

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

ARB No.255 of 2022

Date of Decision: July 08, 2022

NEETU SINGH

..... Petitioner(s)

**Versus**

NEERAJ GROVER AND ANOTHER

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Kumar Sushobhan, Advocate,  
for the applicant.

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**LISA GILL, J.**

Present is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking a declaration that the Sole Arbitrator appointed unilaterally by respondents has no jurisdiction to adjudicate the disputes between the parties arising out of agreement to sell dated 09.07.2019, which is alleged to be a forged and fabricated document.

Perusal of the file reveals that the applicant and respondent no.2 are husband and wife. Reference has been made by learned counsel to various orders passed by the Presiding Officer, DRT-III, Delhi as well as the Delhi High Court in certain proceedings between the parties. In order dated 10.07.2019 (Annexure A-1) passed by DRT III - Delhi, settlement between the authorised officer, the bank and the applicant is referred to as well as the stand of respondent no.1 to the effect that he is going to purchase 160 square yards property i.e. 1189, Mukherjee Nagar, Delhi, for a sum of approximately Rs.4 crores and that the said amount would be transferred in

the account of applicant and respondent no.2 after payment of Rs.2.75 crores to the bank and that he would personally intimate the Tribunal as well as the bank one day prior to transfer of the amount. Thereafter, reference is made to order dated 23.07.2019 (Annexure A-2), passed by the Delhi High Court in I.A. No.9758/2019 in CS(OS) No.2528-2015, under Order XXXIX Rule 2-A CPC besides order dated 03.09.2019 (Annexure A-3), passed by the Delhi High Court on an application seeking modification of order dated 23.07.2019. In all these orders, there is an averment regarding the purchase of property as aforementioned by respondent no.1 and thereafter a change of heart on his part due to intervening circumstances as noted in Order dated 03.09.2019 (Annexure A-3). Order dated 11.09.2019 (Annexure A-4), passed by the Presiding Officer, DRT-III, Delhi has also been attached. Copy of agreement to sell dated 09.07.2019 is attached along with this application as Annexure A-8.

Said agreement is allegedly executed between the parties with definitions reading as under:-

“Definitions:-

**First Party** shall mean Sh. Rajeev Saumitra

**Second Party** shall mean Mr. Neeraj Grover

**Confirming Party** shall mean Smt. Neetu Singh

**First Party/Second Party and Confirming Party** shall mean and include their respective heirs, successors, representatives and assigns etc.

**Property under sale** in this agreement shall mean and include the entire Plot no. 1189 Dr. Mukherjee Nagar New Delhi.

**Total Sale Consideration** Shall mean and be read as Rs.4,00,00,000/- (Rupees Four Crore only)

**Sector 45 Properties** shall include Plot No.1802-1803 Sector 45 Gurgaon

**Sector 57 Property** shall include Plot No. 2880 Sector 57 Gurgaon  
**Burari Property** shall mean and include the fully constructed building in Plot No.A-14, Himgiri Enclave Sant Nagar, Pepsi Road, Burari New Delhi.

**Lease Agreement for Burari property** shall be the agreement dated 05.03.2019 in favour of M/s Paramount Premier Pvt. Ltd. group entity of First party.

**Settlement Agreement** shall mean and include the settlement agreement dated 15.04.2019

**Court of Law** shall mean and include the office of JUSTICE Sh. R.B. Mishra, H.No.12, High Court Judges Colony, Sec – 105, NOIDA 201304 (rbmishra@yahoo.com) as the Sole Arbitrator to act under the Arbitration and Conciliation Act 1996 amended upto Date.

**Seat of Arbitration** shall be at Gurgaon Haryana at the office of the Arbitrator.”

The said agreement dated 18.02.2019 is stated to be a forged and fraudulent document. It is stated that arbitration clause in the alleged agreement dated 09.07.2019 was invoked in a malafide manner by respondent no.1 and Mr. Justice R.B. Mishra (Retd.) was appointed as Arbitrator, purportedly in terms of said agreement. Details of the orders passed by Delhi High Court and Presiding Officer, DRT III – Delhi as mentioned above, are not being referred to and quoted in extenso as the same are not necessary or relevant for adjudication of the present controversy.

Learned counsel for the applicant is unable to show how the present petition is maintainable. Reliance is sought to be placed on a judgment dated 09.02.2021, passed by the High Court of Delhi in

ARB.P.424/2020, titled *Oyo Hotels and Homes Pvt. Ltd. Vs. Rajan Tewari*

**and another**, to submit that in case appointment of the sole Arbitrator itself is non-est, not being in accordance with the agreed procedure, the Court would be well within its jurisdiction to declare the said Arbitrator to have no jurisdiction to adjudicate the dispute between the parties. However, reliance by learned counsel for the applicant on the said decision is clearly misplaced. At this stage, it is relevant to note that Section 11 of the Arbitration Act provides for appointment of Arbitrator and Section 11(6) of the Arbitration and Conciliation Act, reads as under:-

“(6) Where, under an appointment procedure agreed upon by the parties,—

- (a) a party fails to act as required under that procedure; or
- (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
- (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.”

It is pertinent to note that the applicant in this case does not seek appointment of an Arbitrator. In fact on a pointed query to learned counsel for the applicant in this regard, it was replied that there is no question of appointment of an Arbitrator as the agreement to sell dated 09.07.2019 itself is claimed to be a forged and fabricated document. At this stage it is to be noted that the applicant, replied to letter dated 07.03.2022 (Annexure A-5) sent by respondent no.1 in regard to appointment of the Arbitrator, vide reply dated 24.03.2022 (Annexure A-6) stating that agreement to sell dated 09.07.2019 has become void *ab-initio* in the light of settlement suffered by respondent no.1 before the Delhi High Court in I.A No.11985/2019 in CS(OS) No.2528/2015. It is further stated therein that an arbitration Clause cannot be invoked in a void agreement to sell and that the

matter is subjudice before the learned DRT-III, New Delhi. In such a situation, to read decision dated 09.02.2021, passed by the Delhi High Court selectively to hold that the present petition is maintainable for declaring mandate of the sole Arbitrator to be terminated is indeed far fetched. Delhi High Court in *Oyo Hotel's* case (supra) has in fact reiterated the well settled position that appointment of an Arbitrator which may be non-est in law, will not inhibit the exercise of jurisdiction by Court under Section 11(6) of the Arbitration Act. Same cannot by any stretch of imagination be taken to mean that mandate of the Arbitrator can be challenged in this manner.

No other argument has been addressed.

This petition being devoid of any merit is dismissed.

It is clarified that there is no expression of opinion on the merits of the matter and is confined only for limited purpose of decision of this petition.

**(Lisa Gill)**  
**Judge**

**08.07.2022**  
Sunil

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| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |