

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 30 of 2011 (O&M)

Date of Decision: 03.05.2024

M/s Anjaniputra Builders Pvt. Ltd.

.....Petitioner

versus

Smt. Baljit Kahlon

.....Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA, ACTING CHIEF JUSTICE

Present : Mr. N.S.Gill, Advocate for
Mr. Munish Gupta, Advocate, for the petitioner.

Mr. Shaurya Khanna, Advocate, for the respondent.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner for appointment of an independent Arbitral Tribunal to adjudicate upon the disputes between the parties arising out of the agreement dated 14.04.2006.

2. Apparently, as per the copy of the agreement to sell dated 14.04.2006 (Annexure P-2), the petitioner builder had agreed to purchase the land measuring 96 Bighas 16 Biswas roughly about 24 killas at the rate of Rs.32,25,000/- per killa. A sum of Rs. 45 lacs in cash and a cheque of Rs.1,14,33,000/- totaling Rs. 1,59,33,000/- was received by the respondent and the remaining payment was to be made on or before 21.07.2006. Keeping in view the fact that there was an arbitration clause in the agreement, the petitioner has preferred the said petition. Another sum of Rs.25 lacs in cash and a cheque of Rs.75 lacs was also received by the respondent on 21.07.2006.

2. On notice dated 25.05.2009 (Annexure P-4) being served by the petitioner upon the respondent for not fulfilling his obligations, for appointment of an arbitrator as the petitioner proposed the name of Shri V.R.Rao, Additional Vice President (Finance & Secretarial), Omaxe Ltd. 7, LSC Kalkaji, New Delhi, and also proposed two persons i.e. Directors of the aforesaid company as alternate arbitrators. Accordingly, the arbitration proceedings were commenced and set into motion. Reply to the legal notice was received on 04.06.2009 (Annexure P-5) whereby a defence was taken by the respondent that there was another agreement dated 08.08.2006 (Annexure R-1) and therefore, on the last extended date the earnest money paid by the petitioner stands forfeited and the agreement came to an end and there was no question for appointment of an arbitrator in terms of the superseded agreement dated 14.04.2006. The respondent had thus prayed that the notice dated 25.05.2009 be withdrawn.

3. The respondent has also taken a defence in the reply to the petition that the petitioner failed to perform its part of contract and had been delaying the matter due to global recession and therefore, the date for execution and registration of the sale deed was extended on 08.08.2006 till 23.08.2006. The gist of the dispute pertained to sale of land vide agreement to sell dated 14.04.2006 and the matter could be dealt with under the Specific Relief Act and the provisions of the Indian Limitation Act, 1963 would also apply was the defence. The subsequent agreement had not been disclosed and it has been mentioned in the reply that only Rs. One crore was paid out of the total sale consideration and the petitioner was unable to arrange the balance amount. Therefore, the respondent had further entered into an agreement with Banarsi Dass etc. and due to delaying tactics the subsequent agreement dated

08.08.2006 was executed and the arbitration clause mentioned in the earlier agreement was cancelled.

4. Vide order dated 03.07.2015 passed by this Court, Shri Tushar Sharma, Advocate, was appointed as the Local Commissioner by a Coordinate Bench then for recording the evidence of the parties only on a limited issue as to whether the parties had entered into an agreement dated 08.08.2006 or not as the issue could not be decided in a summary manner. The report of the Local Commissioner dated 26.08.2016 alongwith the evidence of the parties recorded was placed on record. A perusal of the same would go on to show that the original copy of the agreement dated 08.08.2006 (Annexure R-1) was also produced before the Commissioner and after perusal thereof the same was returned to Shri Vivek Rattan, learned counsel for the respondent. Photocopy of the said agreement was taken on record as Ex. AW1/A and a photocopy of the same was also supplied to Shri Munish Gupta, learned counsel for the petitioner.

5. Before the Court Commissioner, one of the witnesses to the agreement was also examined wherein he had admitted that he had signed only at one place on this writing dated 08.08.2006 and he was in the profession of doing due diligence for banks etc. The writing of the agreement had been done in front of him and one Manpreet Sandhu at Tehsil office, Derabassi who is signatory on behalf of the petitioner. He further admitted that Manpreet Sandhu was known to him since college days. He had stated that he never met the other witness, namely, Rajinder Singh after writing of this agreement and Rajinder Singh had signed this agreement in front of him.

6. A perusal of the second agreement dated 08.08.2006 thus would go on to show that it has two relevant clauses to the extent that the petitioner as such had failed to perform its part of the contract and the balance payment of the first party in terms of the agreement dated 14.04.2006 stands forfeited and in case the owner as such failed to execute the relevant documents on or before the extended date i.e. 23.08.2006, he is liable to pay back the earnest money along with interest at the rate of 12% per annum. There was a stipulation that the parties could approach the competent Court of law for specific performance of the agreement and for damages etc. which will be decided by the competent Court of jurisdiction where the property is situated.

7. Clause 12 of the agreement further provides that the other terms of the earlier agreement dated 14.04.2006 which does not find mention in this agreement shall stand cancelled/withdrawn and waived by the parties. Relevant Clauses 10 to 12 of the agreement dated 08.08.2006 read as under:-

“10. That in case the second party/purchasers fail to perform its part of the contract and fail to make the balance payment to the first party in terms of the agreement dated 14.04.2006, the earnest money/amount paid stands forfeited in favour of the first party and in case the first party failed to execute the relevant documents sale deeds of the lands on presentation of the documents by the second party on or before the final extended date given as 23.08.2006, in that event the first party shall pay back the earnest money recovered by them together with interest @ 12% per annum from the date of payment or in the alternate if the parties do not opt for damages in that event the respective parties can approach the competent Court of law for the specific performance of the Agreement and for damages etc.

11. That in case of breach of contract or any dispute arising out of the agreement, the same shall be decided by the competent Court of jurisdiction in which the property is situated.

12. That the other terms of the agreement dated 14.04.2006 which does not find mention in this agreement shall stands cancelled/withdrawn and waived by the parties.”

8. It is thus apparent that by entering into the second agreement as such, the parties agreed that the earlier arbitration clause would stand cancelled and withdrawn and the dispute could only have been sorted out by approaching the competent Court of jurisdiction under the Specific Relief Act. Having done so, it is apparent that the present petitioner has debarred itself by approaching this Court for appointment of an arbitrator.

9. It is settled principle of law that in the absence of any arbitration clause as such, this Court would have no jurisdiction to adjudicate upon the dispute between the parties. Once the parties themselves agreed to, as has come on record and proved by producing one of the witnesses to the agreement as such that the subsequent agreement dated 08.08.2006 was executed and the original thereof was produced before the Commissioner, as noticed above, the jurisdiction of this Court is thus denuded to appoint the arbitrator. No fruitful purpose would thus be served to appoint the arbitrator as this Court has no jurisdiction to do so and the said Arbitrator would also be having no such jurisdiction as the parties have agreed themselves that the jurisdiction would lie with the competent Court of jurisdiction where the property is situated. Accordingly, no case for appointment of an arbitrator is made out and the petition is dismissed. All pending applications stand disposed of.

(G.S.SANDHAWALIA)
ACTING CHIEF JUSTICE

03.05.2024

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No