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

Date of decision: 29th August, 2018

+ ARB.P. 254/2015

+ OMP(I) 193/2015

BALESHWAR SHARMA Petitioner

Through: Mr.Rohit Kumar,Adv.

versus

NAGESHWAR PANDEY Respondent

Through: Mr.Kirti Uppal, Sr. Adv.with
Mr.Satish Mahambrey, Ms.Sumati
Sharma and Mr.Aditya Awasthi,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

I.A. No.1450/2016 in OMP(I) 193/2015

The abovementioned application has already been dismissed vide order dated 25.02.2016 and is being wrongly shown in the cause list.

I.A. No.5075/2018 in ARB.P.254/2015

I.A. No.5076/2018 in OMP(I) 193/2015

These applications are seeking condonation of delay in filing of the reply to the applications seeking revival of the petitions.

For the reasons stated in the applications, the delay is condoned and reply is taken on record.

Applications stand allowed.

ARB.P. 254/2015 & I.A. No.571/2018
OMP(I) 193/2015 & I.A. No.567/2018

1. These petitions under Section 9 and 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') are based on the Memorandum of Understanding dated 24.05.2014 executed between the parties. By way of the abovementioned MOU the parties had affirmed the earlier MOU dated 05.06.2007 and it was further agreed that the petitioner shall be entitled to find a purchaser/developer of the land admeasuring 68325 sq. meters (bearing mutation No. 59), situated at Bainguinim, Tiswadi Taluka surveyed under Survey No. 26/2 within the jurisdiction of village Panchayat of Se (Old Goa), Goa (hereinafter referred to as 'the disputed land'). It was further agreed that the respondent would be entitled to a sum of Rs.13.5 crores out of the sale of the said property and the remaining shall belong to the petitioner.
2. The petitioner filed a petition under Section 9 of the Act being OMP 1649/2014 *inter-alia* praying for an order restraining the respondent from transferring, selling or creating any third party interest in the disputed land.
3. This Court on 22.12.2014 passed the following order in the above petition:

"4. In these circumstances, any action taken by the respondent vis-a-vis property described in the petition as: Plot No. D3 of property Mallans, admeasuring 68325 sq. meters (bearing mutation No. 59), situated at Bainguinim, Tiswadi Taluka surveyed under Survey No. 26/2 within the jurisdiction of village Panchayat of Se (Old Goa), Goa, will be subject to the final orders of this court in the present petition."

4. When the matter was taken up on 03.02.2015, on a statement made by the learned counsel for the respondent that the disputed land had already been sold by the respondent on 12.12.2014, this Court vacated the Interim Order dated 22.12.2014, however, reserving the rights of the petitioner to seek other appropriate interim reliefs in the arbitral proceedings. It was further clarified that if the statement made by the counsel for the respondent is found to be incorrect, it will be open to the petitioner to approach this Court for appropriate orders.

5. The present petitions have been filed on the basis of the liberty given by this Court in its order dated 03.02.2015.

6. It is asserted that the statement made by the learned counsel for the respondent as recorded in the order dated 03.02.2015 was incorrect inasmuch as though the Sale Deed is dated 12.12.2014, it was actually registered by the Sub-Registrar of Documents only on 06.01.2015, that is, after the passing of the Interim Order dated 22.12.2014.

7. Learned counsel for the petitioner relying upon the judgment of the Supreme Court in ***Ram Saran Lall and Ors. v. Mst.Domini Kuer and Ors.***, (1962) 2 SCR 474 submits that the sale would be complete upon registration of the Sale Deed though under Section 47 of the Registration Act, 1908 it may relate back to the date of its execution. He therefore, submits that as on the date of the Interim Order dated 22.12.2014, the Sale Deed executed in favour of the third party had not come into effect.

8. On the other hand, learned senior counsel for the respondent submits that the Sale Deed would in fact take effect from the date of its execution, that is, from 12.12.2014 and therefore, statement made by the learned counsel for the respondent as recorded in the order dated 03.02.2015 was

correct. In this regard he places reliance on the judgment of the Supreme Court in **Gurbax Singh v. Kartar Singh and Ors.**, (2002) 2 SCC 611 and **A.Jithendernath v. Jubilee Hills Coop. House Building Society & Anr.**, (2006) 10 SCC 96. He further submits that the petitioner was well aware of the execution of the Sale Deed by the respondent and had even made a complaint to the Sub-Registrar for not registering the said document on 16.12.2014. If the Sub-Registrar of Documents had still proceeded to register the document, the remedy, if any, of the petitioner was to challenge the Sale Deed by way of a Civil Suit and therefore, the present petitions are not maintainable.

9. Before I consider the respective pleas of the parties, I would take note of another important aspect in this case which is that this Court vide its Interim Order dated 01.05.2015 passed in the present petition under Section 9 of the Act, on a prayer made by the petitioner, had restrained the respondent from selling, transferring or creating any third party interest in respect to the disputed land. Admittedly on this date, the Sale Deed had already been executed and registered.

10. Further, by a subsequent order dated 13.01.2017 this Court *inter-alia* recorded as under:

“16. It was pointed out to the Court by the Respondent at the subsequent hearing on 3rd November, 2015 that since plot No. D-3 had already been sold on 12th December, 2014 on payment of stamp duty of Rs. 88 lakh on the entire consideration amount, the subsequent registration of the document on 6th January, 2015 would be of no consequence. Therefore, the injunction against the Respondent would be infructuous as the property had already been sold to a third party.

17. Nevertheless, the contention of the Petitioner was that the sale deed was not complete. In the circumstances, the interim order passed by the Court was directed to continue till the next date of hearing "whatever be its import."
(emphasis supplied)

11. This Court further found that as the MOU dated 24.12.2014 was not properly stamped, it should be impounded and be sent to the Collector of Stamps, Goa for a proper determination of the stamp duty and penalty payable thereon. It was held that once the stamp duty and penalty so determined is paid by the petitioner to the concerned authority in Goa, in the manner as prescribed, the Court will take up further issues including whether the said document is forged or fabricated as contended by the respondent and further whether, if the answer to the said question is in the negative, the said document requires compulsory registration.

12. The petitions were therefore, adjourned *sine die* with liberty to the parties to mention them for listing after requisite stamp duty and the penalty thereon if any, is paid by the petitioner.

13. By a subsequent order dated 23.01.2017 passed in IA 867/2017 filed by the petitioner, the following order was passed.

"1. An application seeking interim relief was already pending before this Court when the order dated 13th January, 2017 was passed. Unless the Petitioner is able to first comply with the said order, the question of granting any interim relief in the matter does not arise. In any event, the doctrine of lis pendens will apply.

2. The application is, accordingly, dismissed."

(emphasis supplied)

14. The petitioner has thereafter filed IA 571/2018 in Arbitration Petition

No.254/2015 and IA 567/2018 in OMP(I) No.193/2015 seeking revival of these petitions contending therein that the stamp duty and penalty as fixed by the Collector of Stamps has been duly paid by the petitioner.

15. The above facts were relevant only to highlight that the Sale Deed has been executed on 12.12.2014 and was duly registered on 06.01.2015. In fact, the learned senior counsel for the respondent submits that the Sale Deed had been duly presented before the Registrar of Documents on 12.12.2014 itself, that is, prior to the passing of the Interim Order dated 22.12.2014 of this Court and more than three years have passed since then. This Court vide its order dated 23.01.2017 has already rejected the prayer of the petitioner for continuation of the order dated 01.05.2015 by observing that the doctrine of *lis pendens* would apply and therefore, in my view, the question whether the Sale Deed would operate from the date of its execution or from the date of its registration loses all significance at this stage and the petitioner is not entitled to any further relief as far as his petition under Section 9 of the Act is concerned.

16. Accordingly, OMP(I) 193/2015 is dismissed without any order as to cost. Equally, OA 76/2016 also stands dismissed.

17. As far as the petition under Section 11 of the Act, that is, ARBP.254/2015 is concerned, the MOU dated 24.05.2014 contains an Arbitration Agreement in form of clause 13 thereof.

18. The learned senior counsel for the respondent submits that the respondent has no objection if the parties are referred to the Delhi International Arbitration Centre (DIAC) for adjudication of the disputes that have arisen between the parties in relation to the abovementioned MOU. This suggestion is acceptable to the counsel for the petitioner as well.

19. Accordingly, the parties are referred to the DIAC, which shall appoint a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned MOU. All contentions of either party shall remain open before the Arbitrator who shall adjudicate on the disputes remaining uninfluenced by any observation of this Court in the present order. The arbitration and the fees shall be governed by the DIAC Rules.

20. The parties shall appear before the DIAC on 24th September, 2018 at 2.00 p.m.

21. ARB.P. 254/2015 is allowed in the above terms, with no order as to costs.

NAVIN CHAWLA, J

AUGUST 29, 2018/Arya