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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 16th January, 2018
Pronounced on: 09th February, 2018

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O.M.P. 2/2018 & IA No.486/2018

SUMER ARORA

..... Petitioner

Through : Mr. Rakesh Khanna, Sr. Advocate
with Mr.Pavan Kr. Chaturvedi,
Mr.A.B. Singh, Ms.Shefali Jain,
Ms.Seema Rao and Mr.Bushee
Kezum, Advocates.

versus

MANOJ KUMAR & ANR.

..... Respondents

Through : Mr.A.K. Singla, Sr. Advocate with
Mr.Parmanand Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. The petitioner has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the Act') for setting aside the arbitral award dated 12.08.2016.

2. The petitioner has challenged the impugned award on the grounds as follows:-

a) the respondent on the basis of the frivolous arbitration award dated 12.08.2016, wherein petitioner had neither participated into the alleged arbitration proceedings nor was provided any opportunity or even served with any notice of the arbitration proceedings or consented for the appointment of the

learned sole arbitrator Justice R.B. Misra (Retired) for the alleged arbitration proceedings has hatched criminal conspiracy in connivance with respondent No.2 and his father Sh.Mahesh Kumar and misrepresented before the arbitrator in fraudulent arbitration proceeding which was conducted at 503, Adiswar Apartment, 34, Feroz Shah Road, Connaught Place, New Delhi in which the alleged award dated 12.08.2016 was passed in favour of respondent No.1 and also further played trick to get the award transferred in the name of respondent no.2

b) the whole arbitration is based upon an alleged addendum agreement dated 13.05.2016 to an alleged original agreement to sell dated 07.10.2008 whereas the original agreement to sell was never placed before the arbitrator which clearly establishes the falsity of the claim, it was not legally possible in 2008 for the petitioner to enter into any agreement to sell as there was already a registered Mortgage Deed between petitioner and Ms.Seema Juneja vide registration No.26936 dated 23.03.2007 at the time of alleged agreement to sell dated 07.10.2008 and it became free from encumbrances on 11.03.2015 and also a suit regarding the same mortgage deed between petitioner and Ms.Seema Juneja was pending and is still sub-judice as on date, agreement to sell dated 07.10.2008, its registration was never brought to the notice of the arbitrator, and with the amendment of the Registration Act and Transfer of the Property Act, an agreement to sell has to be compulsorily registered after 24.09.2001. Therefore, even if it is presumed that there was an agreement to sell, no right can be

created or extinguished in immovable property on the basis of an unregistered agreement to sell.

c) As per the alleged agreement to sell dated 07.10.2008, the petitioner had allegedly entered into an agreement with the respondent No.1 to sell his land bearing No.10/1 (7-14) Village Dhumaspur, Tehsil & District Gurugram, Haryana to total consideration of ₹3,00,00,000/- in which ₹40,00,000/- was paid in cash at the time of the agreement which has not been explained by the respondent No.1 as to how he came into possession of such a huge cash without any ITR to back this humungous claim. Further respondent No.1 has claimed that between 07.10.2008 to 14.05.2016 he has made payment to the tune of ₹2,43,80,000/- mostly in cash and also filed a false schedule of payment before the arbitrator and did not file any document/receipt of the same, there was never an arbitration agreement and there was never agreement to sell between the petitioner and respondents the whole arbitral proceeding is malafide and illegal.

d) In July 2017 petitioner came into knowledge of the alleged arbitration award after receiving the summon of execution petition filed by the respondent No.2 before the Court of Gurugram. Immediately after receiving of summon of execution proceeding sent an application for certified copy of complete documents of the arbitration proceedings through registered post vide application dated 04.08.2017 to the office of the sole arbitrator but did not receive the copy of the same, then again petitioner on 26.10.2017 sent another application for certified copy of complete documents

of the arbitration proceedings through registered post and all efforts of the petitioner went in vain. Petitioner after getting no response to his letter he immediately visited to the office of sole arbitrator and inquired whereabouts of the learned arbitrator but did not get any clue about the same from there, then petitioner got the mobile number of the learned arbitrator from the annexure filed by the respondent No.2 in her execution proceedings and immediately contacted at the same mobile number in the month of October, 2017 finally given time to meet him on 14.11.2017 as he was out of station at that time and asked the petitioner to come at his residence located at House No.12, High Court Judges Colony, Sector-105, Noida, U.P. Thereafter, on 14.11.2017 counsel of petitioner visited to the residence of the sole arbitrator at the above said address and received the certified copy of whole arbitration proceedings; hence the present petition.

3. The learned senior counsel for the petitioner has submitted the agreement to sell dated 07.10.2008 between the parties whereby the petitioner was required to sell the land admeasuring 7 Karnals 12 Marlas bearing No.10/1(7-14), Village Dhumaspur, Teshil and District Gurugram, Haryana and to make the construction over 49026 square feet of the said land against the total consideration of ₹3.00 Crores appears to be sham. In the time given, the construction could not be possible and hence addendum agreement dated 13.05.2016 was entered into between the parties wherein the petitioner was absolved of his liabilities to construct

the area of 49026 square feet while reducing the total consideration amount from ₹3.00 Crores to ₹2,43,80,000/-.

4. It is submitted that as per the addendum agreement the payment of ₹2,43,80,000/- was made in cash and the final decree/deed was to be executed within 15 days. On 29.06.2016, the notice for invocation of arbitration clause was given by the respondent. It is alleged neither the agreement to sell was produced before the learned arbitrator nor addendum agreement was registered or stamped and hence was inadmissible document and could not have been relied upon by the arbitrator and the arbitration clause No.11 in the addendum agreement also could not have been given effect to.

5. In support of his contention, the learned senior counsel for the petitioner referred to *SMS Tea Estate Private Limited vs. Chandmari Tea Company Private Limited* (2011) 14 SCC 66 wherein the Supreme Court held:

“21. Therefore, when a lease deed or any other instrument is relied upon as contending the arbitration agreement, the court should consider at the outset, whether an objection in that behalf is raised or not, whether the document is properly stamped. If it comes to the conclusion that it is not properly stamped, it should be impounded and dealt with in the manner specified in section 38 of Stamp Act. The court cannot act upon such a document or the arbitration clause therein. But if the deficit duty and penalty is paid in the manner set out in

section 35 or section 40 of the Stamp Act, the document can be acted upon or admitted in evidence.”

6. Further, he also referred to *Avinash Kumar Chauhan vs. Vijay Krishna Mishra* (2009) 2SCC 532 which held:-

“22. We have noticed heretobefore that Section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to receive a document in evidence is bound to give effect thereto. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The court, therefore, was empowered to pass an order in terms of Section 35 of the Act.

23. xxx

24. In this case, by reason of the statutory interdict, no transfer at all is permissible. Even transfer of possession is also not permissible. [See Pandey Oraon v. Ram Chander Sahu 1992 Supp (2) SCC 77 and Amrendra Pratap Singh v. Tej Bahadur Prajapati and Others (2004) 10 SCC 65]. The Registration Act, 1908 provides for such a contingency in terms of the proviso appended to Section 49 thereof, which reads as under :-

"49. Effect of non-registration of documents required to be registered.-

No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall--

*(a) affect any immovable property comprised therein, or
(b) confer any power to adopt, or
(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:*

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument."

25. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes."

7. The learned senior counsel for the petitioner referred to Section 17 (1A) of the Registration Act, 1908 which read as under:-

“17. Documents of which registration is compulsory-

(a) to (e) xxx

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.”

8. Both the decisions and Section 17 (1A) of the Registration Act, 1908 are to the effect that where a document is *required to be registered and stamped* is neither registered nor stamped then in that eventuality it cannot be looked into for collateral purposes.

9. Section 17(1A) of the Registration Act, 1908 relates to Section 53A of the Transfer of Property Act, a shield of defence which would not be available to the defendant if the agreement to sell is not registered and hence does not help in the proposition involved herein.

10. There is also no dispute to the proposition urged. However, in *SMS Tea Estate Private Limited* (supra) there was a lease of land for 30 years which *per se* was required to be registered. Further in *Avinash Kumar Chauhan* (supra) there was a unregistered deed of sale which *per se* was compulsorily registerable and stamp duty need to be paid.

11. However, the present case relates to an agreement to sell which do not per se require registration as it does not create any right in the immovable property and simply state the intention of the parties to execute a sale document in future.

12. Though, the learned senior counsel for the petitioner referred to *Suraj Lamp & Industries Private vs State of Haryana & Another* (2012) 1 SCC 656 to urge the agreement to sell if *unregistered* would not transfer the title and the Court shall discouraged the power of attorney sales prevalent in the society, is also not relevant to the context herein.

13. Even otherwise, I may refer to *SMS Tea Estates Private Limited* (supra) wherein the Supreme Court further noted as under:-

“22.5 If the document is not registered, but is compulsorily registerable, having regard to section 16(1)(a) of the Act, the court can de-link the arbitration agreement from the main document, as an agreement independent of the other terms of the document, even if the document itself cannot in any way affect the property or cannot be received as evidence of any transaction affecting such property. The only exception is where the respondent in the application demonstrates that the arbitration agreement is also void and unenforceable, as pointed out in para 8 above. If the respondent raises any objection that the arbitration agreement was invalid, the court will consider the said objection before proceeding to appoint an arbitrator.

22.6 Where the document is compulsorily registerable, but is not registered, but the arbitration agreement is valid and separable, what is required to be borne in mind is that the Arbitrator appointed in such a matter cannot rely upon the unregistered instrument except for two purposes, that is (a) as evidence of contract in a claim for specific performance and (b) as evidence of any collateral transaction which does not require registration."

14. The learned senior counsel for the petitioner lastly urged the agreement itself would show it was nothing but a sham document since no one could ever think of disposing of a huge plot of land with construction in the area of 49026 square feet for ₹3.00 Crores and that most of the payments being made in cash, the receipt filed before the learned arbitrator being blank; the original agreement of sale not been filed, hence in the light of these facts, there is plausible apprehension that all the documents were got signed from the petitioner by intoxication and the arbitral proceedings were thrust upon the petitioner without his knowledge. It is alleged though one Mr.Mohit Arora, advocate had appeared before the learned arbitrator on behalf of petitioner and had received the award, but was never engaged by the petitioner and even his *Vakalatnama* did not bear the date. Strangely, and admittedly no complaint against Mr.Mohit Arora, advocate has ever been made as yet by the petitioner either in the Bar Council of India or elsewhere.

15. The learned senior counsel for the petitioner is also concerned of the fact that even after giving the award on 12.08.2016, the learned arbitrator passed another order whereby he endorsed the award in the name of the wife of the respondent, despite being *functous officio*. He also referred to his pleadings especially paras No.6 & 7.

16. On the other, learned senior counsel for the respondent argued that this Court has no jurisdiction to entertain the objection petition under Section 34 of the Act since both the parties being resident of and work for gain at Gurugram, Haryana; are the leading industrialist of the area; the agreement being signed at Gurugram and the arbitration clause did not confer the jurisdiction on Delhi Courts. However, I have examined the arbitration clause No.11 of the addendum agreement dated 13.05.2016 which fixes the seat of the arbitration at New Delhi and hence this objection being frivolous and is rejected.

17. Secondly, the learned senior counsel for the respondent fairly admits he is also not relying upon the endorsement of the award in favour of the wife of the respondent. Hence such part of the order/award is declared *nonest*. Ordered accordingly.

18. Thirdly the learned counsel for respondent urged the objections under Section 34 of the Act filed on 11.01.2018 is beyond limitation per Section 34 (3) of the Act which provides 120 days to challenge the award. It is submitted by the learned senior counsel for the petitioner that though the record show the arbitral

award was received by Mr.Mohit Arora, advocate on 12.08.2016, but the law requires the copy of the award has to be delivered to each of the parties under Section 31 (5) of the Act and the party mean it has to be delivered upon individual; per *Benarsi Krishna Committee and Others vs Karamyogi Shelters Private Limited* (2012) 9 SCC 496, which is not the case here. It is submitted the certified copies of the proceedings as also copy of the award was obtained on 04.08.2017 and then objections under Section 34 of the Act were filed. Though the plea of the petitioner appears to be afterthought since Mr.Mohit Arora, advocate received the copy of arbitral award on 12.08.2016 itself and nowhere in the objection petition, the petitioner denied the authority of Mr.Mohit Arora, advocate stating that he was never his counsel or that Mr.Mohit Arora, advocate never given him the copy of arbitral award.

19. However, per law settled above the award was delivered upon the petitioner only on 14.11.2017, hence it cannot be said that the petition under Section 34 of the Act is beyond the limitation.

20. Now, I come to the main objection raised by the learned senior counsel for the petitioner that the entire arbitral proceedings were nothing but sham since the petitioner was intoxicated while signing various agreements and he never appointed any advocate to appear on his behalf before the learned arbitrator.

21. The arbitral record shows the invocation notice was given on 29.06.2016 and the petitioner gave a reply to the said notice dated 01.07.2016 duly signed by the petitioner as well one Mr.Mohit

Arora, advocate on his behalf. One copy of the said reply was sent to the learned arbitrator also.

22. In para No.3 of such reply, Mr.Mohit Arora, advocate for the petitioner stated that he has instructions to convey that his client accepts the appointment of the sole arbitrator in terms of the addendum agreement and 4th July, 2016 would be a date convenient for the preliminary hearing in the matter. The proof of dispatch of said letter is the speed post receipt which Mr.Mohit Arora, advocate has sent to the learned arbitrator. On page No.18 of the documents is the *Vakalatnama* signed by the petitioner in favour of Mr.Mohit Arora, advocate, though date is not mentioned. On 26.07.2016 both parties entered into a deed of settlement which is duly signed by both – the respondent and the petitioner as well as their counsels on each and every pages wherein a sum of ₹10.00 Lac was further paid to the petitioner as a full and final settlement to the petitioner herein and he undertook to get the sale deed registered in favour of the respondent within seven days from the date of the settlement. The petitioner also acknowledged the receipt of ₹2,43,80,000/-. It was stated the settlement shall be binding between the parties absolutely and neither of them have no right, title or interest to challenge its terms or execution of the same. Per clause 4 of the settlement deed both the parties expressly agreed to place the copy of settlement deed before the learned arbitrator and prayed the same to be converted into an arbitral award and on happening of the same all past and present

disputes by and between the parties would be settled. It was only thereafter the statement of the petitioner and the respondent was recorded by the learned arbitrator and settlement deed was exhibited as Ex.C-1. The petitioner confirmed the receipt of ₹2,43,80,000/- from the respondent herein and identified the signatures on the *Vakalatnama* in favour of Mr.Mohit Arora, advocate and confirmed that he had given instructions to sent reply to the legal notice for acceptance of the appointment of learned arbitrator and he signed on the last page of reply notice dated 29.06.2016 wherein he confirmed to have received the said notice. He also confirmed intimation of learned arbitrator for preliminary hearing and schedule of hearing which was received by him by hand. The respondent also accepted the said deed of compromise as Ex.C-1 and requested that the arbitral award may be prepared on the basis of the same. It is only thereafter the arbitral award dated 12.08.2016 was passed incorporating the terms of settlement deed dated 26.07.2016 between the parties. The copy of the said award was accepted by the counsel for the petitioner herein on the same date. It was recorded in the award that the present settlement shall be treated to be the settlement under Section 30 read with Section 73 (3) of the Act and the award is made under Section 31 of the Act.

23. In order to appreciate the facts appositely, let me go through the provisions of Sections 30, 31 and 73 (3) of the Act:-

“30. Settlement.—

(1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.

(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.

31. Form and contents of arbitral award.—

(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

73. Settlement agreement.—

(1) xxx

(2) xxx

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

(4) to (7) xxxx”

24. The arbitral award was based upon the consent of the parties and was signed. Since the main ground of the petitioner is he never participated in the arbitral proceedings neither was aware of it nor had engaged Mr.Mohit Arora, advocate as his counsel to appears is all frivolous *since till date he did not initiate any proceeding against such counsel. It rather belies his claim.*

25. An execution petition was filed by the respondent in Gurugram Courts on 03.01.2017 requesting the Court to get the sale deed executed in favour of the respondent as since he had purchased the stamp paper for execution of the sale deed wherein the judgment debtor/petitioner appeared through counsel and filed his objections. The said objections were dismissed vide order dated 29.11.2017 since it was a consent award. Even the stay application filed by the petitioner was also dismissed with cost of ₹5,000/- .

Hence, there is no ground to assail the award dated 12.08.2016, which is under Section 30 of the Act and Section 73(3) of the Act and its final and binding and there is no scope for objections under Section 34 of the Act to the arbitral award - a consent award. The plea of the petitioner he never participated in the arbitral proceedings is after thought.

26. However, in view of above facts, since the arbitral award is a consent award being reasoned one based upon the settlement deed; the plea of the petitioner being afterthought; there is no valid cause for setting aside the reasoned / consent award and hence the petition stands dismissed. Even otherwise the power of scrutiny of an award, per law, is minimal.

27. The pending application is also disposed of.

28. No order as to cost.

YOGESH KHANNA, J

FEBRUARY 09, 2018

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