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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 80/2018 & CM Appl.No. 19787/2018 (direction)**

RAJIV JOSHI Appellant

Through Mr. Vikas Dhawan, Mr. Avadh
Kaushik, Mr. Satyabrata Panda and
Ms. Kreeti Joshi, Advocates

versus

ANAND SWAROOP Respondent

Through Mr. Devraj Singh & Ms. Srishti
Sharma, Advocates

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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07.11.2019

1. This appeal is directed against the judgment dated 16th April, 2018 passed by the learned Single Judge dismissing the Appellant's OMP No. 7/2018, which challenged an Award dated 20th February, 2018 passed by the Sole Arbitrator in the dispute between the Appellant and the Respondent.

2. The dispute between the parties arose out of an Agreement to Sell ('ATS') dated 18th April, 2014 claimed by the Appellant to have been executed by the Respondent, under which the Respondent agreed to sell to the Appellant built up property at 161, Hardyan Singh Road, Karol Bagh, New Delhi admeasuring 30 sq. yards (hereafter "the property in question") for a total sale consideration of Rs.5.00 crores. The case of the Appellant was that he had, at the time of execution of the ATS, paid the Respondent Rs.2.50 crores in cash as earnest money. He further claimed that apart from the said sum he paid another sum of Rs.20 lakhs on 29th April, 2014 through RTGS. On his part, the Respondent denied that any such ATS had been

executed or any sum had been received pursuant thereto. As regards the receipt of Rs.20 lakhs, the Respondent claimed that this was pursuant to other financial transactions which had no connection to the alleged ATS.

3. In the arbitration proceedings, in support of his claim, the Appellant examined himself as CW-1; one Mr. Prem Kumar, who had signed as a witness to the ATS as CW-2 and hand writing expert Mr. Syed Faizal Huda as CW-3.

4. While discussing the said evidence in the Award dated 20th February, 2018 the learned Arbitrator rejected the testimony of CW-2 as being unreliable. The observation of the Arbitrator as regards CW-2 is as under:

“He was not aware of anything and he had only signed on the papers which were already prepared including his affidavit by way of evidence and whatever details he has given in para 4 of his affidavit i.e. regarding signing of the agreement to sell between the parties with free consent and the receipt of part consideration acknowledged by Respondent at the time of agreement to sell were not in his knowledge as these details were told to him by Mr. Rajiv Joshi, and thus were based on hearsay.”

5. The Arbitrator noted that there was one other witness to the ATS i.e. Mr. Sanjay Malik, who was initially cited as a witness by the Appellant but later on dropped.

6. As regards the evidence of the hand writing expert i.e. CW-3, the Arbitrator noted testimony of CW-3 that the admitted signatures of the Respondent appearing on the reply to the claim, the affidavit and the Vakalatnama, were “the disguised signatures” and that the disputed

signatures appearing on the ATS, were the “genuine signatures” and that both were written by the same person, namely the Respondent. The Arbitrator noted that CW-3 during his cross-examination had affirmed the above opinion.

7. The learned Arbitrator discussed the judgment of the Supreme Court in terms of which the evidence of an expert is at best an opinion, which is not conclusive. The learned Arbitrator then took on the exercise of comparing the admitted and disputed signatures and found them to be different. Accordingly, it was held that the evidence of CW-3 could not be relied upon.

8. As regards the payment of the sum of Rs.2.50 crores, the learned Arbitrator noted that for the first time in his cross-examination, the Appellant had stated that he had paid the said amount to the Respondent in cash. He had not withdrawn the amount from any account with the bank, but stated that the said amount was lying with him one week prior to 18th April, 2014 since the Appellant was a builder. When asked questions with reference to his Income Tax Returns and his Balance Sheets, the Appellant replied that it was only his Chartered Accountant who could answer the question. The learned Arbitrator noted that there was no entry as regards the payment of Rs.2.50 crores in his Income Tax Return. Accordingly, the learned Arbitrator held that there was no evidence to substantiate the Appellant’s assertion that he had paid Rs.2.50 crores to the Respondent in cash at the time of signing the ATS.

9. The learned Single Judge has concurred with the view of the learned

Arbitrator that the evidence of CW-3 could not be the sole basis for making an Award in favour of the Appellant. The learned Single Judge also found no reason to differ with the view of the learned Arbitrator about the evidence of CW-2 not being reliable.

10. Mr. Vikas Dhawan, learned counsel for the Appellant placed extensive reliance on the decisions of the Supreme Court in the *State v. Pali Ram (1979) 2 SCC 158* and *Thiruvengadam Pillai v. Navaneethammal (2008) 4 SCC 530* to urge that the learned Arbitrator, even while comparing the signatures himself, ought to have taken the assistance of an expert. His submission was that the learned Arbitrator could not have simply rejected the expert evidence of CW-3.

11. It requires to be recollected here that the scope of the powers of the Court under Section 34 of the Arbitration and Conciliation Act, 1996 to interfere with an Award is limited. The Court is not expected to re-appreciate the evidence and come to a conclusion, different from that of the Arbitrator only because another view is possible. In other words, the Court is not sitting in appeal over the learned Arbitrator.

12. On that yardstick, the view taken by the learned Arbitrator on the evidence before him and in particular the evidence of the handwriting expert, was a perfectly plausible one. This is what weighed with the learned Single Judge in the impugned judgment, while declining to interfere with the Award. The Court is unable to find any legal error committed either by the Arbitrator or the learned Single Judge, calling for interference in the present appeal.

13. It must be recalled that under Section 19 (1) of the Arbitration and Conciliation Act, 1996 the learned Arbitrator is not bound by strict rules of evidence. Consequently, the judgments cited by Mr. Dhawan cannot be said to be *ipso facto* applicable in the facts of the present case. In any event, this Court is not persuaded that the view taken by the learned Arbitrator was not a plausible one and that a contrary view, supporting the case of the Appellant, was the only possible view that could be taken in the facts and circumstances of the case.

14. Mr. Dhawan then expressed the apprehension that the findings rendered by the learned Arbitrator would prejudice the Appellant in the criminal case instituted by the Appellant against the Respondent. The above apprehension seems to be misplaced since the criminal case would obviously be decided on the basis of the evidence that emerges therein.

15. The Court finds that no grounds are made out for interference with the impugned judgment of the learned Single Judge. The appeal is dismissed. The interim order stands vacated. The pending application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 07, 2019/mw