M.R.Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINAY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (L) NO. 39 OF 2019

Jairam N. Bhasin ... Petitioner
Vs.
Kalpataru Properties (Thane) Pvt. Ltd.
& Anr. ... Respondents

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Mr. Prasad Sarvankar i/b Mr. Chaitanya Nikte for Petitioner.
Mr. Saket Mone a/w Mr. Vishal Dushing i/b M/s Vidhi Partners for Respondent No.1.

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CORAM : G. S. KULKARNI, J.

DATE : 15TH MARCH, 2019

P. C. :

On the background of what had transpired between the parties on the earlier occasion, learned Counsel for the parties today have tendered Consent Minutes of the Order by which it is stated that the dispute between the parties in regard to invocation of the bank guarantee as furnished by the petitioner to the respondent No.1 would stand resolved as set out in the Consent Minutes of the Order.

2. It is not in dispute that a Letter of Intent was issued by the respondents on 13 February 2009 in favour of the petitioner in

relation to purchase of three residential flats i.e. Flat Nos.161, 173 and 174. In pursuance of the said letter of intent, substantial payments were made by the petitioner to the respondent No.1. However, in regard to the sale of the flats, an agreement came to be registered on 5 April 2013. In clause 4.3 of the said agreement, the parties have agreed in regard to any future tax liability. This for the reason that though the said transaction was of the year 2009, the actual agreement came to be registered on 5 April 2013 and that the market value of the premises as on the date of the registration of the agreement would not be the same as on the date of the transaction.

3. In pursuance of Clause 4.3 of the agreement dated 5 April 2013 executed between the parties, the petitioner had furnished a bank guarantee to the respondents to ensure payment of any tax liability, to cover any future tax liability. The petitioner apprehended that the respondents would invoke the bank guarantee and consequently, this petition was filed.

4. It, however, so happened that the income tax authorities issued a notice under Section 56(2)(vii) of the Income Tax Act 1971, to the petitioner, claiming an additional income of Rs.41,81,224/- in

regard to the purchase transaction in question under the registered agreement dated 4 May 2013. This notice was challenged by the petitioner on the ground that the transaction was in fact of the year 2009 and what had happened in the year 2009, was only registration of the document. The plea was not accepted by the Assessing Officer. The petitioner had accordingly approached the Commissioner of Income Tax (Appeals)-2, Pune, [for short, “CIT (Appeals)”]. By an order dated 5 October 2018 passed by the Commissioner of CIT (Appeals), the petitioner's appeal came to be allowed holding that the demand for tax on the basis of additional income was not appropriate and the demand notice was accordingly set aside.

5. However, it has so happened on an apprehension that there would be a tax liability on the respondent No.1 in regard to the transaction as entered with the petitioner, respondent No.1 oblivious of the order passed by the CIT (Appeals) in favour of the petitioner and oblivious of the fact that it was merely the registration of the agreement in the year 2013, has suo-moto deposited the tax on differential value.

6. Now certainly according to the parties, the complexion has changed in view of the order dated 5 October 2018 passed by the CIT (Appeals) whereby on the same transaction the CIT (Appeals) held that there is no tax liability.

7. It is in these circumstances, the respondent No.1 intended to invoke the bank guarantee as furnished by the petitioner. Learned Counsel for the petitioner would contend that in the appeal filed before the CIT (Appeals), it is held that no tax is liable to be paid by ready recknor price prevailing the year April 2013 and submitted that any further tax liability also at the hands of respondent No.1 cannot be contemplated.

8. According to the learned counsel for the petitioner, the order dated 5 October 2018 passed by the Commissioner of Income Tax (Appeals)- 2, Pune, is conclusive in this regard. After much deliberations and fairly considering the position as emerged from the order dated 05.10.2018 passed by the Commissioner of Income Tax (Appeals), the learned Counsel for the parties have decided to resolve the dispute by filing consent munites of the order. The consent minutes of the order provides for the remedy which the

respondent to take recourse with the tax authority seeking refund of the said amounts inadvertently deposited with the Tax authority.

9. A perusal of the consent minutes of the order clearly indicates that the dispute between the parties can certainly be resolved in the manner as agreed. It is thus in the interest of justice to dispose of this petition in terms of consent minutes of the order. It is accordingly disposed of in terms of the consent minutes of the order.

10. At this stage, learned counsel for the petitioner and learned counsel for the respondent submits that it would be in the interest of justice that the revenue authorities to decide the issue at the earliest. Certainly the respondent is not precluded from requesting the concerned authorities to adjudicate on the application which may be filed, as expeditiously as possible. Petition is accordingly disposed of in terms of the above observations and in terms of the consent minutes of the order. No costs.

11. At this stage, learned counsel for the respondent No.1 submits that there would be some delay in filing the application

before the Income Tax authorities, as the respondents have received knowledge of the order dated 5 October 2018 passed by the CIT (Appeals) in December 2018. In this context, it can be seen that the proviso of sub-section (3) of Sction 264 of the Income Tax Act clearly confers powers on the authority/Commissioner, Income Tax, to condone delay on a sufficient cause. The Commissioner would definitely consider that there is a cause which prevented the respondents from preferring an application within the stipulated time as prescribed in sub-section (3). Such delay can certainly be condoned by the Commissioner on being satisfied. It is not in dispute that the respondents became aware of the order passed by the CIT (Appeals) in December 2018. In the circumstances, the Commissioner of Income Tax (Appeals-2), Pune, would surely take such factors into consideration.

(G. S. KULKARNI, J.)