

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

C.M.A.Nos. 1140 and 1141 of 2019

COMMON JUDGMENT: (Per Sri Justice M.S.Ramachandra Rao)

In these two appeals, common order dt.29.11.2019 in A.O.P.Nos.1 of 2019 and 3 of 2019 passed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') by the XV Additional District Judge-cum-II Additional Family Judge, Ranga Reddy District at Kukatpally, are challenged.

2. The appellant in these appeals filed under Section 37 of the Act, is the respondent in A.O.P.No.1 of 2019 and the applicant/petitioner in A.O.P.No.3 of 2019.

3. For the sake of convenience, the parties will hereinafter be referred to as per their array in these appeals.

4. The appellant is a Developer and respondent is the owner of land in Sy.No.21 of Khajaguda village, Serilingampally Manal, Ranga Reddy District of extent Ac.5.38 gts.

5. The respondent had sold about Ac.3.21 gts out of the said land as plots to various persons and about Ac.0.09 gts was transferred by respondent to his brother and 0.16 gts was transferred by respondent to his brother's wife.

6. After negotiations, separate Development Agreements dt.05.09.2005 (registered Doc.No.13140/2005) and 21-09-2005 (registered Doc.No.14049/2005) were entered into by respondent's brother and wife with the appellant for development of the said land by building residential apartments etc., and it is alleged by appellant that a sum of Rs.30,50,000/- was paid as refundable deposit to them.

7. Appellant also contends that respondent received on various dates Rs.1,46,10,000/- as advance repayable with interest from the appellant with a promise to bring all the plot owners under the development scheme as agent and partner of the appellant; that respondent obtained separate Development Agreements-cum-General Power of Attorney from all the individual plot owners, who had purchased the plots from him, and a Memorandum of Understanding dt.10-05-2006 was entered into between the parties. According to the appellant, respondent was offered 24% share of the developed area and he also was agreed to join as partner in the Project. Subsequently, another Development Agreement-cum-General Power of Attorney dt.14.05.2006 (Doc.No.10975/2006) was entered into between the parties in respect of the land acquired by respondent as agent/partner on behalf of and for the purpose of appellant wherein the respondent acted as G.P.A. holder of the plot owners in the said Development Agreement-cum-General Power of Attorney for the purpose of binding them.

8. There is also a reference to single and composite Supplementary Agreement dt.26.07.2007 earmarking the shares under all the

Development Agreements including the Development Agreement-cum-General Power of Attorney (DGPA) dt. 14.05.2006, under which different parts of 'A' schedule property were brought under the Development Scheme.

9. It is also stated that a further Supplementary Agreement dt.23.08.2008 being Doc.No.6904/2008 was entered into to include an extent of Ac.0.02 gts. abutting the 'A' schedule land which was obtained from the State Government subsequently in 2008.

The contentions of the appellant

10. According to the appellant, the respondent did not provide any land for access road as required under Clause-3 of the DGPA dt.14.05.2006, and on 10.01.2008, the Cyberabad Development Authority permitted laying of road on 24.03.2008 after the Government issued a Memo on 24.03.2008. But before the appellant could lay the road, the Hon'ble Lokayukta suspended the order on 11.06.2008 and later modified it only on 26.09.2008 directing construction of two additional culverts; that appellant spent Rs.40.00 lakhs to lay the culverts and a road and thereafter the Lokayukta closed the case on 27.01.2009; for laying a road, the appellant had to spent Rs.1.00 crore and it took 3 years; that on account of the Lokayukta case, permission obtained by the appellant from various Departments in 2007 including Fire Services stood suspended and after the Lokayukta's disposal of the matter, the appellant submitted application for additional 10 floors and obtained permission on 23.10.2009.

11. Reference was also made by appellant to O.S.No.1882 of 2009 filed by two of the plot owners before the Additional Senior Civil Judge, Ranga Reddy District, who obtained an *ex parte* injunction on 29.09.2009, which came to be vacated only on 11.11.2009. According to the appellant, the said suit was dismissed for default on 28.07.2017.

12. According to the appellant, it started construction on 11.04.2008 but the construction was disturbed frequently and had to be stopped on account of litigation and interim orders passed therein; two other plot owners, after taking delivery of possession of the apartments allotted to their share, initiated proceedings before the Revenue Divisional Officer seeking cancellation of mutation in favour of respondent for the 'A' schedule property on 13.04.2016, which was allowed on 26.05.2018; the same plot owners made a representation to the GHMC on 17.09.2016 for cancellation of permission granted in respect of 'A' schedule property and also filed W.P.No.34960 of 2016, which was disposed of on 19.10.2016 directing the GHMC to hear both parties and pass orders, and the GHMC dismissed it on 10.07.2017.

13. According to the appellant, it had received Service Tax Demand Notice by the concerned Department to the tune of Rs.2,34,29,122/- in respect of the owners share, but the respondent had ignored the same and did not pay the same.

14. The appellant contended that Occupancy Certificate for the first block was issued on 04.08.2015, but the Occupancy Certificate for the second block could not be issued because one of the plot owners filed

O.S.No.1585 of 2017 before the IX Additional Senior Civil Judge, Ranga Reddy District and on 22.03.2018, the said Court directed the GHMC to maintain *status quo*.

15. The appellant alleged that respondent sent a legal notice on 16.04.2019 making false allegations and claims in order to avoid discharge of his obligations as agent and partner, having made the appellant to complete all his obligations by completing the construction with its funds.

16. According to the appellant, the respondent is liable to:

- (i) repay to the appellant the amount advanced to him from time to time;
- (ii) pay to the appellant for the capital which he could not contribute as a partner should also be paid to the appellant with interest @ 18 % p.a.;
- (iii) pay to the appellant the amounts payable under the Development Agreement-cum-General Power of Attorney which the respondent was supposed to pay, but which the appellant had paid on his behalf;
- (iv) the respondent has to pay to the appellant for the additional specifications availed over and above the agreed specifications for 51 flats in Block-A and 44 flats in Block-B fallen to the share of the owners under Supplementary Agreement and also for

conversion of 4 flats from ordinary to duplex and vice versa as per Clause-12 of the Supplementary Agreement;

(v) that he had also to contribute Rs.1.00 lakh per flat towards water and electricity service connection charges under Clause-14 of the Supplementary Agreement and also to compensate the appellant for the loss it suffered on account litigation in respect of the land and prohibitory orders passed and the consequent delays and cost escalation.

According to the appellant, the respondent is liable to pay Rs.54,25,28,133/-.

The contentions of the respondent

17. It is the contention of the respondent, on the other hand, that the appellant did not complete the construction and development of 60% of the total built up area within the period of 2 years with a grace period of 6 months as agreed between the parties and that the appellant did not also deliver balance 40% of the total Project in the shape of residential flats within 3 years from the date of obtaining building permission with a grace period of 6 months.

18. He contended that the appellant had completed the construction of Block-A and handed over respondent's share only on 04.08.2015 instead of 22.04.2012, that constructed area of respondent in Block-B was delivered only on 26.03.2019 instead of 22.04.2012 and though

Occupancy Certificate for Block-A was obtained by the appellant, it did not obtain Occupancy Certificate for Block-B.

19. It is also alleged that Block-C, which should have been completed on 22.04.2013, is still under construction and possession thereof was not delivered and Occupancy Certificate was also not obtained.

20. It is contended that the appellant only constructed internal walls but left the finishing works in almost all the flats which fell to the share of respondent in Block-C and the said flats are only bear shells.

21. It is alleged that the appellant was alienating all the completed flats in Block-A which fell to its share without simultaneously completing and handing over the flats fell towards the share of respondent and that the appellant had committed breach of the agreed terms and conditions of the agreement between the parties.

22. According to the respondent, the appellant has to pay him Rs.7,26,94,080/- as penalty/compensation for the delay in delivery of residential apartments which fell to the share of the respondent in Blocks-A, B and C.

23. He also alleged that appellant had already alienated 31 flats to various purchasers and other 60 flats which fell to the share of the appellant are also sought to be sold leaving the respondent without ability to sell the flats allotted to his share. He also claimed to have advanced Rs.1,54,00,000/- to the appellant between 2008-09.

The relief sought in A.O.P 1 of 2019 by the respondent against the appellant

24. A.O.P.No.1 of 2019 was filed by respondent against the appellant for the following reliefs:

- “a) To restrain the respondent from alienating, conveying and transferring the petition schedule ‘B’ property to third parties or creating any sort of encumbrance and third party interest in and over the same.*
- (b) to appoint an Advocate-Commissioner by issuing warrant to him to note down the physical features of the existing unfinished construction/structure in the petition ‘B’ & ‘C’ properties with a direction to take out the photographs of the same, to submit the report along with the photographs and negatives.*
- (c) To direct the respondent to furnish Security for an amount of Rs.7,26,94,080/- to the petitioner towards penalty/compensation on account of delay committed on the part of the respondent in delivering the Residential flats fell towards the share of the petitioner in Blocks- A, B & C.*
- (d) and to pass such other order or further orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”*

The relief sought in A.O.P 3 of 2019 by the appellant against the respondent

25. The appellant filed A.O.P.No.3 of 2019 for the following reliefs:-

- “i) to issue a temporary injunction against the respondent restraining the respondent, his agents, purchasers and principals (in respect of whose plots he entered into development agreement-cum-GPA dt.14.05.2006 with the petitioner), from anyway dealing with any third party in respect of the petition-B schedule flats, situated in petition A schedule property, by way of alienating or entering into any agreement or transaction of sale, lease, gift, mortgage, charge or for carrying out interior works or inducting into possession or registering any document or otherwise, in any manner*

whatsoever, pending appointment of the Arbitrator and before, during and after Arbitration proceedings and pass such other order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

- ii) To direct the respondents to hand over all original documents, including the original sale deeds, supplementary agreements and all other documents entered into by him in respect of the plots covered by Development Agreement-cum-GPA dt.14.05.2006 bearing Doc.No.10975/2006 and Supplementary Agreements dt.26.07.2007 and 23.08.2008 and all the documents and details with regard to the litigation thereof and settlements, if any, entered into by the respondent.*
- iii) to direct the respondent to furnish all other information and documents required for settlement of accounts, to the petitioner.*
- iv) Costs of the O.P. be awarded.*
- v) Any other and further relief or reliefs as this Hon'ble Court may deem fit and necessary in the circumstances of the case."*

The events which transpired in the Court below

26. Both parties filed counter-affidavits in A.O.Ps., denying the allegations leveled by other party.

27. Both these A.O.Ps. were heard together by the Court below.

28. According to the counsel for both sides, the parties had filed 143 documents in the Court below. The appellant also claimed to have filed written arguments in the matter, copy of which are filed in both the appeals.

29. The Court below, however, did not mark any of the documents filed by both sides.

30. It wrote a brief common order on 29.11.2019 in both O.Ps running into 26 paragraphs dismissing A.O.P.No.3. of 2019 and partly allowing A.O.P.No.1 of 2019 and granting relief to the respondent in respect of relief-(a) i.e. injunction to restrain the appellant from alienating, conveying and transferring the 'B' schedule property to third parties or creating any sort of encumbrance and third party interest over the A.O.P. schedule property.

The consideration by the Court

31. The counsel for the appellant contended that the common order in the AOPs cannot be sustained since the Court did not advert to and consider the pleas of the appellant.

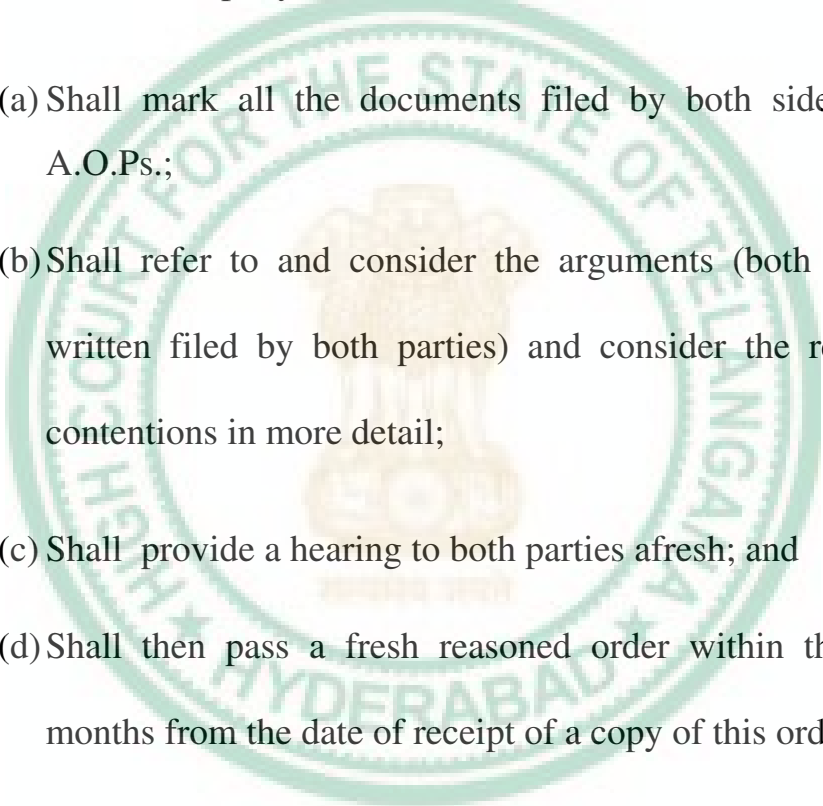
32. The counsel for the respondent sought to support the order passed by the Court below.

33. A reading of the said common order in both the AOPs shows that the actual reasoning of the Court below is contained in paragraphs-20 to 24 i.e. 5 paragraphs. There is no consideration of the contentions of the appellant including written arguments filed by the appellant in the Court below.

34. When the matter relates to development of large extent of land and construction of several apartments in three blocks, and when the appellant is claiming large sum of Rs.54.25 crores, and the respondent is claiming Rs.7.26 crores, the Court below ought to have properly considered the contentions of both sides and come to the conclusion after

marking documents filed by both sides and referring to and considering the pleas by both parties. The failure of the Court below to deal with the matter on the above lines vitiates it's common order in the AOPs.

35. Accordingly, the appeals are allowed; common order dt.29.11.2019 in A.O.P.No.1 of 2019 and A.O.P.No.3 of 2019 is set aside; and both appeals are remitted back to the Court of the XV Additional District Judge-cum-II Additional Family Judge, Ranga Reddy District at Kukatpally. The said Court:

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- (a) Shall mark all the documents filed by both sides in the A.O.Ps.;
 - (b) Shall refer to and consider the arguments (both oral and written filed by both parties) and consider the respective contentions in more detail;
 - (c) Shall provide a hearing to both parties afresh; and
 - (d) Shall then pass a fresh reasoned order within three (03) months from the date of receipt of a copy of this order.

36. We had suspended the order dt.29.11.2019 in A.O.P.No.1 of 2019 on 07.01.2020 while reserving orders in the C.M.As., and the said suspension shall continue pending disposal of the A.O.Ps., by the Court below.

37. We make it clear that we have not expressed any opinion on the merits of the contentions of either party.

38. Pending miscellaneous petitions, if any, shall stand closed. No costs.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date: 24-01-2020

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