

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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FAO No. 97 of 2013 (O&M)

Date of Decision : 8.3.2018

Balbir Chand

....Appellant

VS

**The Apsara Co-operative Group Housing Society Ltd. And another
....Respondent**

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Vishal Garg, Advocate
for the appellant.

AJAY TEWARI, J.(Oral)

This appeal has been filed against the order of the Additional District Judge, Panchkula dated 30.11.2009 dismissing objections under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the appellant against the award dated 7.9.2007.

Brief facts of the case are that the respondent had given the contract of construction of 24 number of flats to the appellant. During the construction a dispute had arisen where by the appellant filed a civil suit. During the pendency of that civil suit the matter was settled between the parties and a Memo of Understanding dated 11.9.2000 entered into as per which the appellant agreed to complete the entire work by 20.10.2000 and the respondent society agreed to make a payment of Rs. 6,69,000/- out of which Rs. 4,00,000/- was to be paid

within 15 days from 12.9.2000 and the remaining had to be paid co terminus with the date of completion i.e. 20.10.2000 Clause (v) of the agreement further stipulated that any legal proceedings which were initiated by any party would be withdrawn. On the very next date 12.9.2000 the suit was pending. The appellant did not withdraw the suit and thereafter the respondent also did not make the payments according to the MoU. This gave rise to fresh dispute which was referred to arbitration. The sole claim of the appellant before the Arbitrator was that once the society had agreed to make a certain payment as per the MoU they could not be allowed to renege on the same. The Arbitrator held that it was the appellant who had breached the MoU (by not withdrawing the suit) and consequently could not be heard to argue that there was a lapse on the part of the society and further could not rely on the terms of the MoU to contend that certain payments were due to him. Having disposed of the plea regarding the MoU the Arbitrator went on to decide the claim on merits dismissing the claim of the appellant and allowing the counter claim of the respondents. Objections having been dismissed as mentioned above, the appellant is before this Court.

The sole contention of the learned counsel for the appellant is that both the Arbitrator and the Court below erred in not enforcing the terms of MoU against the respondent. In my opinion, the argument is misconceived. It is clear that MoU prescribed reciprocal duties on the parties. The first duty which the respondent had to fulfill was to withdraw the suit. Having not done so he cannot turn around to claim

that the other provisions of the MoU are binding on the respondent.

The appeal stands dismissed.

Since the main case has been decided, the pending C.M, if any, also stand disposed of.

8.3.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No