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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 19.12.2024

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ARB.P. 624/2024, I.A. 42579/2024, I.A. 45804/2024**VERSATILE COMMOTRADE PVT LTD.****.....Petitioner**

Through: Mr. Nikhilesh Krishnan, Mr.
Abhishek Singh and Mr. Divyam
Rathi, Advocates.

versus**MADAN GOPAL****.....Respondent**

Through: Mr. Gulab Chandra Yadav, Advocate.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the A&C Act') seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of an Agreement to Sell dated 14.04.2013, executed between the petitioner and the respondent. Under the agreement, the respondent agreed to sell agricultural land measuring 7 Bigha 9 Biswas, identified as "property bearing Khasra Nos. 11/16/1 (0-13), 25/3 (1-5), 12/21/1 (1-5), 19/1/1/min. (0-17), 10/4 (0-17), and 20/5/3 (1-5)" (hereinafter 'the concerned property') to the petitioner for a total sale consideration of Rs. 5,27,70,000/-.
3. The petitioner submits that before the execution of the Agreement to sell, the respondent informed the petitioner that the concerned property was



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owned by M/s Rajshree Furniture Pvt. Ltd., who had agreed to sell the said land to the respondent, who in turn would sell it to the petitioner. The respondent assured the petitioner that a formal agreement to sell would be executed by M/s Rajshree Furniture Pvt. Ltd upon receiving an advance payment of Rs. 48 Lakhs.

4. Based on these representations, the Agreement to Sell dated 14.04.2013 was executed.

5. Furthermore, the petitioner submits that, at the respondent's request, the petitioner handed over a cheque dated 15.04.2013 for Rs. 43 Lakhs in favour of M/s Rajshree Furniture Pvt. Ltd. and an additional Rs. 5 Lakhs in cash to the respondent, thereby satisfying the advance payment requirement of Rs. 48 Lakhs.

6. Thereafter, the respondent informed the petitioner that he had executed a formal agreement with M/s Rajshree Furniture Pvt. Ltd. on 15.04.2013 for a total sale consideration of Rs. 4,80,50,000/-, out of which Rs. 48 lakhs had already been paid. The respondent further assured the petitioner that he would pay the remaining balance consideration to M/s Rajshree Furniture Pvt. Ltd., obtain the sale deed in his favor, and thereafter transfer the property to the petitioner after securing the requisite No Objection Certificate (NOC) under the Delhi Lands (Restrictions on Transfer) Act, 1972.

7. Despite repeated follow-ups by the petitioner, the respondent neither secured the sale deed nor furnished the NOC, breaching the Agreement to Sell.

8. In September 2015, the respondent informed the petitioner about receiving a legal notice from M/s Rajshree Furniture Pvt. Ltd., highlighting



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that only Rs. 48 Lakhs of the total sale consideration of Rs. 4,80,50,000/- had been paid. The notice gave 15 days to complete the payment of the balance amount of Rs. 4,32,50,000/-, failing which the amount already paid would be forfeited. The respondent assured the petitioner that he was working to resolve the issues and would soon secure the sale deed to fulfil his obligations. However, even thereafter, the respondent consistently failed to take any steps to resolve the dispute.

9. The petitioner submits that the petitioner made an advance payment of Rs. 53,00,000/-, comprising Rs. 43,00,000/- paid directly to M/s Rajshree Furniture Pvt. Ltd. and the remaining amount paid to the respondent the balance was payable within 60 days from the date of execution of sale deed by respondent.

10. Due to the respondent's inaction and breach of the Agreement, the petitioner issued a legal notice dated 19.12.2022, demanding a refund of Rs. 53,00,000/- along with interest at 14% per annum and declaring the Agreement cancelled. However, the respondent failed to refund the said amount.

11. The arbitration clause in the agreement between the parties, is in the following terms: -

“12. Dispute Resolution

That the parties further agree that in the event of any dispute or differences arising between the parties relating to any of the terms of this Agreement or regarding implementation thereof, the same shall be referred for adjudication to a sole arbitrator to be appointed in terms of the provisions contained in the Arbitration & Conciliation Act, 1996 or any other enactment in force at the relevant time. The arbitral proceedings shall be conducted in accordance with the provisions of the above enactment. The parties shall be bound by the award given by the above arbitrator. The seat of Arbitration will be at Delhi and the Courts at Delhi only will have the Jurisdiction.”



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12. The petitioner issued a notice dated 24.01.2024 under Section 21 of the A&C Act, invoking the arbitration clause in the Agreement to Sell. However, the respondent did not respond.

13. In the above circumstances, the petitioner has now approached this Court through the present petition, seeking the appointment of a Sole Arbitrator to adjudicate the dispute/s.

14. The respondent has raised the following objections in opposition to the present petition:-

- a. The petition suffers from mis-joinder and non-joinder of necessary parties. The Applicant has not impleaded the actual owner of the property, M/s Rajshree Furniture Pvt. Ltd.
- b. The agreement lacks witness signatures, was not registered or notarized, and is thus voidable. Section 68 of the Evidence Act requires attesting witnesses for such agreements to be admissible as evidence.
- c. The present petition has been filed approximately 11 years after the agreement was executed, and as such, the claims are barred by limitation.

The contentions sought to be raised by the petitioner on the merits of the matter are also strongly refuted by learned counsel for the respondent.

15. For the purpose of the present proceedings, this Court does not find any merit in the objections raised by the respondent.

16. The disputes between the parties, as canvassed by the petitioner, arise under the agreement to sell executed and duly signed by both parties, which includes an arbitration clause. As held in *In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996*



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and the Indian Stamp Act, 1899, 2023 SCC OnLine SC 1666, the scope of examination in the present proceedings is confined to examine the *prima facie* existence of an arbitration agreement and not other issues.

17. The same position has been reiterated in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532, wherein it has been held as under:

“113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re: Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]”

(Emphasis supplied)

114. In view of the observations made by this Court in In Re. Interplay, it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia and adopted in NTPC v. SPML Infra Ltd. that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re. Interplay.

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123. The power available to the referral courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the referral court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the arbitral tribunal at the nascent stage of Section 11, the referral courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected.”

(emphasis supplied)

18. As such, for the purpose of the present proceedings, this Court is unable to accept the contention of the respondent that the petition suffers from mis-joinder and non-joinder of necessary parties. *Prima facie*, the non-joinder of M/s Rajshree Furniture Pvt. Ltd. does not bar the petitioner from invoking the arbitration clause contained in the agreement executed between the petitioner and the respondent to adjudicate the disputes allegedly arising between them.

19. In any case, it is open for the respondent to take an objection in the arbitral proceedings that the claims, sought to be raised by the petitioner are bad / liable to be dismissed for mis-joinder / non-joinder of necessary parties. The same shall necessarily be considered by a duly constituted arbitral tribunal.

20. Similarly, the respondent's contentions regarding the alleged lack of witness signatures on the agreement, its non-registration, or the consequences of lack of notarization, are issues that necessitate detailed adjudication. Additionally, the contention that the petition has been filed after an inordinate delay, potentially rendering the claims being time barred, is an aspect which would entail an adjudicatory exercise, which is best left to be carried out by a duly constituted arbitral tribunal.



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21. In the circumstances, this Court does not find any impediment to constitute an arbitral tribunal to adjudicate the disputes between the parties, subject however, to the right of the respondent to pursue its objections as regards jurisdiction / arbitrability before the arbitral tribunal.

22. Accordingly, Mr. Sidhant Kumar, Advocate (Mob. +91 9873047772) is appointed as the sole Arbitrator to adjudicate the disputes between the parties.

23. The respondent would be entitled to raise appropriate objections as regards jurisdiction/arbitrability including objections on account of non-joinder or misjoinder of parties or limitation. All such objections shall be duly considered and decided by the learned Sole Arbitrator on its own merits and in accordance with law.

24. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

25. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

26. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

27. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

28. The present petition stands disposed of in the above terms.

DECEMBER 19, 2024/sv

SACHIN DATTA, J