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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ARB. P. 233/2014**

MONIKA INFRASTRUCTURE PVT. LTD. ..... Petitioner
Through: Ms. Smita Maan, Advocate.

versus

RATI RAM & ANR. ..... Respondents
Through: Mr. Rajesh Singh, Advocate.

AND

2.
\+ **OMP 540/2014 & IA 10454/2014**

MONIKA INFRASTRUCTURE PVT. LTD. ..... Petitioner
Through: Ms. Smita Maan, Advocate.

versus

RATI RAM & ANR. ..... Respondents
Through: Mr. Rajesh Singh, Advocate.

CORAM: JUSTICE S. MURALIDHAR

O R D E R
% **26.11.2016**

1. These two petitions filed by Monika Infrastructure Pvt. Ltd. ('MIPL') against Shri Rati Ram, Respondent No. 1 and Shri Chand Kiran, since deceased, who has been substituted by his legal representative Smt. Leela.

2. Whereas the Arbitration Petition No. 233 of 2014 is under Section 11 (6)

of the Arbitration and Conciliation Act, 1996 ('Act'), OMP No. 540 of 2014 is under Section 9 of the Act.

3. The background facts, according to the Petitioner, are that an Agreement to Sell was entered into between the parties on 14th February, 2000 whereby the Respondents agreed to sell, transfer and convey their right, title and interest in land admeasuring 25 Bighas 2 Biswas comprised in Khasra No.39/9 (2-14), 12 (4-16), 17/2 (3-0), 18 (4 -16), 19 (4-16), 49//9/1 (5-0), situated in the revenue estate of village Rewla, Khanpur, Najafgarh, New Delhi. The entire sale consideration of Rs. 7,52,000 was paid by cheques on the date of agreement itself.

4. Clause 4 of the Agreement stated that the seller i.e., the Respondent herein would not have any right, interest or lien on the said land henceforth and for all intents and purposes, the Petitioner herein alone "shall be liable and responsible for all the dues and payments of the concerned corporate authorities in respect thereof from the date of the execution of this Agreement." Further, in terms of Clause 2, the Respondents undertook to hand over the vacant physical possession of the land at the spot along with all the documents "after receiving full and final consideration amount and after the registration of the Sale Deed/G.P.A./Will/all other relevant documents in the office of the Sub-Registrar, New Delhi." Under Clause 5 of the Agreement, the Respondents were to "apply for and get the permission for the sale/transfer of the said land and freehold rights in the land" in favour of the Petitioner "within one month from the date of grant of sale permission to get the same registered in the office of the sub-Registrar,

Delhi/New Delhi." In terms of Clause 8 of the said Agreement to Sell, the Respondents appointed the Petitioner as their attorney for the management, control and supervision of the said land. The Respondents agreed not to cancel, withdraw or revoke the powers conferred upon the said attorney.

5. At the outset, it requires to be noticed that at the time of filing of OMP 540 of 2014 on 9th May, 2014, a photocopy of the said Agreement to Sell was placed on record along with the documents. This contained, on the right hand bottom corner, the stamp of the Petitioner with the signature of its Director and an endorsement in hand stating that "this is true and correct copy of original".

6. Simultaneous with OMP No. 540 of 2014, the Petitioner also filed Arbitration Petition No. 233 of 2014 along with documents which also included a photocopy of the said Agreement to Sell and Purchase containing the signatures of the Petitioner above the endorsement stating "this is true and correct copy of original".

7. Both Arbitration Petition No. 233 of 2014 as well as OMP 540 of 2014 were listed together for the first time in this Court on 13th May, 2014 when the following order was passed:

> "The petitioner, M/s Monika Infrastructures Pvt. Ltd. @ M/s Monika Property Dealers Pvt. Ltd. has filed the abovementioned two petitions against respondents, namely, Rati Ram and Chand Kiran. In the first petition being Arb. P. No.233/2014, the prayer is sought by the petitioner for appointment of sole Arbitrator as per Clause 9 of the Contract dated 14th February, 2000 entered into between the petitioner and the respondents. In the second petition being OMP

No.540/2014, the interim order is sought by the petitioner against the respondents restraining them, their attorneys, servants, representatives, assignees, LRs, family members, etc. from selling, alienating, transferring, assigning and/or creating any kind of third party interest in any Maaner in favour of any third person in respect of land admeasuring 12 Bighas 11 Biswas out of the total land admeasuring 25 Bighas 2 Biswas comprised in KhasraNo.39//9 (2-14), 12 (4-16), 17/2 (3-0),18 (4-16), 19 (4-16), 49//9/1 (5-0), situated in the revenue estate of Vill. Rewla, Khanpur, Najafgarh, New Delhi, till the final disposal of the dispute/arbitration proceedings.

The case of the petitioner is that the respondents are co-owners to the extent of ½ share, i.e. 12 Bighas 11 Biswas in the total land admeasuring 25 Bighas 2 Biswas comprising in the Khasra numbers detailed above. The respondents entered into an agreement to sell and purchase with the petitioner on 14th February, 2000 whereby they agreed to sell the land in question to the petitioner-Company for a total sale consideration of Rs.7,52,000/-. The details of the payments are mentioned in the petition and it is stated that the cheques issued by the petitioner were duly encashed by the respondents who have also executed the receipts, possession letter and affidavit all dated 14th February, 2000. The General Power of Attorney was issued by them in favour of Mr.Om Prakash, an employee of the petitioner. The respondents also handed over the actual physical possession of the land in question to the petitioner-Company who is in actual possession of the land on the basis of the power of attorney issued by the respondents.

The petitioner has not filed the original documents as well as copies of the earlier litigations pending between the respondents and their family members and also the orders passed by the Court from time to time. It is necessary for the petitioner to file the said documents before issuing the notice in the petitions, as prima-facie, it appears to the Court that the contract is dated 14th February, 2000. The present petitions have been filed after a period of more than 14 years. Let all pleadings, documents and orders be filed by the petitioner so

> that the Court would be able to come to the prima-facie conclusion, as to whether the disputes raised by the petitioner are time barred or not. Let these documents be filed within four weeks.
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> List on 5th August, 2014."

8. In Arb. Pet. No. 233 of 2014 under an Index dated 23rd May, 2014, the originals of the following documents were filed by the Petitioner:

(i) Agreement to Sell and Purchase dated 14th February, 2000.

(ii) GPA dated 14th February, 2000.

(iii) Original affidavit of the Respondent dated 14th February, 2000.

(iv) Original receipt for the sum of RS.7,52,000 dated 14th February, 2000.

(v) Original possession letter of the same date.

9. Significantly, none of these originals contained any signature of the Petitioner.

10. In order to satisfy the Court about the petition being within limitation, the Petitioner filed on 7th July, 2014 a copy of an application submitted by the Respondents under Section 5(1) of the Delhi Land (Restriction on Transfers) Act, 1972 ('DLRT Act') for permission to sell, mortgage and transfer the land in question.

11. An application being IA No. 12110/2014 under Order VI Rule 17 CPC was filed by the Petitioner seeking to explain that the signature of the Petitioner on the photocopy of the Agreement to Sell was only for the purpose of undertaking that it was a true certified copy and that the original in fact did not contain the signature of the Petitioner. It is the case of the

Petitioner that the Agreement to Sell does not get invalidated due to the absence of the signature of the purchaser as long as the signatures of the seller are not denied by the seller.

12. The following two paragraphs i.e., Paras 28 (a) and (b) were sought to be inserted in the main petition i.e. OMP No. 540 of 2014:

> "28A. That it is submitted that the originals of the agreement to sell, General Power of Attorney, Affidavit and possession letter dated 14.02.2000 executed by the respondents in regard the land in question does not bear any stamp and signature of the petitioner company being the purchaser. It is submitted that there is no requirement in law mandating the purchaser to sign the agreement to sell "and it is only the seller/vendor whose signature is mandatorily required in the sale documents. It is a settled position of law that the absence of the signature of the purchaser on the agreement to sell does not affect the legality and validity of the agreement in any Maaner and the same is very much enforceable in law against the seller/vendor as a legal and valid contract. Therefore, even though the above said agreement to sell in question does bear the stamp and signature of the petitioner company in the capacity of purchaser, the same does not affect the validity and legality of the said agreement and same is a document enforceable in law against the respondents.
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> 28B. That when the photo copy of the above said agreement to sell dated 14.02.2000 and other documents were filed by the petitioner company before this Hon'ble Court along with the above said petition, the said photocopies were signed by the authorised representative of the petitioner company and the stamp of the petitioner company were put on the said photocopies on the instruction of the clerk of the advocate of the petitioner company in order to certify the said documents as the true copy as per the requirement of the registry of this Hon'ble Court. The clerk of the advocate of the petitioner company had asked the authorised representative of the

petitioner company to put the stamp of the petitioner company and sign the petition, copies of the documents and the vakalatnama. Accordingly, the photocopies of the above said documents were signed by the authorised representative of the petitioner company and the stamp of the petitioner company was also affixed thereon by mentioning them as True Copy. The said stamp and signature of the petitioner company on the said documents are not in the capacity of purchaser and the same have not been intended to make any changes in the documents but it was only in order to certify the photocopies as the true copies of the originals."

13. On the above application in OMP No. 540 of 2014 the following order was passed by the Court on 8th July 2014:

> "The petitioner/applicant has filed the petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking certain interim relief against the respondents.
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> During the pendency of the hearing of the main petition, the above mentioned application has been filed by the petitioner under Order VI Rule 17 read with Section 151 CPC seeking amendment in the petition. Along with the application, the petitioner has also filed the amended petition. The petitioner seeks an amendment mentioned in para 28 of the petition by inserting paras 28 A and B in the petition.
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> Issue notice. Learned counsel appearing on behalf of the respondents accepts notice and states that subject to the objections to be raised in the reply, the respondents have no objection to the amendment sought by the petitioner. In view of the statement made by the learned counsel for the respondents, the prayer of this application is allowed.
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> The amended petition is taken on record.
>
> The application is disposed of."

14. On the same day at the hearing, learned counsel for the Respondents while seeking time to file a reply raised the contention that the petition was not maintainable as it was barred by limitation. The second objection was that it was not maintainable under Section 33 of the Delhi Land Reforms Act 1954 (DLR Act). In any event, he undertook that till the next date, the Respondents would not sell the land in question. Four weeks' time was granted on that day to the Respondents to file a reply.

15. Another set of documents was filed on 1st August, 2014 in Arb. Pet. No. 233 of 2014. This included:

(i) Copy of an application dated 13th May, 2014 filed by the Petitioner with the Additional District Magistrate, South-West, Kapashera, New Delhi seeking provision of the complete file of the NOC Nos. 4982, 4983 and 4984 of village Rewla Khanpur, New Delhi.

(ii) Copies of the order dated 10th November, 1996 passed by the Additional Collector, Delhi in an appeal filed under Section 64 of the DLRT Act against an order dated 24th September, 1996 passed by the Naib Tehsildar seeking the mutation and succession in favour of the Appellants therein.

(iii) A copy of the response filed by the Respondents to the competent authority under DLRT Act seeking permission to sell/mortgage/gift/lease the land in question to one Leo India Capital Pvt. Ltd. dated 19th December, 2013; and

(iv) Copies of various NOCs.

16. *Status quo* was ordered to be maintained in the said appeal restraining the Respondents therein, who are also the Respondents in the present petition, from creating third party interests in respect of the land in question. It appears that on 2nd August, 1999 with the parties not appearing, the appeal was dismissed in default. In the copy of the status report dated 19th December, 2013 issued by the Tehsildar, *inter alia* it is stated that there was no violation of Section 33 of the DLR Act. It further notes that a Court case is still pending. Further, the document shows that on 9th January, 2014 there was a rejection of the NOC. It appears that, thereafter, an NOC was obtained on 26th March, 2014.

17. The Petitioner has also placed on record a copy of the Khatoni which in columns 7 to 10 records the stay order granted by the Civil Judge in the case involving the Respondents *qua* the land in question. It also records that *status quo* was passed by the Revenue Officials on 20th November, 1996.

18. In seeking to explain the limitation, the Petitioner states that the entry in respect of the *status quo* order continued notwithstanding the dismissal of appeal in 1999. It is only on 25th April, 2014 that the Tehsildar recorded the vacation of the stay order. In effect, therefore, according to the Petitioner, till the aforesaid date i.e., 25th April, 2014, the Revenue officials proceeded on the basis that there was a *status quo* order in respect of the said property and, therefore, no application was moved by either party for getting the sale deed executed.

19. Thereafter, for several hearings in this Court, no replies were filed either in the arbitration petition or in OMP 540 of 2014. Meanwhile, the parties

went in for mediation which did not succeed. On 23rd July 2015, the following order was passed:

> "The mediation between the parties has failed.
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> List for hearing on 13th August, 2015.
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> Learned counsel for the respondents submits that the petitioner has filed a civil suit with respect to the adjoining land which is pending before the learned Additional District Judge. It is submitted that it would be appropriate that the petitioner may institute a civil suit with respect to the subject land as well.
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> Learned counsel for the petitioner seeks time to take instructions."

20. At the next hearing on 13th August, 2015, the Petitioner informed the Court that it did not agree to the suggestion of the Respondents to file a civil suit. Further time was granted to the Respondents to file a reply.

21. Thereafter, for some hearings on 2nd March, 2016 and 14th March, 2016 when none appeared for the Respondents, they were set *ex parte*. On 4th October, 2016, Mr. Rahul Kumar and Mr. Saurabh Shandilya, Advocates appeared for the Respondents. On that date, a query was raised by the Court whether there was no requirement of registration of the Agreement to Sell since main relief sought was that for specific performance.

22. Today, the matter was listed for hearing, with the consent of both parties, Mr. Rajesh Singh, learned counsel for the Respondents stated that he needs time to file his vakalatnama on behalf of the Respondent as he was instructed by them to appear only yesterday.

23. Considering that several hearings have already gone by and the Respondents were aware even on 4th October, 2016 that the matter was to be listed today i.e., 26th November, 2016, the Court declines the Respondents' request.

24. Ms. Smita Maan, learned counsel for the Petitioner has by referring to the amendments made in 2001 to Section 17 of the Registration Act and, in particular, to Section 17(1A) and proviso to Section 53 of the Transfer of Property Act, 1882 submitted that the requirement of registration of an Agreement to Sell became effective only from 24th September, 2001 when Act 48 of 2001 was notified. She submitted that inasmuch as the Agreement to Sell in the present case is dated 14th February 2000, the aforementioned amendments would not have any application. She also seeks to rely on the decisions of this Court in ***Patricia Helen Atwal v. ING Vyasa Bank Ltd. 2016 (155) DRJ 57 [DB]*** and ***Shashi Bala Nagpal v. Rama Kant Shah 2016 (8) AD (Del) 208*** in support of the above submission.

25. Mr Rajesh Singh, learned counsel for the Respondents, while not denying the legal position as regards the prospectivity of the above amendments pointed out in the first instance that the Agreement to Sell in original had not been signed by the Petitioner and, therefore, could not be acted upon by the Court either for the appointment of an Arbitrator or for passing any interim order under Section 9 of the Act.

26. As far as the above objection is concerned, the Court notes that in view of the queries raised by the Court, the Petitioner had filed IA No. 12110/2014 in OMP No. 540/2013. After hearing learned counsel for both

parties, the said application was allowed but it was subject to “the objections to be raised in the reply” of the Respondents. Unfortunately for the Respondents no reply has been filed till date to the amended OMP No. 540 of 2014 which contains averments explaining the circumstances under which the original agreement did not contain the signature of the Petitioner and the averments that there is no requirement in law for the agreement to sell to contain the signature of the purchaser.

27. At that juncture, learned counsel for the Respondent again renewed his prayer for some more time to file a reply. Considering that both these petitions have been pending for more than two years and several opportunities have been granted to the Respondents to file a reply, the Court does not consider it justified to grant any further time for that purpose.

28. Learned counsel for the Respondents then reiterated the above claim of the Petitioners being barred by limitation. Here again, the Court finds that the Petitioner has sought to explain the aspect of limitation by placing on record documents which *prima facie* go to show that the entry in Khatoni regarding the *status quo* order of the Civil Court was rectified only on 25th April, 2014. Till that date, both parties as well as the Revenue officials appear to have proceeded on the basis that the *status quo* order *qua* the land in question was still pending. They did not seem to be aware of the fact that it had been vacated by the Civil Court in 1999 itself with the dismissal in default of the appeal filed against the Respondents.

29. A query was posed to learned counsel for the Petitioner whether in fact there was any communication addressed to the Respondents to come

forward after that date i.e., 25th April, 2014 to execute the sale deed. While pointing out that there was no such letter, Ms. Maan drew attention to the averments in para 15 of OMP No. 540 of 2014 to the effect that the Petitioner approached the Respondents on 28th April, 2014 and asked him to obtain an NOC on which stage the Respondents insisted for a sum of Rs. 1 crore over and above the sale consideration already paid in terms of the Agreement to Sell dated 14th February, 2000. When the Petitioner insisted on going by the Agreement to Sell, the Respondents insisted that they would only comply if they paid Rs. 1 crore in addition to the sale consideration received by them.

30. Attention was also drawn to the averment in para 4(p) of the Arb. Pet. No. 233 of 2014 when the Respondents refused to perform their part of the obligation and to the averments in para 4(t) that "the Respondents have totally refused to comply with any of the terms and conditions of the contract dated 14th February 2000."

31. To reiterate, all of the above averments have gone uncontroverted with the Respondents failing to file any reply to either of the petitions.

32. In light of the above averments in the petition, the Court is satisfied that for the purpose of Section 11(6) and (6A) of the Act, the Respondents have been unable to dispute that there does exist an arbitration clause in the Agreement to Sell and that the Respondents have failed to act in terms of the procedure outlined in the arbitration clause for the appointment of an Arbitrator.

33. The Court is also satisfied that the Petitioner has made out a *prima facie* case for a *status quo* in favour of the Petitioner *qua* the land in question in terms of the assurance already given by the Respondents on 8th July, 2014.

34. Accordingly the following directions are issued:

(i) Till such time the learned Arbitrator appointed by the Court vacates, modifies or varies this order in an application that may be filed by either party under Section 17 of the Act, the Respondents will continue to maintain *status quo qua* the lands in question as regards the title and will not sell, transfer or create any third party rights in the land in question. It is noted at this stage that the case of the Petitioner is that the possession of the land in question is with the Petitioner.

(ii) The Court, accordingly, proposes Ms. Mamta Sehgal, (Mob. No.9910384607) a former District & Sessions Judge, Delhi as sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC'). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules. In the first instance, the proposed Arbitrator will make a disclosure to the DAC in terms of Section 11 (8) read with Section 12 (1) of the Act and, thereafter, enter upon reference. DAC will provide to the parties copies of the said disclosure. In the event the disclosure is not made within a reasonable time or such disclosure discloses the inability of the proposed Arbitrator to act as such, it will be open to the parties to apply to this Court for directions.

35. The petitions are disposed of in the above terms. Pending application also stands disposed of. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

S. MURALIDHAR, J

NOVEMBER 26, 2016
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