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

+ CM(M) 1044/2016

RUP BASANT

..... Petitioner

Through Mr.Jawahar Chawla, Adv.

versus

SANJANA CHOPRA

..... Respondent

Through Mr.V.K.Singh, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

16.11.2018

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R.P. 3/2017

1. Present Revision Petition is filed seeking review of the Order dated 3.11.2016. Ms.Sanjana Chopra/plaintiff/respondent filed a suit seeking mandatory injunction directing the petitioner to remove his water tanks both cement and plastic from the portion of the plaintiff. A decree of permanent injunction is also sought restraining the defendants from using or causing to be used front portion of half terrace for any purpose.
2. The petitioner/respondent filed his written statement and also filed an application under Order 7 Rule 11 CPC. He did not file an application under section 8 of the Arbitration and Conciliation Act to refer the parties to Arbitration.
3. The case of the petitioner is that he had entered into an agreement dated 06.09.2006 with regard to the second floor with the builder Lipul Construction Pvt.Ltd.. The sale deed executed by the petitioner in favour of

the builder contained an arbitration clause. Based on that clause, arbitration proceedings commenced with the builder on the basis of an order passed by this court in a petition under section 11 on 17.5.2010.

4. The trial court dismissed the application under Order 7 Rule 11 CPC.

5. By the impugned order this court relying upon the judgment of the Supreme Court in ***Sukanya Holdings (P) Ltd. vs. Jayesh H.Pandya and Another, (2003) 5 SCC 531*** noted that there is no absolute bar under section 5 of the Arbitration Act from filing of a suit. The Court also noted that the petitioner has not filed an application under section 8 of the Act. Further, this court noted that there is no arbitration agreement between the parties. Hence, the petition was dismissed

6. Learned counsel for the petitioner states that as per order dated 17.5.2010 passed by this court referring the petitioner and the builder for arbitration the respondent was also a party to the said proceedings. In that proceedings this court had held that if a contract is capable of being assigned the Arbitration Agreement would also bind the assignee. Hence, the court held that the arbitration agreement binds the respondent herein.

7. He further relies upon judgment of the Division Bench of this Court in ***Sharad P.Jagtiani vs. Edlweiss Securities Ltd., (2014) (4) Arb.L.R. 94 Delhi (DB)*** to contend that in the written statement if an objection is stated about existence of an arbitration clause it is sufficient for the court to refer the parties to arbitration.

8. Learned counsel for the respondent has pointed out that the learned Arbitrator has already dismissed the claim of the petitioner vide his Award dated 13.6.2018.

9. I may note that the petitioner may be right in his contention that

where in the written statement a plea is taken about existence of an arbitration clause, it may on facts of the case be possible for the courts to refer the parties to arbitration provided the submission of the parties is construed on the facts of the case to be request under Section 8 of the Arbitration Act. In this case on facts no such plea was made or established.

10. Further, in the present case it is manifest that disputes between the parties are beyond the terms of the arbitration agreement. The original arbitration clause is contained in the sale deed between the petitioner and the builder. The arbitration/dispute between the petitioner and the builder have already been adjudicated upon by the learned Arbitrator. The present dispute raised by the defendant in the form of a suit relates to the rights of the defendant on the property which as per the defendant is being encroached upon by the petitioner. Such a dispute is not covered by the arbitration clause.

11. There are no ground to review the order of this court dated 03.11.2016. There is no merit in the present petition. Same is dismissed

JAYANT NATH, J

NOVEMBER 16, 2018

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