

CR No. 627 of 2022

Date of Decision: 24.02.2022

Suresh Singh and others

....Petitioners

VS

M/s Maven Realty (P) Ltd. and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Vivek Khatri, Advocate for the petitioners

SUDHIR MITTAL, J. (Oral)

The petitioners are the plaintiffs. They are aggrieved because the trial Court has allowed an application filed by the defendants under Section 5 and 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'). Vide the said application, the defendants sought reference of the dispute to arbitration.

The plaintiffs have filed a suit for permanent injunction restraining the defendants from interfering in their possession. After service and before filing of written statement the aforementioned application under Sections 5 and 8 of the Act was filed. In the said application a development agreement dated 09.12.2011 was pleaded and in terms thereof a direction was sought to refer the parties to arbitration. In reply to the application the plaintiffs submitted that the agreement dated 09.12.2011 was a result of fraud. It may be noted that the plaint did not reveal the existence of the said agreement nor is there any challenge thereto on the ground of fraud. As mentioned hereinabove, the trial Court has allowed the application and has referred the parties to arbitration.

Learned counsel for the petitioner has submitted that although Clause 11.1 of the agreement provides for arbitration, Clause 11.3 thereof is in the nature of an exception. The said Clause permits either party to seek specific

performance of the agreement in case the other party fails to perform or intentionally delays the performance of its obligation. Thus, the parties could not have been referred to arbitration.

Further, it has been submitted that where fraud is pleaded, the question can only be decided by a civil Court as Arbitrator can not decide such complicated issues. Finally, it has been submitted that at the time of execution of the agreement petitioner No. 5 was a minor and making her a party to the agreement was a fraudulent act.

The arguments raised are liable to be rejected for the simple reason that the suit is not for a declaration that agreement dated 09.12.2011 was fraudulent. As mentioned earlier the suit is for grant of permanent injunction and the agreement dated 09.12.2011 has not been revealed therein. The plea of fraud has been raised in reply to the application filed under the Act. Thus, the argument that where fraud is pleaded the matter can only be decided by civil Court can not be accepted. Applicability of Clause 11.3 of the agreement also does not arise as the suit is not for specific performance of the agreement. The nature of the suit clearly shows that differences have arisen between the parties and in such a situation Clause 11.1 would apply. The said clause is arbitration clause. The fact that petitioner No. 5 was a minor at the time of execution of the agreement does not make the act of the defendant fraudulent. Obviously, the other parties to the agreement did not disclose her minority at that time and they can not be permitted to take advantage of their own mistake.

The revision petition has no merit and is dismissed.

24.02.2022

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**(SUDHIR MITTAL)
JUDGE**