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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 672/2015

HARBIR KAUR & ORS

..... Petitioners

Through

Mr.Rajender Singh, Advocate.

versus

HOTSHOT DEVELOPERS (P) LTD & ANR Respondents

Through

Mr.Keshav Mohan and Mr. Rishi
K.Awasthi, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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28.01.2016

1 Petitioners are aggrieved by the order dated 25.3.2015 wherein the application filed by the respondents under Section 8 of the Arbitration and Conciliation Act,1996 seeking reference to Arbitration had been allowed.

2 Learned counsel for the petitioners vehemently urges that fraud had been pleaded in the plaint which is not an answer which can be given by the Arbitral Tribunal. Although admittedly there is an allotment letter dated 21.11.2011 inter se the parties which even contained an arbitration clause (Clause 54) yet the question of fraud could not be answered by the Arbitral Tribunal. Further submission is that the necessary clearances as required to be taken by the respondents from the National Green Tribunal had not been taken. All these questions could only be answered in a suit. The matter could not have been referred to arbitration. The impugned order

staying the suit is liable to be set aside.

3 The present suit is a suit which arises out of an allotment letter dated 21.11.2011 issued by the defendants/respondents to the petitioners. Clause 54 of the allotment agreement contains an arbitration clause. It reads herein as under:

“54. That all the disputes or disagreements arising out of in connection with or in relation to this allotment which cannot be amicably settled shall be finally decided by arbitration and the sole arbitrator in such a case shall be appointed by the Company. The place of arbitration shall be at Delhi.”

4 Section 8 of the Arbitration Act casts a mandate upon the Court and it clearly states that in case where there is an arbitration clause between the parties and the dispute which has arisen relates to the subject matter of the arbitration agreement and is arising out of the said agreement, the Court must refer the dispute to the arbitration. This is a mandate which has been cast upon the Court. There is little discretion left with the Court in such an eventuality.

5 To decide as to whether the impugned order suffers from infirmity or not, averments made in the plaint are relevant.

6 The present suit is a suit for permanent injunction and declaration. It is the submission of the plaintiffs that the plaintiffs had entered into an agreement with the defendants who had agreed to allot them a shop in terms of the allotment letter dated 21.11.2011 pursuant to which an amount of more than Rs.3.60 lakhs had been paid by them. Necessary clearance required to be taken by the defendants from the National Green Tribunal had not been taken. Learned

counsel for the petitioners vehemently submits that the National Green Tribunal in its order dated 03.4.2014 had stated that if any construction work is carried out within a radius of 10 kilometre from the Okhla Bird Sanctuary it is liable to be stayed. The project of the respondents falls within a 10 kilometre radius. It was only for this reason that the petitioners had stopped making payment after July, 2013. This is a fraud which had been played upon the petitioners by the respondents. This fraud can only be answered by the Court and not by the Arbitral Tribunal.

7 Reply to the application had been filed.

8 It has also been brought to the notice of this Court that the order of the National Green Tribunal has been modified by a subsequent notification of the Government i.e. the Ministry of Environment, Forest and Climate Change dated 19.8.2015 wherein the radius of 10 kilometres has been reduced to 1.27 kilometres. This is a public document. The petitioners are fully aware of this document.

9 The suit had been filed by the petitioners in June, 2014. Admittedly, even as per the petitioners they had paid instalments only up to July, 2013. They have defaulted in making the payment after July, 2013.

10 The Trial Court had noted the facts in its correct perspective. The Trial Court had noted that the dispute had clearly arisen out of the allotment letter dated 21.11.2011 which contained an arbitration clause in Clause 54. The application for referring the matter to arbitration had been filed by the respondents in the first instance i.e. before their written defence could be taken up. The Apex Court in

P.Anand Gajapathi Raju Vs. P.V.G. Raju 200(4) SCC 539 has reiterated that in cases where there is an arbitration clause contained in the agreement, it is obligatory for the Court to refer the dispute to arbitration in terms of the arbitration clause and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. The dispute sought to be raised by the present petitioners clearly comes within the ambit of the arbitration clause.

11 Impugned order in this background suffers from no infirmity. Petition is dismissed with cost quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 28, 2016

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