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

+ CM 3878/2014, 12307/2014 in FAO(OS) 18/2013

RK ASSOCIATES

..... Appellant

Through: Mr A.S. Chandhiok, Sr. Adv. with Mr Ritesh Kumar, Mr Dipender Chauhan, Ms Sukhneet Kaur Dhir and Mr Shrey Chathly, Adv.

versus

SANJEEV KUMAR MAHOTRA & ORS

..... Respondents

Through: Mr Y.R. Sharma, Adv. for R-2a,b & c.

Mr P.S. Mehandru, Adv.

Mr Kanwal Chaudhary, Adv. for the proposed R-8.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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09.02.2017

This appeal is directed against the order/judgment dated 14.09.2012 delivered by a learned Single Judge of this Court in OMP 326/2006 which in turn was a petition under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act') challenging an award dated 11.04.2006 delivered by the Sole Arbitrator. One of the issues which was determined by the learned Arbitrator was that the Property Development Agreement (PDA) which was entered into between the appellant and the respondent on 06.09.1989 had been validly terminated on 11.06.1991. This finding of the learned Arbitrator has been set aside. In other words, the

learned Single Judge, by virtue of the impugned order, held that the termination was invalid.

The learned counsel for the appellant submits that the factum of the termination being declared invalid would throw up other issues which require determination such as the issue of damages and/or specific performance of the PDA. Those issues are required to be gone into and to be determined. He, therefore, requested that the matter ought to have been remitted to the learned Arbitrator for determining those issues and for granting or not granting relief in accordance with law.

We have heard the counsel for the parties and we have taken note of the fact that the learned Single Judge in paragraph 14 of the impugned order has been careful to record that insofar as the issue of damages is concerned that would have to be examined but the same would have to be done in some other appropriate proceeding. With regard to the issue of specific performance, however, the learned Single Judge has given a finding that the same was not capable of being granted. We are of the view that since this issue was not gone into by the learned Arbitrator in the first instance while making the award, the learned Single Judge ought not to have been given a finding on it. Therefore, insofar as the finding with regard to specific performance is concerned as contained in paragraph 15 of the impugned judgment, the same cannot be sustained and is set aside. This, however, does not mean that the relief of specific performance is to be given to the

appellant. That is a matter which has to be considered in an appropriate proceeding.

It is, therefore, clear from the above discussion that both the issues of damages and/or specific performance of the PDA would require independent examination. Since the parties have entered into an agreement which contains an arbitration clause, it is through arbitration that the same could be resolved.

The learned counsel for the respondents submit that the finding and direction of the learned Single Judge with regard to payment of Rs. 1 lakh with interest @ 10% per annum from 01.07.1991 till the date of payment would also have to be set aside. We agree with this submission because the two issues of damages and specific performance are yet open. Consequently, this finding is set aside.

The learned counsel for the parties are agreed that this matter would have to be resolved through arbitration. The learned counsel for the appellant states that he would invoke the arbitration clause within a week in order to have the issues with regard to the damages and specific performance resolved. If the respondents have a counter claim they would also make the same before the learned Arbitrator.

The appeal stands disposed of in the above terms. CM 12307/2014 is also disposed of as it does not survive. All pending applications also stand disposed of.

Dasti under the signature of the Court Master.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

FEBRUARY 09, 2017

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