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

+ **ARB.P. 492/2023**

**SMT. NEELAM MITTAL & ANR.**

..... Petitioners

Through: Ms. Arundhati Katju, Ms. Shristi  
Borathakur, Ms. Ritika Meena, Ms.  
Parkhi Rai, Advs.

versus

**SMT. SAKSHI DUA**

..... Respondent

Through: Mr. Avinash Das, Mr. Nikhil Yadav,  
Advs.

**CORAM:**

**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**ORDER**

**12.03.2024**

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1. By way of the present petition filed under Section 11(6)(B) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of an Arbitral Tribunal comprising of a sole arbitrator, to adjudicate the disputes between the parties.
2. At the outset, the agreement to sale entered between the parties on 20.03.2020 is quite interesting. The respondent (Sakshi Dua) stated herself to be an absolute owner and in possession of the property bearing Khata Khatoni No.17( Fasli Year 1421-1426), Farm No, 368, Village Shyamkhet, Patti Ramgarh, Near Bhowali-Ramgarh Road, Tehsil and District Nainital, Uttarakhand and the dimensions of the said property are Central Area 300 Varg meter. On this property, the



ground floor, 1<sup>st</sup> floor and 2<sup>nd</sup> floor were already constructed. It is very interesting that as per the agreement, the ground floor having 2400 sq feet had been sold by the respondent to Smt. Alka Chawla, and 1<sup>st</sup> Floor sold to Sh. Jatin Lamba and Smt. Divya Lamba.

3. The respondent claimed herself to be an absolute owner and in possession of the said property by virtue of having been gifted by her real brother Vikram Khanna vide Gift Deed dated 09.07.2018.
4. The respondent agreed to sell the fully furnished entire land and building including the ground floor having been sold to Smt. Alka Chawla and 1<sup>st</sup> Floor to Sh. Jatin Lamba and Smt. Divya Lamba. The petitioner also agreed to purchase the entire said property including the respective floors sold to Smt. Alka Chawla, Sh. Jatin Lamba and Smt Divya Lamba for a total sale of consideration of Rs.90,00,000/-. The petitioner paid a sum of Rs.50,000/-and agreed to pay the entire balance sale consideration of Rs.94,50,000/-.
5. The respondent agreed to get the title of the property in question clear in all respects from Smt. Alka Chawla, Sh. Jatin Lamba and Smt. Divya Lamba within a period of 45 days from the date of execution of the agreement to sale and the balance sale consideration was agreed to be paid within 45 days upon the respondent getting the title in the property clear and no payment was required to be paid by the petitioner before that. The respondent was to execute a sale deed within a period of 90 days.
6. The said agreement to sell contained Clause -10 which provided that the right to seek specific performance of the term and condition of the present agreement is foremost, and in case the vendor chooses not to



exercise his right by way of specific performance then the vendor may at its sole option chose to refund the sale consideration.

7. The petitioner's case is that in this event, the respondent agreed to pay to the petitioner a total sum of Rs.3,00,00,000/- towards the sale consideration and the compensation to the vendee. It was agreed that this amount shall not be challenged by any of the parties. Clause-11 of the agreement provides the Arbitration Clause.
8. Learned counsel for the petitioner submits that since the respondent has only paid back Rs.50,000/- and has not paid the compensation amount, a dispute has arisen between the parties which is required to be referred to arbitration.
9. Learned counsel further submits that the agreement between the parties as well as the arbitration clause is not disputed. It has been further submitted that the jurisdiction of the Court at the time of making the reference is very limited. Reliance has been placed ***Vidya Drolia V. Durga Trading Corp.*** (2021) 2 SCC 1.
10. Learned counsel for the petitioner has further relied upon ***D. Ravinder Reddy V. Smt, C. Geetanjali***, Arb. P. 147/2021 (Telangana High Court dated 25.07.2022). Learned counsel submits that the respondent has only taken a plea that the present contract is contingent and therefore void under Section 32 of the Indian Contract Act, 1872. However, learned counsel submits that in the case before the Telangana High Court, the same plea was taken by the respondent, and the matter has been referred to arbitration by the Telangana High Court.
11. Per contra, learned counsel for the respondent has reiterated that the



present contract is contingent and is void by virtue of under Section 32 of the Indian Contract Act, 1872. Learned counsel submits that there is no arbitrable dispute between the parties which can be referred to the arbitration.

12. There is no doubt in the mind of this Court that the jurisdiction of the Court at the time of making the reference to the arbitration is very limited. The Court is required to see the existence of the agreement, arbitration clause and whether prima facie there is an arbitrable dispute. However, at the same time, though the jurisdiction is very limited but the Court has to see the agreement and take a wholesome view that whether the present matter is required to be referred to arbitration. This Court at the outset is not convinced with the agreement entered into between the parties. It is relevant to note that Section 31 of the Indian Contract Act, 1872 defines "Contingent contract" as "a contract to do or not to do something, if some event, collateral to such contract, does not happen". A contingent contract to do or not to do anything, if an unforeseen future event happens, cannot be enforced by law, under Section 32, unless and until that event has happened. If the event becomes impossible, such a contract becomes void.
13. In the present case, the terms and conditions of the agreement are quite strange and were depending upon uncertain events of buying back the property from the persons to whom it has already been sold. The agreement seems to be directly hit by the section 31 and section 32 of the Indian Contract Act, 1872 and is, therefore impossible and void. The respondent agrees to sell the property which has already



been sold by and the petitioner agrees to buy the same. It is beyond comprehension that how can a person agree to sell something which has already been sold by her. The deal is struck at Rs.95,00,000/- out of which the petitioner pays only Rs.50,000/- and is now raising a dispute for a compensation of Rs.3,00,00,000/- as provided in the agreement. Before making any reference to the arbitration, the agreement itself has to pass the test of being reasonable and genuine. The agreement does not seem to be genuine at all. The Court cannot mechanically make the reference to the arbitration. The Judgment cited by the Ld. Counsel for the petitioner is respectfully distinguished on the facts & Circumstances of the case.

14. Hence, the present petition is dismissed.

**DINESH KUMAR SHARMA, J**

**MARCH 12, 2024**

*Pallavi*