

07
20-12-2021
Ct.21
AB

C.O. 2085 of 2021
Ashok Kumar Dubey & Anr.
Versus
Sri Pranabesh Chatterjee & Ors.
(VIA VIDEO CONFERENCE)

Mr. Pinaki Ranjan Mitra
...for the Petitioners

Mr. Gopal Chandra Ghosh,
Mr. T. K. Ghosh
...for the Opposite Parties

Being aggrieved by the order of allowing the petition under section 8 of the Arbitration and Conciliation Act,1996, (hereinafter the Act) filed by the defendants no.4 to 7 and referring the alleged dispute between the Parties to Arbitration by learned Civil Judge (Senior Division) 2nd Court, Howrah in Title Suit No.568 of 2021 on 16.11.2021, the plaintiffs/ petitioners have filed the present application under Article 227 of the Constitution of India.

Facts necessary for determination of the present case in nutshell is that defendants being the joint owners and occupiers of the schedule property entered into Two Separate Registered Agreement for development of the schedule property with the plaintiff on 03.05.2017. The defendants no.1 to 3 and defendants no.4 to 7 also executed two separate registered Development Power of

Attorney in favour of the plaintiffs.

After complying all necessary legal formalities, the plaintiffs started construction of multi storied building in the schedule property. During the progress of construction work the defendants demanded extra area beyond the area mentioned in the agreement and beyond the specification and agreed to pay for the extra space/area part by part during construction, but they failed to do so.

When the Plaintiffs have almost completed the construction after spending almost Rupees two corers and when they demanded payment for extra work done, the defendants have started creating obstruction in completion of the construction work and thereby prevented them from performing their part of contract as per agreement. They have filed the suit for specific performance of the part of the contract by the defendants as specified in Schedule "C" of the agreement, for injunction and consequential reliefs.

The defendants no.4 to 7 by filing a petition under section 8 of the Act has prayed for referring the dispute to Arbitration alleging the dispute raised by the plaintiffs being in respect of terms and conditions of Development Agreement and not for enforcement of specific performance of the contract in view of the clause 23 and clause 24 contained in the Development Agreement.

The learned court below after taking into consideration such application filed by defendant no.4 to 7 passed the impugned order under challenge.

On perusal of the Development Agreement, I find the parties have agreed to settle their dispute for enforcement of contract for Specific performance in the court of law and dispute regarding terms and conditions and for interpretation of terms and conditions of the agreement to the Arbitration.

Learned lawyer for the plaintiffs contended there is conflicts between clause no.23 and clause no.24 of the agreement and in that case the previous clause has to be taken into consideration as it over rides the later clause. Therefore, as per Clause 23 it is not the Arbitrator but a civil court who has been vested with the power to hear the dispute arising out of the Development agreement between the parties. He in support of his contention has referred to *Cliff Navigations S.A. vs LMJ International*, reported in 2017(1) CHN (Cal) 370 and *Radha Sunder Dutta Vs. Mohd. Jahadur Rahim & Ors* reported in AIR 1959 SC 24.

On reading the plaint of the plaintiffs it is seen that they have categorically alleged when the construction was in progress they have been approached by the defendants and requested to allot them more area beyond 40% as agreed in clause 15 of the agreement and also beyond the specification and for which the

defendants assured to pay extra, but which have they failed.

When the construction is almost over and in verge of completion, the plaintiffs made demand for payment for the extra area allotted in the shares of the defendant and on such demand defendants no.4 to 7 prevented the plaintiffs from completing the unfinished works and which has caused additional financial loss to the plaintiffs. The plaintiffs have prayed for specific performance of Schedule "C" part of the agreement by the defendants.

This Court finds schedule "C" of the agreements is in respect of the Specification of the Building and it further provides the Developers' right to claim for extra works done outside the specification mentioned in the schedule from the *Purchaser before delivery of possession*.

Schedule "B" provides for Owners Allocation to the extent of 40% as per specification mentioned in Schedule "C" and nothing is there to suggest the owners too are bound to pay extra for extra work done or extra area allotted by the Developers beyond the Specification and agreement.

Therefore, this court finds the dispute between the parties is in respect of interpretation of terms and conditions of the agreement and not for specific performance of contract. There is nothing to show that defendants have breached to perform their part of

contract as stipulated in the agreement.

This court does not find any merit in the present revisional application or any reason to interfere with order impugned.

Accordingly C.O. 2085 of 2021 is disposed of.

Connected application, if any, stands disposed of.

Interim order, if any, stands discharged.

In view of the order made above affidavits are not invited. Allegations made shall be deemed be denied.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for be given to the parties upon compliance of the requisite formalities.

(Kesang Doma Bhutia, J.)