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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. 241/2012

KHAIRATI RAM Petitioner
Through Mr.N.K.Jha, Advocate

versus

SURESH CHAND MITTAL & OTHERS Respondents
Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **19.09.2017**

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) to impugn the award dated 16.01.2012.
2. The respondents have already proceed *ex-parte* vide order dated 11.07.2014. I may also note that this court had requested the learned arbitrator to transfer the original arbitral record. The learned arbitrator is stated to have expired. Notice was sent to his son Sh.Anuj Agarwal who appeared before the Joint Registrar of this court on 27.01.2017 and submitted that he had been unable to find any record pertaining to the arbitration proceedings. He also filed an affidavit to that effect.
3. The case of the petitioner is that an agreement dated 05.08.2005 for sale of land of the petitioner with respect to Khasra No. 149/1 in Village Burari, Ajit Vihar, Delhi was executed in favour of respondents for a sum of Rs.44,05,500/-. The petitioner has received a sum of Rs.2,00,000/- as earnest money. Respondents could not arrange the balance funds. Other than the payment of Rs.2,00,000/- which was received by the petitioner, it is urged

that no other payment has been received by the petitioner. Hence, it is urged that the agreement dated 05.08.2005 stands cancelled as null and void and thereafter the petitioner is stated to have sold the land to one Dr.Joginder Bhardwaj and executed necessary documents such as GPA etc. The earnest money was forfeited.

4. It is further the case of the petitioner that the respondents fabricated an agreement dated 10.02.2006 by forging the signatures of the petitioner showing the sale of the aforesaid land in their favour. The agreement also claims that the petitioner was paid Rs. 5,00,000/-. He also fabricated a receipt dated 28.12.2005 by forging the signatures of the petitioner showing the receipt of Rs.5,00,000/-. An FIR being No.513/2010, under Sections 420, 467, 468 and 471 IPC has been filed by the petitioner with Police Station Kavi Nagar, Ghaziabad. It is pointed out that though the Police have filed a closure report, the court of Chief Judicial Magistrate, Ghaziabad vide order dated 20.05.2016 has directed the Police to carry out further investigation in the matter and has not accepted the said closure report.

5. A perusal of the award would show that the learned arbitrator framed seven issues. Based on the same, he passed an award in favour of the respondents stating that the respondents/claimants are entitled to Rs.20,91,482/- and also a sum of Rs.12,500/- as cost plus expenses to alongwith interest @ 10% per annum.

6. The relevant issue, which is the bone of contention between the parties, is issue No.1, which reads as follows:

“1. Whether the receipt dated 28.12.2005 and agreement dated 10.02.2006 are forged and fabricated one?”

7. The case of the petitioner is that the receipt dated 28.12.2005 and the

alleged agreement dated 10.02.2006 had to be proved by the respondents/claimants. Though the Evidence Act does not strictly apply, I may look to the relevant provisions. Sections 67 and 72 of the Indian Evidence Act read as follows:

“67. Proof of signature and handwriting of person alleged to have signed or written document produced:

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

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72. Proof of document not required by law to be attested

An attesting document not required by law to be attested may be proved as if it was unattested.”

8. A perusal of the receipt dated 28.12.2005 and agreement dated 10.02.2006 shows that these are documents allegedly attested by witnesses. Admittedly, none of the witnesses had been called for the purpose of proving the execution of the documents by the petitioner. In the background of the case, these are material witnesses. The evidence led by the respondents is also surprisingly not available. The award also does not consider the fact that the petitioner has filed an FIR alleging forgery of the said two documents dated 28.12.2005 and 10.02.2006 investigation of which is pending which were material evidence on the record which the learned Arbitrator has ignored.

9. In my opinion, award has been passed without following a judicial approach. A material document, namely, the FIR and the fact that the police has been ordered to carry on further investigations throw a serious doubt on the authenticity of the receipt dated 28-12-05 and agreement dated 10-02-

2006. These documents have been completely ignored by the learned arbitrator.

10. Reference may be had to the judgment of the Supreme Court in the case of *Associate Builder v. Delhi Development Authority*, AIR 2015 SC 620/(MANU/SC/1076/2014). The award is contrary to the fundamental policy of Indian Law.

11. Accordingly, I quash the award. Petition is accordingly allowed.

JAYANT NATH, J.

SEPTEMBER 19, 2017/v