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IN THE HIGH COURT DELHI AT NEW DELHI

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CS (OS) 3450/2015

IA Nos.25835-25836/2015; 8697/2016

KUSUM KALRA

.... Plaintiff

Through: Mr. Uday Kumar, Advocate.

versus

SUBASH CHANDAR VOHRA

.... Defendant

Through: Mr. Vaibhav Kalra, Advocate for D-1.
Mr. Ajay Pal Singh, Advocate for D-2.

CORAM: JUSTICE S.MURALIDHAR

ORDER

09.08.2016

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1. The counsel for the Defendants point out that an alternative prayer in the amended plaint is for a direction to Defendant No.2 to deliver the possession of the suit property i.e., D-22, Greater Kailash, Part-II, New Delhi-110048 “of new construction as per Settlement Agreement attached with Collaboration Agreement dated 17th November, 2014 and more specifically described in the para 11 of the plaint.” He points out that the Collaboration Agreement (CA) was expressly made part of the Settlement Agreement (SA) dated 17th November, 2014, entered into between the parties at the Delhi High Court Mediation & Conciliation Centre (‘DHCMCC’).

2. Clause 35 of the said CA, which has been signed by both the Plaintiff and Defendant No.1 as well as Defendant No.2, Deb Realtors Pvt. Ltd.

(‘Builder’) states “that if any dispute arises between the parties regarding any matter concerning herewith, the same shall be mutually decided or be referred to arbitrator mutually appointed by both the parties.” It also states that “the provisions of Arbitration and Conciliation Act, 1996 shall apply to such proceedings. The place of arbitration shall be at New Delhi.”

3. The counsel for the Plaintiff is unable to deny that the aforementioned CA was, in fact, signed by the parties including the Plaintiff and that the SA incorporates by reference the said CA as part and parcel of the SA. The Plaintiff also does not deny that the parties have acted on the CA. The Plaintiff and Defendant No.1 have received sums in part in terms of the said CA. However, he states that neither Defendant No.1 nor Defendant No.2 have actually taken any steps for referring the matter to arbitration by filing any application.

4. It is the Plaintiff who has come to the Court with the present suit seeking as their first prayer the relief of partition of the suit property. The Plaintiff does not deny that the CA was signed by both the parties i.e., the Plaintiff and Defendant No.1 with the Builder, i.e., Defendant No.2. Further it is seen that the Settlement Agreement expressly states in Clause 2 as under:

“2. The parties have also entered into a Collaboration Agreement with the Builder dated 17.11.2014 and the same shall also be read as part and parcel of the present agreement entered between the parties. The Collaboration Agreement dated 17.11.2014 is annexed as Schedule 1.”

5. In fact, the CA has been marked as Schedule I to the SA. It is also seen that even during the mediation, the Builder participated at the request of

the parties and he was accordingly impleaded in the Test. Cas. No.8/2003 by the order dated 5th January, 2015. That suit was dismissed as withdrawn on the same date in view of the SA.

6. Counsel for Defendant No.2, which has not filed a written statement till date, raises a preliminary issue about maintainability of the suit. He points out that Clause 35 of the CA which forms part of the SA contains an arbitration clause.

7. In the circumstances it was for the Plaintiff to have taken steps to have the disputes between the parties arising out of both the SA and the CA referred to arbitration. In terms of Section 8(1) of the Arbitration & Conciliation Act, 1996 as amended by the Arbitration & Conciliation (Amendment) Act, 2015, the disputes between the parties are referred arbitration.

8. Since none of the parties disputes the validity of the CA which contains the arbitration clause, and with the Plaintiff is relying on the CA for relief, the Court refers the parties to arbitration in terms of Clause 35 of the CA.

9. The suit and the applications are accordingly dismissed.

AUGUST 09, 2016
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S. MURALIDHAR, J.