

CR Nos.1517 to 1523 of 2018 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND Punjab
AT CHANDIGARH**

Date of decision : 09.01.2019

- 1.** **CR-1517-2018 (O&M)**
M/s Samar Estates Pvt. Ltd. and another
... Petitioners
Versus
Amrish Kumar Bansal and another
... Respondents
- 2.** **CR-1518-2018 (O&M)**
M/s Samar Estates Pvt. Ltd. and another
... Petitioners
Versus
Yogesh Mittal
... Respondent
- 3.** **CR-1519-2018 (O&M)**
M/s Samar Estates Pvt. Ltd. and another
... Petitioners
Versus
Navraj Mittal
... Respondent
- 4.** **CR-1520-2018 (O&M)**
M/s Samar Estates Pvt. Ltd. and another
... Petitioners
Versus
Sanjesh R. Dhall
... Respondent
- 5.** **CR-1521-2018 (O&M)**
M/s Samar Estates Pvt. Ltd. and another
... Petitioners
Versus
Shri Shyam Enterprises Pvt. Ltd.
... Respondent

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6. CR-1522-2018 (O&M)

M/s Samar Estates Pvt. Ltd. and another

... Petitioners

Versus

Navraj Mittal

... Respondent

7. CR-1523-2018 (O&M)

M/s Samar Estates Pvt. Ltd. and another

... Petitioners

Versus

Sanjesh R. Dhall and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arshdeep Bhullar, Advocate
for the petitioner(s).

Mr. M.K. Verma, Advocate
for the respondent(s) in CR Nos.1517, 1518, 1519, 1521 and
1522 of 2018.

AMIT RAWAL, J.

This order of mine shall dispose of seven revision petitions bearing CR No.1517 of 2018 titled as “M/s Samar Estates Pvt. Ltd. and another V/s Amrish Kumar Bansal and another”, CR No.1518 of 2018 titled as “M/s Samar Estates Pvt. Ltd. and another V/s Yogesh Mittal”, CR No.1519 of 2018 titled as “M/s Samar Estates Pvt. Ltd. and another V/s Navraj Mittal”, CR No.1520 of 2018 titled as “M/s Samar Estates Pvt. Ltd. and another V/s Sanjesh R. Dhull”, CR No.1521 of 2018 titled as “M/s Samar Estates Pvt. Ltd. and another V/s Shri Shyam Enterprises Pvt. Ltd.”, CR No.1522 of 2018 titled as “M/s Samar Estates Pvt. Ltd. and another V/s Navraj Mittal ” and CR No.1523 of 2018 titled as “M/s Samar Estates Pvt. Ltd. and another V/s Sanjesh R. Dhall and another”, filed

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against the impugned order, whereby an application submitted by the petitioners for rejection of the petition under Section 22(C) of the Legal Services Authorities Act, 1987 (in short 'the 1987 Act'), containing the arbitration clause, has been dismissed.

Learned counsel for the petitioners submitted that the respondents had booked apartment and entered into an agreement to sell with the petitioners (Annexure P-3) and Clause 46 of the agreement contained a resolution of dispute, if any, through arbitration, but despite the adjudication of the dispute, the respondents filed the application under Section 22(C) of the 1987 Act for settlement of dispute between the parties. In fact, the respondents did not pay the installment and they were defaulters. In such circumstances, an application under Section 8 of the 1996 Act was filed, but the same was dismissed on the premise that the provisions of Section 8 of the 1996 Act would not applicable to the proceedings.

I have heard learned counsel for the petitioner and appraised the paper book and of the view that there is force and merit in the submissions of Mr. Arshdeep Bhullar.

It would be apt to reproduce the provisions of Section 8 of the 1996 Act, which reads as under:-

"Section 8 of the Arbitration and Conciliation Act, 1996

8. Power to refer parties to arbitration where there is an arbitration agreement.—

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

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(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

On plain and simple reading of the aforementioned provisions that the expression 'Judicial Authority' cannot exclude the jurisdiction of the Public Utility Services constituted under the 1987 Act. In case such applications are accepted, the whole purpose of terms and conditions of the agreement containing the arbitration clause would be rendered infructuous. The parties cannot permitted to resile and take the remedy according to their own will and choice. In my view, the impugned order, under challenge, suffers from illegality and perversity, much less, is not sustainable in the eyes of law. The same is set aside. The application filed under Section 22(C) of the 1987 Act is ordered to be returned to the respondents-plaintiffs and they shall be at liberty to avail remedy in accordance with law.

The present revision petitions stand allowed.

09.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**