

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.22 of 2018

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Mrs. Asha Singh, through her Authorized Representative Mr. R. A. Singh, both resident of 401 and 402, 'A' Block, Shiv Ranjani, Complex Plot No. S.T.-8, Adityapur, Main Road, Near Ashiana Trade Centre Jamshedpur, Saraikela, Jharkhand.

... .. Petitioner/s

Versus

M/s Star India Awas Private Limited through its Chairman cum Managing Director, Mr. Shashi Bhushan Prasad, having its registered office at 13, Haripur Apartment, East Boring Canal Road, Patna- 800 001.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Apurva Kumar, Advocate
Mr. Ritesh Kumar, Advocate
Mr. Sanchit Singh, Advocate

For the Respondent/s : Mr. Kaushal Kishore, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

12 10-05-2019 Heard learned counsel for the applicant and the learned counsel for the sole respondent.

This application has been filed praying for appointment of an Arbitrator on the ground that the certain disputes have arisen out of a development agreement in respect of a certain property.

Learned counsel for the applicant has invited the attention of the Court to clause 52 of the agreement to urge that the dispute has to be settled by the appointment of an Arbitrator in the event it arises out of a contract.

The counter affidavit which has been filed by the



opposite party narrates that a letter has been manufactured and brought into existence with a malafide motive for ulterior purposes that too after a considerable lapse of time and, therefore, invoking the arbitration clause is misplaced. Learned counsel has further invited the attention of the Court to a settlement said to have been arrived at which, according to the opposite party, forecloses all such claims and therefore denude either of the parties from invoking the arbitration clause. The said clause in the deed of settlement dated 7th of April, 2011 is extracted hereinunder:-

“And whereas the terms and condition has been laid down in D/A, S/D & P/A. The owners have read and understood everything quite satisfactory from all the four corner has settled from all point of view and there will never further claim demand in any way from outside of Development agreement, Share division, power of Attorney, Sale Deed & other papers.

And whereas that if any claim or complain will raise by the Smt. Asha Singh, Sri R. A. Singh will be liable to settle the same amongst themselves and in this regard the Developer will be not liable or responsible from any corners and in any manners.”



It is the contention of the learned counsel for the opposite party that once all the settlement had been brought about, then all the terms and conditions of the Development Agreement stood satisfied and no dispute remains to be settled thereafter. He, therefore, contends that the assets having been shared according to the agreement, there is no occasion for the applicant to seek arbitration by creating hurdles on the pretext of any beautification work which had to be carried out as stated in paragraph 16 of the counter affidavit. In paragraph 17 it has been asserted that the applicant-petitioner herself has sent a letter of satisfaction congratulating the completion of the work and therefore, the same should be treated as having foreclosed all issues and consequently no arbitrator should be appointed.

Learned counsel for the applicant, on the other hand, contends that such issues cannot be gone into by this Court keeping in view the provisions of sub-section (6A) of Section 11 of the Arbitration and Conciliation Act, 1996 and in view of the law laid down by the Apex Court in the case of **Duro Felguera Vs. Gangavaram Port Limited, (2017) 9 SCC 729.**

Having considered the submissions raised and keeping in view the said facts, there is an arbitration clause in existence in the agreement itself. The deed of settlement in the



clause as extracted hereinabove restrains the setting up of any claim outside the Development Agreement. In such circumstances, it cannot be said that the claim set up is such for which the arbitration clause cannot be invoked. It is for the Arbitrator to decide as to whether any dispute exists or otherwise the relief is available as claimed by the applicant.

Accordingly, the application is allowed. I hereby appoint Hon'ble Mr. Justice Akhilesh Chandra (Retired) as the sole Arbitrator to enter upon the dispute and render his award in terms of the 1996 Act.

Let the information of this order along with papers be transmitted by the Registrar General to the sole Arbitrator for proceeding in the matter. The parties to the agreement shall appear before the Arbitrator on 03.06.2019 for any further date to be fixed by the convenience of the Arbitrator.

(Amreshwar Pratap Sahi, CJ)

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