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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 4th May, 2022*

+ **ARB.P. 518/2019 & IA No.11262/2019**

SMT. SAVITRI DABAS Petitioner
Through: Mr. Ashutosh, Adv.

Versus

SH. SANJAY KUMAR Respondent
Through: Mr. Anand Yadav & Ms. Anita
Tomar, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereafter the 'A&C Act'), *inter alia*, praying that an Arbitrator be appointed to adjudicate the disputes that have arisen between the parties in connection with an Agreement to Sell dated 11.12.2014.

2. In terms of the said Agreement to Sell, the respondent had agreed to sell the land ad-measuring 3 *Bighas* and 17 *Biswas* situated in Revenue Estate of Village Ladpur, Tehsil Kanjhawala, District North-West, Delhi-110081 for a total sale consideration of ₹1,82,87,500/-. The said Agreement to Sell also records that the respondent had received a sum of ₹18,30,000/- towards advance sale consideration.

3. The Sale Deed of the said property was required to be executed within a period of three months that is, on or before 11.03.2015.

Admittedly, the respondent failed to execute the said Sale Deed in performance of the Agreement to Sell. In view of the above, the petitioner sent a notice dated 16.08.2016 calling upon the respondent to return the sum of ₹18,30,000/-, however, the respondent failed to comply with the said demand.

4. In the circumstances, the petitioner filed a Civil Suit [CS No.172/2017] before the District Court on 27.05.2017. The respondent opposed the said suit on the ground that there was an Arbitration Agreement existing between the parties and filed an application under Section 8 of the A&C Act for the said purpose. The said application was taken up for hearing on 10.10.2017 and the Court dismissed the suit by referring the parties to arbitration.

5. Thereafter, the petitioner issued a notice dated 04.12.2017 under Section 21 of the A&C Act suggesting the name of an Advocate to be appointed as an Arbitrator. The petitioner states that the respondent did not respond to the said notice. It is in the aforesaid context, that the petitioner filed the present petition under Section 11 of the A&C Act.

6. The Agreement to Sell includes an Arbitration Clause that reads as under:

“12. Dispute Resolution

That the parties further agree that in the event of any dispute or difference arising between the parties relating to any of the terms of this Agreement or regarding implementation thereof, the same shall be referred for adjudication to a sole arbitrator to be appointed in terms of the provisions contained in the Arbitration & Conciliation Act, 1996 or any

other enactment in force at the relevant time. The arbitral proceedings shall be conducted in accordance with the provisions of the above enactment. The parties shall be bound by the award given by the above arbitrator. The seat of Arbitration will be at Delhi and the Courts at Delhi only will have the jurisdiction.”

7. The learned counsel appearing for the respondent does not dispute that the parties had entered into the Agreement to Sell or that the same includes an Arbitration Agreement. He also does not dispute that the respondent had received a sum of ₹18,30,000/- as part consideration for the property agreed to be sold in terms of the aforementioned Agreement to Sell dated 11.12.2014. He has, however, opposed the present petition on two grounds. First, he submits that the respondent had acquired the rights in the said property in terms of the Agreements entered into with one Mr. Balwan, who did not honour his agreement. This is because he, in turn, had entered into an agreement with one Mr. Sajjan Kumar and one Mr. Pardeep Kumar for the said property and they had not honoured their commitment. He submits that there is no default on the part of the respondent in performing his obligations under the Agreement to Sell dated 11.12.2014 as it is for reasons beyond the control of the respondent. He further states that the respondent has also filed a recovery suit against Mr. Balwan.

8. Second, he submits that the respondent has not received a notice dated 04.12.2017 and therefore, the claim is beyond the period of limitation.

9. None of the two grounds are persuasive. The fact that the

respondent has not performed the Agreement to Sell is admitted. The question as to the reasons why the respondent has not performed the Agreement relates to the merits of the disputes between the parties and the scope of examination under Section 11 of the A&C Act is confined to existence of the Arbitration Agreement. As noted above, the existence of the Arbitration Agreement is not disputed.

10. Insofar as the receipt of notice for invoking arbitration is concerned, the petitioner has not only produced the copy of the notice but has also produced the postal slips indicating dispatch of the said notice by post. He states that the notices were not returned undelivered. In the aforesaid circumstances, it is assumed that the article sent by pre-paid post at the given address in normal course stands delivered. Thus, *prima facie*, the contention that the arbitral proceedings have not commenced within the period of limitation, is unmerited.

11. It is also material to note that by an order dated 10.10.2017 passed by the learned ADJ, the respondent's application under Section 8 of the A&C Act captioned *CS no. 172/17 10102017: Savitri Dabas v Sanjay*, was allowed. The court had, *inter alia*, directed: "*parties to proceed further as per their agreement and to get the dispute between them settled by proceedings further as per clause 12 of the Agreement by appointing an Arbitrator*".

12. The petitioner has filed the present petition within a period of three years from the date of the said order. Further, the respondent was also bound by the said order and was obliged to get the disputes settled in arbitration by appointment of an arbitrator. It does appear that the

respondent's effort is to somehow frustrate the petitioner's endeavour to get the disputes adjudicated.

13. Given the limited scope of examination under Section 11 of the A&C Act, this Court considers it apposite to allow the present petition.

14. Accordingly, Ms. Amrit Kaur Oberoi (Mob.9899347698), Advocate is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. This is subject to the learned Arbitrator making the necessary disclosure as required under Section 12(1) of the A&C Act and not being ineligible under Section 12(5) of the A&C Act.

16. The parties are at liberty to approach the learned Arbitrator for further proceedings.

17. It is clarified that all rights and contentions of the parties are reserved.

18. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

MAY 4, 2022

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[Click here to check corrigendum, if any](#)