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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. (COMM) 487/2016

MR. KISHAN KUMAR KATHPAL

..... Petitioner

Through: Mr.P.S. Bindra and Mr.G.S. Patwalia,
Advs.

versus

DAYANAND & ANR.

..... Respondents

Through: Mr.Sandeep Sharma, Ms.Kanika
Mitra and Mr.Aman Dhyani, Advs.
for R-1.
Mr.Yudhvir Singh Chauhan, Adv. for
R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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04.02.2019

1. This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') challenging the Arbitral Award dated 11.03.2015 passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Agreement to Sell dated 29.03.2004 executed between the parties for transfer of Shop bearing No. F-27A, Shanker Market, Central Market, Connaught Place, New Delhi (hereinafter referred to as 'the said shop').
2. The petitioner claims that the petitioner was enjoying Cash Credit Limit of Rs.20 lacs with Punjab National Bank, Connaught Place, New Delhi and the said shop had been given as a collateral security. As the petitioner was unable to pay the said amount, the bank offered a sum of

Rs.21 lacs as a One Time Settlement.

3. The petitioner negotiated the sale of the said shop with the respondent no.1 for a total consideration of Rs.1.25 crore, out of which the respondent no.1 paid Rs.21 lacs to the bank. As far as the remaining amount of Rs.1.04 crore was concerned, as the respondent no.1 did not have ready cash available with him, he got respondent no.2 to execute various documents, including General Power of Attorney and Will in favour of the petitioner with respect to the land ad measuring 5000 sq. yards at Khasra No. 20/10 (2-A), 20/11 (2-12), Khera Dabar Village, New Delhi (hereinafter referred to as 'the land').

4. The petitioner alleges that both these transactions were interrelated and the second transaction with respect to the land was merely security for the payment of the balance sale consideration for the shop.

5. The Arbitrator has rejected the said claim of the petitioner *inter-alia* holding as under:

"It is clear that various documents including agreement to sell (Exhibit RW-1/1) as well as the possession letter (Exhibit RW-1/9) was executed by the plaintiff on 29.03.2004 in favour of the defendant no.1 Sh. Dayanand in respect of the property F-27 A, Shankar Market, Central Market, Connaught Place, New Delhi (the suit property).

On the same date 29.03.2004 a will and GPA was executed by defendant no.2 in favour of the Plaintiff with regard to land measuring 5000 sq. yards at Khasra No.20/ 10 (2-A), 20/11 (2-12), Khera Dabar Village, New Delhi which the plaintiff claims was got executed by the Defendant no. 1 from the Defendant No.2 for clearance of the dues and for the balance consideration of Rs.1.04 Crore as the Defendant no. 1 was short of funds and the same was got executed for a short period till the Balance funds were arranged.

Thereafter on 07.05.2004 first complaint was filed by the Plaintiff with the P.S. Connaught Place and thereafter further complaints on 14.02.2005 and 25.11.2004 with regard to the threat to his life and to the life of his family members alongwith various other allegations against the others.

The allegations were found to be incorrect on investigation vide report dated 26.05.2005 at pages 38 to 52 of the documents filed by the Respondents and placed in the File "Documents filed by the parties ".

Thereafter in a case under Section 145 Cr.P.C. the Executive Magistrate held that the testimony of the Complainant remained totally uncorroborated and also does not inspire confidence and as such cannot be relied upon. He further held that Sh. Dayanand, Respondent of party no.2 is in possession of property no. F-27 A, Shankar Market, Central Market, Connaught Place, New Delhi and entitled to retain such possession until ousted by due course of law and do strictly forbid disturbance of his possession in the meantime (Exhibit RW-1/20). Even in the Revision Petition the Ld. Additional Sessions Judge held that the Defendant no.1 came in possession of the property peacefully and the Revisionist cannot be permitted to say that the Respondent forcefully dispossessed him and concurred with the findings of the Executive Magistrate (Exhibit RW -1/21).

Otherwise also in between 29.03.2004 and the filing of the first complaint on 07.05.2004 with the P.S. Connaught Place no action was taken by the plaintiff.

From the Agreement to sell (Exhibit RW-1/1) it is clear that the consideration amount for the property no. F-27 A, Shankar Market, Central Market, Connaught Place, New Delhi was Rs.21 lakhs which was paid by the defendant no. 1 directly to the bank in the loan account of the plaintiff to get the clearance of the property from the Bank for sale.

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There is nothing on record to suggest that the execution of the GPA and Will with regard to the Khera Dabar property, which was later on revoked/cancelled by defendant no.2 was linked with the transaction with regard to the Shankar Market property.

The defendants have also placed on record the certified copy(ies) of other sale deed(s) executed with regard to the properties in the surrounding area of Shankar Market (Exhibit RW-1/23 (Colly)), which go to show that the prevalent rate at that time was the same as the consideration amount mentioned in the Agreement to sell (Exhibit RW-1/1).

Considering all the material on record, I am of the view that the two transactions i.e. of Shankar market and Khera Dabar are independent of each other and the total sale consideration of the Shankar Market property could not have been more than Rs.21 lakhs.”

6. Learned counsel for the petitioner submits that the Arbitrator has erred in relying upon the report dated 26.05.2005 regarding closure of investigation. He submits that the petitioner has challenged the said report by way of appropriate proceedings and the same is still pending consideration. He further submits that the Arbitrator has failed to appreciate that the precarious financial position of the petitioner being well known to the respondents, there would have been no occasion for the respondent no.2 to enter into to an Agreement to Sell with the petitioner for the sale of the land. The two transactions were entered into as a composite transaction with the second in relation to the land being as a security for the payment of the balance sale consideration.

7. I have considered the submissions made by the learned counsel for the petitioner. Admittedly, in none of the documents executed with respect to the shop, there is any mention of a second transaction, including the sale consideration to be more than Rs.21 lacs. The Arbitrator, therefore, has held that there is nothing on record to suggest that the execution of the documents in relation to the land, which was later revoked/cancelled by respondent no.2, was linked with the transaction with respect to the shop in question.
8. This being a finding on fact arrived at by the Arbitrator on appreciation of evidence lead by the parties, it would not be open to this Court to act as a Court of Appeal to re-appreciate the same.
9. I therefore find no merit in the present petition. The same is dismissed, with no order as to cost.

NAVIN CHAWLA, J

FEBRUARY 04, 2019/Arya