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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision:08.11.2024

SUBODH PARKASH

...PETITIONER

VERSUS

RAJIV GADDH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. P.S. Rana, Advocate
for the petitioner.

Mr. A.P.S. Deol, Senior Advocate with
Mr. Alok Mittal, Advocate
for the respondent.

SUVIR SEHGAL, J.

1. Instant petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (for short “the Arbitration Act”), for appointment of a sole Arbitrator to adjudicate the differences between the parties.

2. Counsel for the petitioner submits that two separate agreements appended at Annexure A-1 dated 02.04.2013 were entered into between the parties to settle their business affairs. The second agreement pertained to a

piece of land in Hoshiarpur measuring 550 square marlas (hereinafter



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referred to as “Hoshiarpur plot”) upon which, some construction was made and was purchased through auction from the J & K Bank Limited. By virtue of Clause 6 in both agreements, Sh. Bharat Bhushan and Sh. Navtej Gandhi, the attesting witnesses, were named as Arbitrators to resolve any dispute between the parties. Counsel for the petitioner states that a dispute between the parties arising out of a collaboration agreement dated 25.03.2012, was referred to an Arbitrator by this Court vide order dated 27.11.2015, Annexure A-3, culminated in the passing of an award on 30.06.2020, Annexure A-6. Counsel asserts that the Hoshiarpur plot was under litigation and after it was settled by judgment dated 09.07.2021, Annexure A-9, passed by the Supreme Court, a notice dated 01.09.2021, Annexure A-7, was issued by the petitioner invoking the arbitration clause. The respondent submitted a response dated 06.10.2021, Annexure A-8, advising the petitioner to move an appropriate application before the Arbitrator, who passed the award dated 30.06.2020, Annexure A-6. Counsel for the petitioner contends that with the passing of the order, Annexure P-9, a fresh cause of action arose as the Supreme Court has held that the auction purchasers are entitled to the possession of the Hoshiarpur plot.

3. Upon notice by this Court, petition has been contested by the respondent by filing a reply stating that the petitioner has filed objections under Section 34 of the Arbitration Act against award, Annexure A-6. A stand has been taken that the claim is barred by the principle of *res judicata* as the dispute pertaining to the collaboration agreement as well as the Hoshiarpur plot were taken up together by the Arbitrator with the consent of the parties. However,



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the petitioner decided to withdraw from the proceedings and the claim qua the Hoshiarpur plot was dismissed for non-prosecution. He has contended that no new right has been vested in the petitioner and the dispute before the Supreme Court was between the original owner and the Bank. Reliance has been placed by counsel for the respondent upon the judgment of the Supreme Court in *Sanjiv Kumar Rajendrabhai Bhatt Vs. State of Gujarat and another* 2023 INSC 515 to assert that the petitioner is indulging in forum shopping. Reference has also been made by him to the observations of the Supreme Court in Para 57 of the judgment in *Supreme Court Advocates-on-Record Association and another Vs. Union of India (Recusal Matter) (2016) 5 SCC 808*. Petitioner has filed a rejoinder to the written statement filed by the respondent and has reiterated the claim.

4. I have heard counsel for the parties and considered their respective submissions.

5. A perusal of the record shows that the dispute referred to the Arbitrator, which culminated in the passing of award dated 30.06.2020, Annexure A-6, arose out of a collaboration agreement dated 25.03.2012 entered into between the parties. During the course of the proceedings, Arbitrator was informed that another dispute is pending between the parties. Noticing that both the disputes are arisen from the same set of facts, which are interlinked, an attempt was made to amicably settle the dispute through mediation, which did not succeed. While passing the award, Annexure A-6, the Arbitrator made the following observations:-

“6. From the foregoing it is evident that the two arbitrations (one relating to the claimant's claims against



the respondent and the other relating to respondent (Prakash)'s claims against Rajiv Gadh) are quite intertwined with the facts of one overlapping those of the other. That being the position it would have been both fruitful and convenient to proceed with the two arbitrations together and to make a common award. In that case it might also have been possible to explore the possibility of adjustments of the claims in one arbitration against the claims in the other. Unfortunately, however, that is no longer possible due to Prakash's ill-conceived decision to withdraw from the proceedings. In this situation it was open to the tribunal to close and terminate the arbitration relating to his claims against Gadh (Subodh Prakash vs. Rajiv Gadh) for non-prosecution. But I do not propose to do that. In this award I propose to deal exclusively with the claims of ARC against Prakash and to leave open the claims of Prakash against Gadh with regard to which appropriate directions are made at the end of this award. It is stated earlier that facts of the two cases are overlapping each other. However, since it is proposed to deal with only one of the arbitrations in this award, the facts of the two cases will have to be separated as far as possible.”

xxx xxx xxx xxx xxx xxx xxx

“31. In Para 6 above it has been stated that the claims arising in ARC Projects versus Subodh Prakash have been separated from the claims arising in Subodh Prakash versus Rajiv Gadh. The present award has been made in the case of ARC Projects versus Subodh. In the other case, the Tribunal could have dismissed the proceedings for non-prosecution. However, I am inclined to give a window of three months to Prakash to resume



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the proceedings, which he may do so by filing an amended Statement of Claims in Subodh Prakash versus Rajiv Gadh. Should he fail to do so within a period of three months from date of the present award, the arbitration in the said case shall stand finally terminated.

32. This is the award in the arbitration between ARC Projects versus Subodh Prakash.”

6. Subsequently, objections to this award were filed by the petitioner, which are pending. Petitioner has not moved any application for the recalling of order, dismissing the proceeding qua Hoshiarpur plot, for non-prosecution nor has he sought revival of the said claim in the arbitration case, which has been terminated. In this background, the question that arises for consideration is whether the claim pertaining to the Hoshiarpur plot sought to be asserted by the petitioner in the present proceedings is barred by the principles of *res judicata*. This precise question came up for consideration before the Supreme Court in **Indian Oil Corporation Limited Vs. SPS Engineering Limited (2011) 3 SCC 507** and it has been held as under:-

“16. The question whether a claim is barred by res judicata, does not arise for consideration in a proceedings under Section 11 of the Act. Such an issue will have to be examined by the arbitral tribunal. A decision on res judicata requires consideration of the pleadings as also the claims/issues/points and the award in the first round of arbitration, in juxtaposition with the pleadings and the issues/points/claims in the second arbitration. The limited scope of Section 11 of the Act does not permit such examination of the maintainability



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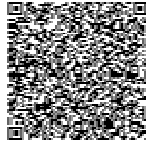
or tenability of a claim either on facts or in law. It is for the arbitral tribunal to examine and decide whether the claim was barred by res judicata. There can be no threshold consideration and rejection of a claim on the ground of res judicata, while considering an application under Section 11 of the Act.”

7. In **Parsvnath Developers Limited &Anr. Versus Rail Land**

Development Authority, 2020 (3) ArbiLR 536, High Court of Delhi has observed that the issue of res judicata or claims being barred under the principles of Order 2, Rule 2, CPC touch upon the merits of the claim and can be decided only by the Arbitral Tribunal. The power under Section 11 (6) of the Arbitration Act is only restricted to examining the existence of the arbitration clause. The objection raised by the respondent requiring the High Court to examine whether the disputes sought to be raised are overlapping with the claims raised before other fora cannot be sustained. Issues clearly fall within the domain of the Arbitral Tribunal and would be decided if and when raised by the respondent.

8. Reliance is also been placed upon a recent decision by the Supreme Court in **SBI General Insurance Company Limited Versus Krish Spinning 2024 (3) RCR (Civil) 497** wherein it has been observed that Arbitral Tribunal is the first preferred authority to look into the questions of arbitrability and jurisdiction, and the referral Court should not venture into contested questions involving complex facts.

9. This Court does not deem it necessary to delve into the alleged non-cooperative attitude and conduct of the petitioner before the arbitral



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tribunal. Hence, the arguments raised by counsel for the respondent are hereby rejected.

10. For the afore-going reasons, prayer made in the petition is accepted. Hon’ble Mr. Justice (Retd.) Ajay Rastogi, a former judge of the Supreme Court of India, House No.69, Sector 10A, Chandigarh, Mobile No.9210906290, is nominated as an Arbitrator to adjudicate the dispute between the parties.

11. Parties are directed to appear before the learned Arbitrator on the date, time and place fixed and communicated by the learned Arbitrator at his convenience.

12. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas etc. before the Arbitrator.

13. Needless to mention that all the questions arising between the parties shall remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.

14. A request letter alongwith a copy of this order be sent to Hon’ble Mr. Justice (Retd.) Ajay Rastogi.

08.11.2024 (SUVIR SEHGAL)
sheetal JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No