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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 685/2015 & C.M. No.13400/2015

M/S AMR INFRASTRUCTURES LIMITED

..... Petitioner

Through Mr.Ajay Verma and Ms.Manjeeta
Kumari, Advocates.

versus

PREMA KANODIA

..... Respondent

Through Mr.Rahul Kadyan, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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10.02.2016

Impugned order is dated 08.4.2015. The application filed by the petitioner/defendant in the Trial Court under Section 8 of the Arbitration and Conciliation Act, 1996 stood dismissed and rightly so.

Record shows that the present suit is a suit for recovery of money which has been filed by the plaintiff against the defendant based on the premise that he had booked a shop bearing no.G-13 in the Shopping Mall at Plot No.9, Tech Zone, Greater Noida, Uttar Pradesh for a total consideration of Rs.37,61,925/-. The parties had entered a Memorandum of Understanding (MOU) dated 12.4.2008. Admittedly, this MOU contains an arbitration clause. Extract of the same is reproduced herein as under:

“That any dispute in the interpretation of any clause of this MOU shall be referred to the sole arbitration of an Arbitrator to be nominated by the Developer whose decision shall be final and binding

on both the parties. All the arbitration proceedings shall be carried out in terms of the Arbitration and Conciliation Act, 1996 at New Delhi.”

The plaintiff filed a civil suit for recovery of Rs.6 lakhs along with interest. The plaint discloses that out of the total sum of Rs.37,61,925/- which was required to be paid by the plaintiff to the defendant qua the shop which he had booked with the defendant, the plaintiff had paid 95% of the said amount i.e. a sum of Rs.32,85,500/-. This factum is not disputed. Acknowledgment receipt of the said amount is also on record. MOU dated 12.4.2008 was entered into by the parties subsequently. In terms of the MOU, in the case of delayed delivery of the shop a sum of Rs.35000/- per month shall be paid by the defendant every month to the plaintiff till the handing over of the possession of the shop; since the project was not completed within the stipulated period which was up to December, 2009. As per the terms and conditions of the MOU the defendant Institute became liable to pay an additional sum of Rs.55,000/-(cumulative sum of Rs.90,000/-). The petitioner/defendant continued to pay this amount and in fact last payment made by him was in March, 2014 which was a sum of Rs.81,000/- (after deducting Rs.9000/- as TDS). However, three of the last drawn cheques i.e. the cheques for the months of January, February and March, 2014 stood dishonoured. This was brought to the notice of the non-applicant/defendant.

Suit was accordingly filed to recover the balance amount of Rs.6 lakhs along with interest; there was also prayer seeking decree of mandatory injunction directing the defendant to complete the project and hand over the shop in question to the plaintiff. Interest @ 24 % per

annum was also demanded.

Before the written statement was filed, the present application under Section 8 of the Arbitration and Conciliation Act came to be filed. Contention was that there was an arbitration clause contained in the MOU dated 12.4.2008, all disputes arising out of the MOU necessarily have to be referred to the arbitration.

Reply was filed to the said application opposing it.

Impugned order has rejected this application. Contention before this Court is that the once there is an arbitration clause and admittedly there was an arbitration clause in the MOU dated 12.4.2008, the Court had no option but to have necessarily referred the disputes for arbitration.

This Court is not in agreement with this submission of the learned counsel for the petitioner. Unless and until the dispute is covered by the arbitration clause and it would not be a dispute encompassed within the scope of Section 8 of the said Act.

To answer this contention, the averments in the plaint become relevant. The averments in the plaint disclose that a shop had been booked by the plaintiff with the defendant. After a sum of Rs.32,85,500/- (which was 95% of the total consideration) was paid, there was an MOU executed between the parties; it was only after the delay in delivery of the shop in question that this MOU (12.4.2008) came to be executed between the parties. The arbitration clause (as extracted supra) clearly states that it is only a dispute relating to the interpretation of any clause of the MOU which requires the dispute to be referred to the arbitration. This is not the averment in the plaint.

There is no dispute to the interpretation of any clause; it is only the delayed delivery which is being made by the defendant to the plaintiff. Moreover, the cheques already issued by the defendant in favour of the plaintiff, stood dishonoured and this amount has been claimed in the plaint along with a decree for mandatory injunction directing the defendant to handover the shop in question to the plaintiff. Even presuming that the disputes are referred to arbitration, the Arbitrator would have no jurisdiction to give a direction to the plaintiff to hand over the shop in question to the plaintiff; this is not a part of the MOU.

The impugned order in this background suffers from no infirmity. Petition is dismissed with costs of Rs.10,000/-.

INDERMEET KAUR, J

FEBRUARY 10, 2016
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