



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-679-2024
Decided on: 21.08.2024

SANJAY KUMAR AND ANOTHER

...Petitioners

Versus

RAVI KUMAR AND OTHERS

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Reshabh Bajaj, Advocate
for the petitioners.

Mr. Prashant Singh Chauhan, Advocate
for respondent No.1.

Mr. Sumit Singh Chahal, Advocate
for respondent No.2.

RITU TAGORE, J.

1. The challenge in this revision petition, filed under Article 227 of Constitution of India, is to order dated 17.04.2023 (Annexure P-5), passed by learned Civil Judge (Junior Division), Gurugram in CS No.828 of 2023 titled 'Ravi Kumar Vs. Meena Chauhan and others', whereby an application under Order 7 Rule 10 of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') and read with Section 2(1)(c) (vi), Section 6 and Section 15 of Commercial Courts Act, 2015, seeking transfer of the suit to the Commercial Court of competent jurisdiction has been dismissed.



2. Learned counsel for the petitioners/defendants No.3 and 4, contends that respondents No.1 and 2/plaintiffs, instituted a civil suit (Annexure P-1), for specific performance, permanent and mandatory injunction, against the petitioners and respondents No.3 and 4, which is indeed a masterpiece of clever drafting, whereas bare perusal of the plaint and the agreement dated 02.05.2022 (Annexure P-2) clearly make out, a case of 'commercial dispute' as defined in Section 2(1) (c)(vi) and (vii) of the Commercial Courts Act, 2015 (referred to as 'the Act'). Given the dispute, the case ought to be adjudicated upon by the designated Commercial Court(s).

3. Learned counsel submits that petitioners filed an application (Annexure P-4) under Order 7 Rule 10 of CPC and read with Section 2(1)(c) (vi), Section 6 and Section 15 of Commercial Courts Act, 2015, seeking transfer of the suit to the Commercial Court of a competent jurisdiction. However, the learned trial Court, without advertng to the facts of the case, relief claimed, evidence on record, the provisions of law and the judicial precedents, defining commercial dispute, dismissed the application in arbitrary manner. While referring to Section 6 of the Act, learned counsel contends that all commercial disputes are to be adjudicated upon by Commercial Courts as constituted under Section 3 of the Act. Referring to the terms of agreement dated 02.05.2022 (Annexure P-2), learned counsel submits that the dispute is essentially a commercial dispute as the facts of the plaint set out in the suit seeking enforceability of the contract and relief claimed is one that is covered under disputes arising out of construction and infrastructure contracts, including traders and also dispute arising out of



agreement relating to immovable property used exclusively in trade or commerce.

4. Learned counsel submits that construction would include any activity or process or manner of constructing or building any structure. Learned counsel submits that tenor of agreement dated 02.05.2022 indicate that money was paid by respondents No 1 and 2, to ensure that the construction of the project is completed within 10 months and only thereafter possession was to be handed over to them. Therefore, construction of the building was necessary before transferring the title in their favor. The terms of the contract thus make it purely an investment agreement and it does not refer to the use of property as their residential accommodation. It is stated that the agreement squarely falls under the definition of commercial dispute, particularly when primary relief sought by respondents No.1 and 2 is the specific performance of contract i.e., completion of construction.

5. Learned counsel submits that learned trial Court failed to consider the true import of the agreement in the light of facts pleaded and relief claimed, thus rendering the impugned order dated 17.04.2023 liable to be set aside. In support of his arguments, referred to **Blue Nile Developers Private Limited v. Movva Chandra Sekhar and others, 2022 (1) Law Summary 47, Raj Kumar Gupta and another v. Jagan Nath Bajaj and others, CS (COMM) No.374 of 2020 and Kanchanganga Realtors Pvt. Ltd. v. M/s Monarch Infrastructure Developers Pvt. Ltd. a nd others 2019 AIR (Bombay) 102.**

6. Per contra, learned counsel for the respondents No.1 and 2/plaintiffs supports the order dated 17.04.2023 (Annexure P-5) stating that



given the pleadings of the respondents, relief claimed and terms of agreement, the dispute does not fall within the meaning and purview of commercial dispute. The suit is purely for specific performance of an agreement dated 02.05.2022. The respondents/plaintiffs enter into an agreement to sell with respondents No.3 and 4, for purchase of property and not into an agreement for development of a project or infrastructure project. The learned counsel submits that case law relied by the petitioners is inapplicable to the facts of the case, as in these cases, the owner had entered into a contract of development of project. It is stated that learned trial Court appropriately concluded that it is not a commercial dispute and rightly dismissed the application. A prayer is made for dismissal of revision, for lacking merits.

7. I have heard learned counsel for the parties and have gone through the paper book with their able assistance.

8. At this stage, it would be relevant to notice the conclusion drawn by the learned trial Court in the order dated 17.04.2023 Annexure P-5 (uncertified true copy replied by petitioner), which reads as under:-

“Thus, after having heard the arguments advanced by Ld. counsel for both the parties and having gone through the documents on file including the application and reply filed thereto this court is of the considered view that the present suit has been filed by the plaintiff seeking a decree for specific performance of contract on the basis of agreement to sell. Whether the plaintiff will succeed in his suit is a question of fact and law to be decided after leading evidence but there is no doubt that the aforesaid case is not covered under the provisions of Commercial Court Act. Both the case laws relied upon by the Ld. counsel for the applicant defendant No. 3 and 4 are not applicable to the facts of this case. In this case plaintiff has agreed to purchase a property and the plaintiff has not entered into any agreement for development of any infrastructure project with defendant or with any third party. There might be a some other



agreement qua the infrastructure development with the defendant but the plaintiff is not a party to such agreement which as per Section 2(c) of Commercial Court Act 2015 comes in category of commercial dispute. Therefore, there is no substance in the objection of lack of jurisdiction with the civil court and therefore the aforesaid application is dismissed being without merit.”

9. Here, it would be profitable to go through some of the clauses of the agreement dated 02.05.2022 (Annexure P-2). The relevant clauses of agreement dated 02.05.2022 are extracted below, which reads as under:-

“XXXXXX

*AGREEMENT
NOTARIZED*

We are Mrs. Meena Chauhan (Aadhaar number 2662 3797 4443) wife of Mr. Sanjay Kumar Chauhan resident of house number 1562, Block C, Palam Vihar, Gurugram, Haryana and Mr. Vikas Singh (Aadhaar number- 7436 9694 9931) son of Mr. Ashok Singh resident of 982, 2nd Floor, C-2, Palam Vihar, Gurugram.

FIRST PARTY

And

We, Ravi Kumar, son of Shri Rajkaran, resident of House No. 1658/3, Rajiv Nagar, Gurugram, Haryana and Vikas Chaudhary, son of Shri Maman Singh, resident of D-11/31, 2nd Floor Executive Floors, DLF Phase-5, Gurugram, Haryana.

SECOND PARTY

XXXXXX

That the first party is making stilt parking on ground floor, first floor, second floor, third floor and fourth floor in the above mentioned plot.

That the first party (Meena Chauhan) after constructing the above mentioned four floors in her share of the plot, will be adhere to give to the second party the first floor fully furnished, of covered area 1150 square feet and the fourth floor fully furnished with roof right cover area of which will be bound to be 1150 square feet, along with two covered car parking. In respect of the above mentioned floor, my husband Sanjay Kumar Chauhan has received the amount in his name and in the name of his company Bharti Builders, which is located at Bharti Builders, Registered



Office Shop No. 1. Apna Enclave, Lower Ground Floor, Railway Road, Gurugram currently at SCO No. 13 First Floor, HUDA Market Sector-15, Gurgaon of which he is a director. About which I have complete knowledge.

That the first party (Vikas Singh) after constructing the above mentioned four floors in his above mentioned plot, will hand over the fully furnished first floor to the second party covered area of which will be bound to be 1150 square feet, in which one car parking will be covered. In respect of the above mentioned floor, my chacha Sanjay Kumar Chauhan has received the amount in his name and in the name of his company Bharti Builders, which is located at Bharti Builders, Registered Office Shop No. 1, Apna Enclave, Lower Ground Floor, Railway Road, Gurugram currently at SCO No. 13 first Floor, HUDA Market Sector-15, Gurgaon of which he is a director. About which I have complete knowledge.

That the first party has received the entire amount of Rs.1,16,00,000/- (Rupees One Crore Sixteen Lakh) from the second party in the following manner:-

XXXXXXX

That the first party will remain bound to construct all four floors in the above area within 10 months i.e. by 31-10-2022. If the first party does not construct the above floor within 10 months and does not give possession or get the registration of their floor to the second party, then the first party will have to register their respective shares in the above area and pay the above amount of Rs. 1,16,00,000/- (rupees one crore Sixteen lakh) If we do not do so, then the second party will have the right to get the registration deed done in the court in his name or in the name of any of his nominees in accordance with the spirit of this agreement. We the first party (Meena Chauhan and Vikas Singh) will not have any reason or objection as the first party has already received the amount.

XXXXXXXXX”

10. On the basis of this agreement, respondents No.1 and 2/plaintiffs filed suit for specific performance, permanent injunction and mandatory injunction, (Annexure P-1), seeking the relief, which reads as under:-

“It is therefore prayed that a decree for specific performance may kindly be passed in favour of the plaintiffs and against



the defendants directing the defendants to complete the construction work of the floors and construct apartments therein as per the agreement in question and to convey the title of 2 apartments located on the ground floor of the building having covered area of 1150 ft² each and an Apartment along with roof rights of the 4th floor of the building having covered area 1150 ft² along with 3 covered parking on stilt-level and to execute and get registered the sale deeds of such apartments in favour of the plaintiffs and also to deliver actual physical possession thereof to the plaintiffs.

Alternatively, a decree for specific performance may kindly be passed directing the defendants to execute and get registered the sale deed of two third share in plot measuring 150 yd² plot bearing number 1397/A/5 having an area of 150 yd² bounded and measured as under:

East: 62.7 feet houses of sector 15 part 2

West: 59.1 feet plot number 1397/A/5

North: 21.9 feet rastaaam

South: 23 feet other owners

Comprising in Khasra number 4906/1/4340/447/2 situated in Hidayatpur Chhawani, now known as Patel Nagar, Gurugram and to deliver the possession thereof to the plaintiffs.

Alternatively decree for mandatory injunction be passed directing the defendants to complete the construction work and building work of the proposed building and to construct and fully furnish the apartments as per the agreement in question.

A decree for permanent injunction be also passed restraining the defendants from alienating or creating third- party rights or part away with the possession of the ground floor and fourth floor of the building to be constructed as well as 2/3rd share in the said plot measuring 1.50 yd² as detailed in paragraph number 1 of the plaint.

Alternatively, in compliance of Section 21 and 22 of the specific relief act, a decree for recovery of ₹ 1.16 crores along with interest at the rate of 18% per annum from 2 May 2022 till the entire amount is refunded to the plaintiffs may kindly be passed in favour of the plaintiffs and against the defendants.

The costs of the suit be also granted to the plaintiffs including but not limited to court fees affixed thereupon.

Any other relief which this honourable court deems fit and proper may also be granted to the plaintiffs against the defendants.”



11. At this juncture, it would be profitable to go through the commercial dispute as provided in Section 2(1) (c) of the Act, which is reproduced hereinbelow:-

“2(1) (c) “commercial dispute” means a dispute arising out of—

- (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;*
- (ii) export or import of merchandise or services;*
- (iii) issues relating to admiralty and maritime law;*
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;*
- (v) carriage of goods;*
- (vi) construction and infrastructure contracts, including tenders;*
- (vii) agreements relating to immovable property used exclusively in trade or commerce;*
- (viii) franchising agreements;*
- (ix) distribution and licensing agreements;*
- (x) management and consultancy agreements;*
- (xi) joint venture agreements;*
- (xii) shareholders agreements;*
- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;*
- (xiv) mercantile agency and mercantile usage;*
- (xv) partnership agreements;*
- (xvi) technology development agreements;*
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;*
- (xviii) agreements for sale of goods or provision of services;*
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;*
- (xx) insurance and re-insurance;*
- (xxi) contracts of agency relating to any of the above; and*
- (xxii) such other commercial disputes as may be notified by the Central Government.*

Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—



(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;”

12. Thus, from the plain reading of the sub clause (vi) and (vii), it is made out that any dispute arising out of a construction and infrastructure contracts, which includes tenders and also the disputes, arising out of agreement relating to immovable property used exclusively in trade or commerce, would fall under the purview of commercial dispute.

13. The perusal of the relevant provision of contract dated 02.05.2022 (Annexure P-2), *prima facie* indicate that respondents No.3 and 4/defendants No.1 and 2, claiming them as owners of the suit property, entered into an agreement to sell, the constructed floor/apartments for the plaintiffs and agreed to hand over the furnished apartments by 31.10.2022 and also agreed to transfer their respective share in the area, in case of failure to hand over the possession of the apartments. The tone and tenor of agreement, *prima facie* does not suggest that it is a commercial dispute attracting the definition of construction and infrastructure contract or an agreement of immovable property relating to trade or commerce. It is an agreement *simplicitor* for construction of the apartments for the plaintiffs with normal terms and conditions, seeking enforceability of completion of apartments for the purchasers. It does not suggest it was for trade or commerce.

14. The ***Blue Nile (supra)*** relied by learned counsel for the petitioner is distinguishable from the facts of the present case. The para 4 of the judgment would indicate that a case was filed before the special Judge



for disposal of the commercial dispute for recovery of certain amount with interest on ground of excess payment made to the petitioner with respect to the construction of the Villas as detailed in the plaint. The judgment ***Raj Kumar (supra)*** relied by the petitioner is also not applicable to the facts of the present case. In this case, the plaintiff filed a suit for specific performance, seeking performance of the Property Development Agreement, in terms of which the plaintiffs were to construct the property. The plaintiffs, being the builders, were required to pay Rs.2,15,00,000/- crores to the defendants, being the owners of the property and carry out construction on the suit property at their own expense. In lieu thereof, the plaintiffs were entitled to two floors of the building to be constructed and the remaining floors were to go to the defendants. The case ***Kanchanganga Realtors Pvt. Ltd. (supra)*** is also distinguishable from the facts of the present case. In referenced case, respondent no.1 in the suit for specific performance against the petitioners, the agreement read with the Memorandum of Understanding of the same date executed between the parties indicated that the agreement was in relation to immovable property, which was to be used exclusively in trade or commerce. The facts of the present case *prima facie* do not make out a commercial deal consequently a commercial dispute between the parties, as discussed above.

15. As a sequel to the foregoing discussion, it is hereby held that there is no illegality, irregularity, infirmity or perversity in the impugned order dated 17.04.2023 (Annexure P-5), passed by the learned trial Court, warranting any interference by this Court.

16. Resultantly, the revision petition is dismissed.



17. It is noted that observations made above should not be construed as an expression of opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.
18. Pending applications, if any, also stand disposed of accordingly.

(RITU TAGORE)
JUDGE

21.08.2024
Rimpal

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