed reliance upon the judgment of Hon'ble the Apex Court in ***N. Radha Krishnan v. Mastero Engineers and Others 2010(1) Supreme Court Cases 72***, wherein it was held that provisions of Section 8(2) of the Act are mandatory, which relate to filing of certified copy of the agreement along with the application under Section 8 ibid but that has not been complied with.

In view of my above discussion, there is no illegality in the order under challenge and the present petition, being devoid of any merit, stands dismissed.

(Shekher Dhawan)
Judge

April 12, 2016

"DK"