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

+ **O.M.P. 437/2011**

KRISHAN KUMAR & ANR

.....Petitioners

Through: **Mr. Rahul Dubey, Advocate**

versus

SHAKUNTALA AGENCY PVT LTD

.....Respondents

Through: **Mr. Saurabh Mishra, Ms. Aashnaa Bhatia and Mr. Abhinav Pandey, Advocates**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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25.07.2024

1. The respondents instituted arbitral proceedings against the petitioners seeking specific performance of an agreement to sell¹ dated 26 December 2005, pertaining to a plot of land situated at No. 66, Block D, Nangal Dewat, New Delhi². The learned Arbitrator has, by an award dated 8 March 2008, allowed the claim of the respondents and has directed the petitioners to execute a sale deed in respect of the disputed property in favour of Respondent 1. Aggrieved thereby, the petitioners have invoked Section 34 of the Arbitration and Conciliation Act, 1996³ to move this Court.

2. I have heard Mr. Rahul Dubey, learned counsel for the petitioners and Mr. Saurabh Mishra, learned counsel for the

¹ "ATS", hereinafter

² "the disputed property", hereinafter



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respondents at length.

3. Both sides have also filed written submissions.

4. Mr. Dubey sought to contend that the arbitral proceedings were *ex parte* as the petitioners never got to know of the proceedings and in fact came to know of the impugned award only when the respondents filed an execution petition, seeking execution of the award.

5. The submission cannot be accepted. The arbitral record reveals that on 16 November 2007 when the matter was listed before the learned Arbitrator for the first time, Petitioner 1's appearance was not only marked; *his signature in English* also figures on the page. Petitioner 1 does not dispute the fact that the signature in English figuring on the face of the order sheet dated 16 November 2007 is his. Ergo, it is clear that Petitioner 1 had appeared before the learned Arbitral Tribunal on 16 November 2007 and was therefore well aware of the arbitral proceedings. If Petitioner 1 remained absent from the proceedings thereafter, he did so at his own peril.

6. Petitioner 1 not only remained absent; he did not choose to file any Statement of Defence⁴ by way of response to the Statement of Claim⁵ filed by the respondent, ever participate in the arbitral proceedings after 16 November 2007 or lead any evidence. The result is that all assertions of fact contained in the SOC are deemed to have

³ "the 1996 Act", hereinafter

⁴ "SOD" hereinafter

⁵ "SOC" hereinafter



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been admitted by the petitioner.

7. Mr. Dubey contends that the ATS could not have been executed at all, as the allotment letter whereunder the disputed property was allotted to Mr. Zile Singh, the original allottee of the property, contained a specific covenant prohibiting further transfer of the property by Zile Singh.

8. Admittedly, the aforesaid allotment letter dated 7 September 2006 was never part of the proceedings before the learned Arbitral Tribunal. Though, Mr. Dubey has sought to point out that there is a reference in the impugned award to the allotment having been taken place on 7 September 2006, that by itself cannot be regarded as knowledge, on the part of the learned Arbitrator, of the covenants of the allotment letter. The petitioners having never chosen to place the said allotment letter on record, or having pleaded before the learned Arbitrator that the allotment letter contained a non-transfer covenant, it is not open to the petitioners to urge such an argument in Section 34 proceedings.

9. Mr. Dubey has further sought to contend that the ATS could not create any right in favour of Respondent 1 as it preceded the allotment of the plot in favour of Zile Singh. This, again, is an assertion of fact, which was never pleaded by the petitioners by filing any SOD. Besides, Mr. Mishra, learned counsel for the respondents has pointed out that the cheques whereunder the payment was made to the petitioners in terms of the ATS, as well as the receipts issued by the



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petitioners acknowledging receipt of the said payments, were all exhibited before the learned Arbitral Tribunal. The record reveals that this is correct. These have also been placed on record before this Court. He has also drawn attention to the order sheet dated 16 November 2007 in which the learned Arbitrator has noted thus :

"...Sh. Krishan Kumar respondent no.4 was shown the original agreement to sell dt. 26.12.2005 to identify the execution of the agreement to sell by Sh. Zile Singh. Sh. Krishan Kumar (R-4) was also shown the original receipt dt. 14.3.2006 and receipt dt. 19.9.2006 for the acknowledgment of total sum of Rs. 1,10,00000/- as on 14.3.2006 and total sum of Rs.1,50,00000/- as on 19.9.06. On seeing the agreement to sell dt. 26.12.2005 and the above receipts dt. 14.3.2006 & 19.9.06 Sh. Krishan Kumar (R-4) admits to have received the above payment from the claimant besides cheque dt. 26.12.2005 drawn on Standard Chartered Bank in the name of Krishan Kumar for Rs.5 lakh and cheque dt. 26.12.05 in the name of Sh.Zile Singh for Rs.Ten lakh. Sh. Krishan Kumar also admits to the amount shown the agreement to sell dt. 26.12.2005. Shri Krishan Kumar identifies his signatures and thumb impression thereon.

Counsel for the claimant submits that the claimant's application U/S 17 of the A.C. Act 1996 may be taken up for the grant of ad-interim orders as prayed thereon. I have heard the counsel for the claimant and the respondents on the application and on the basis of admission of the respondent no.4 and the pleas put forward by the claimant, I find sufficient force to safeguard the interest of the claimant in view of the facts and respondents names having been mutated and to restrain them to not create any third party interest and to maintain status quo in respect of the property being subject matter of agreement to sell dt. 26.12.2005.

As such I pass the following ad-interim order:-

"That the respondents no.1 to 4 are hereby directed to maintain the status quo in the nature of title, & possession in respect to the plot no.66 block-D, Rangpuri, measuring 350 sq. meters to the extent of 1/4th share each owned by the respondents, and that the respondents no.1 to 4 are hereby restrained not to create any third party interest in plot no.66 Block-D, Rangpuri, measuring 350 sq. meters to their extent of ¼ share each till the next date of hearing in the present proceedings"

The respondents submits that arbitration fee towards their share



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will be paid on the next date of hearing.”

(Emphasis supplied)

10. Thus, the record reveals that Petitioner 1, on being confronted, specifically admitted receipt of payments from Respondent 1, in terms of the ATS, in respect of the disputed property. It cannot, therefore, lie in the mouth of the petitioners today to seek to question the validity of the ATS or the right of the respondents to seek specific performance thereof.

11. Mr. Dubey further sought to point out that the payment had been made not by Respondent 1, but by one Iqbal Singh. In the first place, as the recipient of the said payment and as having admitted receipt of the said payments against the ATS, Petitioner 1 cannot be heard to contend today that the payments were not made as consideration for the ATS. Mr. Dubey has offered no explanation for the receipt of the payments by the petitioners. Besides, Mr. Mishra points out that Iqbal Singh is the Director of Respondent 1 and that, therefore, receipt of payment from Iqbal Singh was not unusual.

12. The last contention advanced by Mr. Dubey is that, in an undated notice which preceded the Section 21 notice dated 22 October 2007 issued by the Respondent 1 to the petitioners, the plot number is reflected as 61 and not as 66 whereas the dispute before the learned Arbitrator was with respect to Plot No. 66. Mr. Mishra points out that this was a mere typographical error and that, in fact in the very same letter, two paragraphs later, the plot number is correctly reflected as Plot No. 66. On going through the letter, this fact is found to be



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correct.

13. Besides the above discrepancy – if it can be called one at all – was not in the Section 21 notice issued by Respondent 1 but in the legal notice that preceded it. The Section 21 notice, in fact, did not advert to any plot number at all though it does make reference to the preceding legal notice.

14. In any event, having participated in the arbitral proceedings and having not chosen to raise any such objection before the learned Arbitrator, the petitioners cannot, in proceedings under Section 34, seek to contend that the arbitral proceedings were with respect to a plot which was different from the plot in respect of which the Section 21 notice was issued.

15. Besides, even on facts, as the undated notice to which Mr. Dubey refers also reflects the plot number as 66, I am *prima facie* satisfied with Mr. Mishra's contention that the reference to Plot No. 61 in the preceding paragraph was merely a typographical error.

16. In any event, it is clear from the above that the submissions advanced by Mr. Dubey are essentially seeking an entire re-appreciation of the disputes on facts. Section 34, quite apart from its classically limited scope, is certainly not intended to be used as a tool for a litigant to desist from participating in the arbitral proceedings, despite being fully aware thereof, and, thereafter, seek a second bite at the arbitral cherry.



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17. That apart, it is trite that, under Section 34, the Court cannot enter into a re-appreciation of facts. The objections that have been raised by Mr. Dubey are all aspects which the petitioners could have raised before the learned Arbitral Tribunal. The petitioners never chose even to file an SOD by way of response to the SOC filed by the respondents. The contention that Petitioner 1 was a poor and illiterate villager, who was not in a position to contest the arbitral proceedings, is not easily palatable, especially as Petitioner 1 has signed his name in English and his signature is not disputed.

18. By no stretch of imagination can, therefore, the submissions advanced by Mr. Dubey be regarded as meriting consideration, while examining the vulnerability of the impugned arbitral award to challenge under Section 34 of the 1996 Act.

19. The petition is completely devoid of merit and is accordingly dismissed with no orders as to costs.

C.HARI SHANKAR, J

JULY 25, 2024/yg

Click here to check corrigendum, if any