



Arb.O.P (Com.Div) No.19 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

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M/s. JMJ Housing Ltd.,
No.556 C.S.S. Complex D.B.Road,
R.S.Puram, Coimbatore – 641 002.
rep. by its Director.

...Petitioner

Vs

Mrs. Sandhya Satish Batavia,
w/o. Mr.Satish Virchand Batavia,
Unit- 603-06, 16-F, Alliance Building,
130-136 Connaught Road,
Central Sheung Wan, Hong Kong.

...Respondent

Arbitration Original Petition filed under Section 11 (6) of the Arbitration and Conciliation Act 1996, seeking for appointment of Sole Arbitrator to resolve the dispute amongst the parties arising out of MOA, dated 26.05.2022 and pass orders, as this Court may deem fit and appropriate in the facts and circumstances of the case.



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For Petitioner : Mr.S.Sathyannarayanan
For Respondent : Ms.S.Yogalakshmi for
M/s.Wallcliffs Law Firm

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act 1996 (hereinafter, referred to as 'the Act') to appoint a Sole Arbitrator to adjudicate upon the dispute between the petitioner and the respondent arising out of a Memorandum of Agreement dated 26.05.2022.

2. Mr.S.Sathyannarayanan, learned counsel appearing for the petitioner would submit that the petitioner-Company is engaged in the real estate business; that both the petitioner and the respondent entered into two agreements for sale both dated 26.05.2022 registered as Doc No.4390 of 2022 and Doc.No.4389 of 2022 with an intention to develop and sell the properties belonging to the respondent, which are situated at Coimbatore; that on the very same date, they had also entered into a MOA dated 26.05.2022 to develop the properties and to sell the same and to share the



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sale consideration as per MOA, and as a gentlemen agreement, the respondent also agreed to cancel the sale agreements that were entered into between them earlier, however, the respondent has cancelled only one sale agreement and not the other; that in the meantime, as there were certain clarifications as to payment terms, both the petitioner and the respondent entered into MOU dated 24.02.2023, but, thereafter, the respondent has not performed her obligation and wanted to wriggle out of obligations under the MOA, which resulted in non-payment of amount mentioned in MOU dated 24.02.2023.

2.1 The learned counsel for the petitioner would submit that though the petitioner tried to resolve the dispute amicably with the respondent, the respondent was not ready, hence, the petitioner issued a notice under Section 21 of the Act, invoking the arbitration clause of MOA dated 26.05.2022, but the respondent sent a reply dated 24.07.2023, stating that there is no arbitration clause between the parties. Hence, the petitioner has filed the present Arbitration Original Petition seeking for the aforesaid prayer.



3. On the other hand, Mr.S.Yogalakshmi, learned counsel for the respondent strongly opposed for the submissions made by the learned counsel for the petitioner by contending the same to be utter fallacious. The learned counsel contended that the alleged MOU was never intended to be acted upon, and therefore, it does not have any binding effect on the parties. The learned counsel fortified her case by contending that initially, both the petitioner and the respondent expressed their intention to develop and sell the properties, and accordingly, they both entered into MOA dated 26.05.2022, later, both the parties were not agreeable to certain terms mentioned in the MOA, and therefore, both the parties agreed to execute two separate agreements, which were registered vide Doc No.4390 of 2022 and Doc.No.4389 of 2022, however, since the petitioner-Company failed to pay the balance sale consideration and failed to perform their part of the contract, they themselves came forward for cancellation of agreement of sale registered vide Document No.4390 of 2022, and the said cancellation deed was registered vide Document No.1664 of 2023 on 03.03.2023, however, insofar as another agreement of sale registered vide Doc.No.4389 of 2022 is concerned, they refused to cancel the same, and therefore, seeking



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for cancellation of the said agreement of sale, she initiated civil proceedings against the petitioner and the same is pending on the file of the V Additional District Court, Coimbatore. Therefore, she contended that unless and until, sale agreement dated 26.05.2022, which was registered vide Doc.No.4389 of 2022, was cancelled, MOA dated 26.05.2022 cannot be given effect to.

3.1 Therefore, it is contended by her that it was the MOA dated 26.05.2022, which was executed first even before the execution of two sale agreements, since MOA was signed at about 10.30 a.m on 26.05.2022, and the sale agreements were signed after 5.00 p.m. on the same date and that had the MOU was executed after the execution of the sale agreements, obviously, the date and other details related to the registration of the properties vide Document number Nos.4390 of 2022 and Doc.No.4389 of 2022 would have reflected in the MOA, dated 26.05.2022, which according to the petitioner was executed later, whereas, in para No21 of the MOU nothing was mentioned as regards the details of such registration. Therefore, it is contended that alleged MOA dated 26.05.2022 was never intended to be acted upon, as the same was executed even before the



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execution of the two sale agreements, and that since the parties are not agreeable to certain terms in the MOA, they entered into two agreement of sale, that is the reason why, the MOU was not registered, and the two sale agreements were got registered. Finally, it is contended that MOA is only in respect of sale of the properties and since the same remains to be an unregistered one, the same will not have sanctity in the eye of law, since, as per the provisions of the Tamil Nadu Registration Act, any agreement for sale has to be compulsorily registered and in the event of non-registration, the same is void ab initio and cannot be given effect to.

3.2 Finally, she summed up her arguments by stating in gist that it is premature for the petitioner to approach this Court without cancellation of registered sale agreement dated 26.05.2022 and to determine the dispute between the parties in terms of MOA dated 26.05.2022. Even otherwise also, the MOA cannot be given effect to, as the same was unregistered one and in terms of provisions of the Tamil Nadu Registration Act, any agreement for sale has to be compulsorily registered and therefore, prayed for dismissal of this Petition.



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4. I have given due consideration to the submission made by the learned counsel appearing for the petitioner and the respondent and perused the materials on record.

5. The moot point that falls for consideration in this Petition is as to whether the alleged MOA dated 26.05.2022 entered into between the petitioner and the respondent, which was an unregistered one, can be given effect to and the dispute between the parties could be referred to an Arbitrator, when there exists a prior registered sale agreement, dated 26.05.2022, which was entered into between the same parties in respect of the same property ?

6. Both the petitioner and the respondent entered into three agreements, of which, one is MOA, and other two are Agreement for Sale and all these three agreements were entered into between the same parties, in respect of the same properties, on the same date (i.e. on 26.05.2022) but for different sale consideration.



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6.1 According to the petitioner, after the sale agreements were entered into between the parties, MOA dated 26.05.2022 was entered into between them with an intention to develop the properties and to sell the same and to share the sale consideration amongst themselves and as a gentlemen agreement, the respondent also agreed to cancel the sale agreements that were entered into between them earlier, however, the respondent has cancelled only one sale agreement and not the other; and thereafter, failed to perform her obligation and wanted to wriggle out of obligations under the MOA. Therefore, according to the petitioner, MOA dated 26.05.2022 still hold good and is binding on the parties and as per clause 18 of the MOA, the dispute arisen between the petitioner and the respondent is arbitral and prayed for appointment of an Arbitrator to adjudicate the dispute.

6.2 Per contra, it is the case of the respondent that it was the MOA dated 26.05.2022, which was executed first even before the execution of two sale agreements and that since both the parties were not agreeable to certain



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terms mentioned in MOA, both the parties entered into two separate agreements, however, since the petitioner failed to perform their part of the contract, they themselves came forward for cancellation of agreement of sale registered vide Document No.4390 of 2022 and insofar as another agreement of sale registered vide Doc.No.4389 of 2022 is concerned, they refused to cancel the same, and therefore, seeking for cancellation of the said agreement of sale, she initiated civil proceedings against the petitioner and the same is pending on the file of the V Additional District Court, Coimbatore, and therefore, the alleged MOA cannot be given effect to, unless and until, the Sale Agreement is cancelled.

6.3 It is no doubt true that, both the Sale Agreements and MOA pertains to the creation of right over immovable property by virtue of sale. Therefore, any agreement pertaining to the sale of the immovable property is compulsorily registrable in terms of the provisions of the T.N.Registration Act. In the present case, the sale agreements dated 26.05.2022 were registered, but the MOA dated 26.05.2022 was unregistered.



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6.4 Further, the respondent/plaintiff filed a suit for cancellation of the sale agreement dated 26.05.2022, registered vide Doc.No.4389 of 2022. On the other hand, the petitioner was not inclined to cancel the sale agreement. In this regard, he also filed an affidavit stating that if the respondent/plaintiff has lost in the said suit, obviously, the petitioner herein will have the right over the property by virtue of MOA. It is pertinent to mention here that by virtue of MOA and Sale Agreement, once the alleged right was created over the same immovable property and by virtue of arbitration clause contained in MOA, if the dispute is referred before the Arbitrator and a decision is rendered and simultaneously, the Civil Court also renders a judgment, the same would pave a way for the mutiplicity of proceeding. That apart, in the sale agreement dated 26.05.2022 there was no clause for arbitration of the dispute among the parties and only the MOA dated 26.05.2022 contains arbitration clause, and in the last para, there was a whisper about the sale agreement.



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6.5 No doubt, the claim made based on the registered agreement for sale prevails over the claim made based on the unregistered document, viz., MOA and whenever, a right over the immovable properties was created, that particular document has to be compulsorily registered as per the provisions of the T.N.Registration Act. Therefore, unless and otherwise, finality is attained in the Civil Suit initiated by the respondent/plaintiff, it is premature to relegate the parties to go for arbitration. In the event, if the matter is decided in favour of the petitioner by the Civil Court, whereby, sale agreement is restored, certainly, no case would arise for either of the parties by virtue of MOA, if it was registered. In case, the sale agreement was cancelled, then, the petitioner can make their claim based on MOA. Even in such case, the validity of the MOA to create right over the property without registration of the same would be a serious issue.

6.6 Therefore, the issue as to whether the dispute among the parties could be arbitral cannot be decided at this point of time, as already stated supra, Civil Suit is pending against the petitioner, and in the event, the petitioner is not succeeding in the suit, depending on the verdict of the



arbitration, right of the petitioner would accrue to them based on MOA. It is not the issue that the respondent in collusion, cancelled the agreement, as such, the veracity of the arbitration agreed between the parties has to be tested, but, it is only the petitioner, who was adamant in not cancelling the one of the agreement, however, seeking for invocation of the arbitration clause contained in the MOU, where, there was mere reference to the sale agreement, stating that, "Notwithstanding the existence of a dispute, the parties shall continue to perform their obligations under this agreement with respect to all such matters as are not the subject matter of the dispute". However, no other details with regard to the sale agreements, date, registered document number were mentioned in the MOA, and therefore, same would no longer come to rescue the petitioner so as to refer the issue pertaining to cancellation of the sale agreement. Hence, the present dispute based on MOA for referring the dispute between the parties to arbitration would not arise.

6.7 That apart, both the Sale Agreement and MOA cannot be given effect to simultaneously. In the event, the sale agreement is not cancelled, it



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is impossible for the parties to proceed with MOA. When the registered sale agreement is in existence, arbitral clause contained in the MOU cannot be given effect to. Thus, the right of the parties has to be decided based on the sale agreement, since the petitioner invited the present dispute, which is due to their non-cooperation for cancellation of the sale agreement when the respondent was willing to do so.

6.8 Therefore, this Court is of the considered view that this Arbitration Original Petition is premature to be entertained. The rights of the parties can be decided either by virtue of the Sale Agreement or by means of MOA, this is so because, both the agreements talks about the sale of the same property, and the only difference is that, Sale Agreement was registered and the MOA was an unregistered one.

7. Thus, for the aforesaid reasons, this Arbitration Original Petition is dismissed. No costs. The parties are at liberty to approach this Court once the Sale Agreement dated 26.05.2022 is cancelled by the Civil Court.

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Krishnan Ramasamy,J.,

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