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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 14.12.2018

+ ARB.P. 823/2017

SHRI JADAV CHANDRA DEY

..... Petitioner

Through Mr. Dibyajyoti Banerjee, Adv.

versus

MAYA BARUA & ORS.

..... Respondents

Through Mr. Rajesh Sharda, Mr. Akshay Sharma and Ms. Pushpanjali, Advs for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.: (ORAL)

1 This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (in short '1996 Act'). The petitioner seeks appointment of an Arbitrator.

2 Upon notice being issued in the captioned petition, reply was filed by a few respondents. The record shows that apart from respondent No.1, all other respondents were deleted from the array of parties at the say-so of the petitioner. An order to that effect was passed on 03.10.2018 based on an application (I.A. No.13641/2018) moved by the petitioner. Therefore, all that one is required to consider

is the affidavit of the sole, remaining respondent i.e. Ms. Maya Barua.

2.1 For the purpose of completion of narration, I may only note that there is no dispute with regard to the aspect that respondents No. 2 to 6, who were deleted from the array of parties, are the children of the aforementioned respondent i.e. Ms. Maya Barua.

4 It is the petitioner's case that an Agreement to Sell dated 28.06.2012, was executed with the husband of the respondent i.e., one, Mr. Dinabandhu Bikas Barua. The agreement to sell pertained to a flat described as No. 37-A/88 (category 'Janta'), situate on ground floor, EPDP Colony, Chittaranjan Park, Kalkaji, New Delhi-110019.

4.1 The total consideration, as per the agreement to sell, was fixed at Rs.31 lakhs.

4.2 It is averred by the petitioner that at the time of execution of the agreement to sell, a sum of Rs.3,10,000/- was paid by the petitioner to the husband of respondent.

4.3 Furthermore, the petitioner avers that the agreement to sell was witnessed by the respondent and her son Mr. Samir Barua and others.

4.4 It is also the case of the petitioner that on that very date i.e. the date of execution of the agreement to sell, the respondent had executed an undertaking that she would adhere to the terms and conditions stipulated in the said agreement.

4.5 Evidently, upon the death of the respondent's husband, disputes erupted which propelled the petitioner to file a suit for specific performance. This suit was numbered as : Civil Suit No.11250/2016. The suit was filed in the District Court, at Saket.

5 Admittedly, in the suit, the respondent moved an application

under Section 8 of the 1996 Act. This application was filed in and about 2016. It is common ground that the petitioner withdrew the suit for specific performance in view of the application filed by the respondent under Section 8.

6 It is in this background that the petitioner has approached this Court for appointment of an Arbitrator.

7 Mr. Rajesh Sharda, who, appears for the respondent, says that the aforementioned agreement to sell was a product of manipulation. The said agreement was executed when the respondent's husband was in hospital and that the sum of Rs.3.10 lakhs, which was received by the respondent, was a loan transaction and had nothing to do with the aforementioned agreement to sell.

8 I may only indicate herein that the petitioner has, in fact, taken the stand that apart from the sum of Rs.3,10,000/- paid at the time of execution of the aforementioned agreement to sell, to which I have made a reference above, a further sum of Rs.6 lakhs was paid to the respondent. In other words, the petitioner claims that a total sum of Rs.9.10 lakhs, out of Rs.31 lakhs already stands paid to the respondent.

9 Learned counsel for the parties have argued in line with their respective pleadings. In fact, learned counsel for the respondent says that there is no arbitration agreement in existence and, therefore, this petition ought to be dismissed.

10 I have heard the learned counsel for the petitioner and perused the record. To my mind, while there may be defences that may be available to the respondent against the possible relief of specific

performance that the petitioner may claim before the Arbitrator, what is clear, is that, it was the respondent who has approached the Civil Court under Section 8 application contending that an arbitration agreement obtained between the parties. In support of this stance, in Section 8 application itself, the respondent had referred to clause 14 of the aforementioned agreement to sell.

10.1 Clause 14 captures the arbitration agreement obtaining between the parties. For the sake of convenience, the same is extracted hereafter:

“14. · That if there be any difference or dispute between the parties on any matter arising hereunder or claimed so to rise, the same shall be referred to the mutually decided arbitrator whose award/decision thereon shall be final and binding on the parties”

11 Having regard to this aspect of the matter, to my mind, the respondent cannot now turn around and take the position that the Arbitrator ought not to be appointed as there is no arbitration agreement in existence.

12 As observed above, the defences with regard to purpose for which moneys were paid to the respondent, which according to her, were paid *de hors* the aforementioned agreement to sell, are aspects which the learned Arbitrator would look into once he enters upon reference.

13 In that view of the matter, I am inclined to allow the petition. It is ordered accordingly.

13.1 Consequently, Mr. Kamlesh Kumar, former District and Sessions Judge (Cell No.9971208844) is appointed as an Arbitrator in

the matter. Learned Arbitrator before entering upon reference will file a declaration under Section 12 read with the attendant provisions of the 1996 Act.

14 Learned counsel for the parties are agreed that the arbitration proceedings be held under the aegis of Delhi International Arbitration Centre (DIAC). It is ordered accordingly. The arbitration proceedings will be conducted as per the rules and fee schedule applicable to proceedings held under the aegis of DIAC.

15 The petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER
(JUDGE)

DECEMBER 14, 2018

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