



2024:DHC:5911



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

+ ARB.P. 200/2023

ALOK DEVELOPERS PVT LTD

.....Petitioner

Through: Ms. Kirti Mewar, Mr. Ishaan Sahai, Advs.

versus

MISS JASVINDER KAUR @ ALIAS PINKYRespondent

Through: Mr. Moni Chinmoy, Mr. Rahul Ranjan Verma and Mr Ajay Tiwari, Advs.

+ O.M.P.(I) (COMM.) 54/2023

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CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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06.08.2024

1. The petitioner Alok Developers Pvt. Ltd. and the respondent Jaswinder Kaur entered into a General Agreement dated 1 November 2021¹, whereunder they collaborated on developing a property situated at 46-A, South Extension, Part-I, New Delhi².

2. The agreement contained the following clause, envisaging

¹ "GA", hereinafter

² "disputed property", hereinafter



2024:DHC:5911



resolution of dispute between the parties by arbitration:

“38. Any dispute or difference arising out of this Agreement shall be referred to Sole Arbitration as per the provisions of the Arbitration & Conciliation Act, 1996, and ruled framed thereunder and Award made shall be fully binding on the parties hereto. However, work under this Agreement shall continue to proceed without any hindrance or obstruction from either of the Parties. That the venue of Arbitration will be Delhi. That all notices required shall be deemed sufficiently served at the address given in this Agreement. However, both parties will put effort to resolve the issued by participating or conducting the meetings among themselves to save time and effort.”

3. This was followed by a Supplementary Agreement dated 1 December 2021³, also executed between the petitioner and the respondent, but containing no arbitration clause. Though Mr. Chinmoy learned Counsel for the respondent, submits that, as the SA, which superseded the GA, did not contain any arbitration clause, the disputes between the parties are not referable to arbitration, Ms. Kirti Mewar, learned Counsel for the petitioner contends, *per contra*, that the SA is only in the nature of a supplementary agreement, which supplements the GA and that, therefore, the covenants of the GA, including the arbitration clause, have to be read as part of the SA.

4. In support of his submission, Mr. Chinmoy placed reliance on the decision of the Supreme Court in *M R Engineers and Contractors Pvt. Ltd. v. Som Datt Builders Ltd*⁴ as quoted and relied upon in *NBCC (India) Ltd. v Zillion Infraprojects Pvt. Ltd*⁵. He has specifically invited my attention to para 24 (i) and (ii) of *M R Engineers and Contractors*, which read thus:

³ “SA”, hereinafter

⁴ (2009) 7 SCC 696

⁵ 2024(2) ARBLR 58 (SC)



2024:DHC:5911



“24. The scope and intent of Section 7(5) of the Act may, therefore, be summarized thus:

(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled:

(i) the contract should contain a clear reference to the documents containing arbitration clause,

(ii) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract,

(iii) the arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

(ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.”

5. Mr. Chinmoy’s contention is that, applying the tests envisaged in para 24(i) and (ii) of *M R Engineers and Contractors Pvt. Ltd.*, to the present case, it would be clear that the GA and the SA are two independent agreements and that the arbitration clause in the GA cannot be said to have been incorporated by reference into the SA.

6. In my considered opinion, this issue cannot be easily decided one way or the other. Given the position of the law recently enunciated by the Supreme Court in *SBI General Insurance Co Ltd v. Krish Spinning*⁶, the issue ought more appropriately to be decided by the arbitral tribunal rather than this Court.

⁶ 2024 SCC OnLine SC 1754



2024:DHC:5911



7. There can be no manner of doubt that, in any event, the GA dated 1 November 2021 was executed between the parties and that it contains an arbitration clause, fixing the seat and venue of arbitration as Delhi. The contention that the SA is merely supplemental to the GA and that therefore, the arbitration clause in the GA would also extend to rights claimed under the SA is a matter which would require examination, appropriately to be undertaken by the arbitrator.

8. The petitioner addressed a notice to the respondent under Section 21 of the 1996 Act on 27 December 2022, setting out the petitioner's claim. The respondent, in its response, refuted the claims and did not condescend to referring the dispute to arbitration.

9. The petitioner has in these circumstances moved this Court by way of Arb. P. 200/2023, seeking reference of the dispute to arbitration.

10. The second petition listed today i.e. OMP (I) (Comm) 54/2023 was preferred by the petitioner under Section 9 of the Arbitration and Conciliation Act 1996⁷. While issuing notice in the said OMP, this Court, *vide* order dated 22 February 2023, passed an *ad interim* order restraining the respondent from creating any third party interests over the first floor, second floor, third floor, terrace and basement situated in the disputed property.

11. Mr. Chinmoy submits that the petitioner is unlawfully obstructing access, by the respondent, to the ground floor, of which

⁷ "the 1996 Act" hereinafter



2024:DHC:5911



the respondent is the exclusive owner.

12. Ms. Mewar submits that the petitioner is not staking rights in respect of the ground floor of the said property and undertakes that there shall be no hindrance to access, by the respondent, to the ground floor.

13. In any event, the *ad interim* order dated 22 February 2023, too, does not extend to the ground floor. As such, it is made clear that there shall be no hindrance to the access, by the respondent, to the ground floor of the disputed property.

14. Rather than proceeding to adjudicate on OMP (I) (Comm.) 54/2023, I am of the considered opinion that, as there exists an arbitration agreement between the parties, the prayer contained in this OMP should also be appropriately addressed by the Arbitral Tribunal treating it as an application under Section 17 of the 1996 Act, while maintaining intact the *ad interim* order dated 22 February 2023, subject to further orders to be passed by the Arbitral Tribunal.

15. In these circumstances, both these petitions are disposed of in the following terms:

- (i) This Court requests Hon'ble Mr. Justice Ravi Shankar Jha, former Chief Justice of the High Court of Punjab & Haryana (Tel. 9425153362) to arbitrate on the disputes between the parties.



2024:DHC:5911



(ii) The arbitration shall take place under the aegis of the Delhi International Arbitration Centre (DIAC) and shall abide by its rules and regulations.

(iii) The learned arbitrator shall be entitled to fees in accordance with the schedule of fees maintained by the DIAC.

(iv) The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

(v) OMP (I) (Comm.) 54/2023 shall be decided by the learned arbitrator treating it as an application under Section 17 of the 1996 Act, as expeditiously as possible.

(vi) The interim order dated 22 February 2023 shall continue to remain in operation pending orders to be passed by the learned arbitrator in OMP (I) (Comm.) 54/2023.

16. All contentions of the parties preliminary as well as on merits, including the arbitrability of the dispute, shall remain open to be agitated before the learned Arbitral Tribunal.

C. HARI SHANKAR, J.

AUGUST 6, 2024

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Click here to check corrigendum, if any