

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

F.M.A. 2386 of 2016

Dr. Debojit Dey

Vs.

Tata Housing Development Company Ltd.

For Appellant : Mr. Gopal Ch. Ghosh, Sr. Adv.
 Mr. Sunandana Saha. Adv.

For the Private Respondent : Mr. Soumabho Ghosh, Adv.
 Mr. Biswajit Kumar, Adv.
 Mr. Aayush Lakhotia, Adv.

Hearing Concluded on : August 21, 2025
 Judgment on : August 27, 2025

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgment and order dated October 3, 2015 passed by the learned District Judge, Barasat, North 24 Parganas, in Misc. (Arbitration) Case No. 185 of 2014.
2. By the impugned judgment and order, learned District Judge has dismissed an application under Section 34 of the Arbitration and Conciliation Act, 1996, filed by the appellant

assailing the award dated August 14, 2014 passed by the learned arbitrator, Mr. Paritosh Kumar Pal.

3. Learned Senior Advocate appearing for the appellant has contended that, the appellant pursuant to an advertisement dated May 8, 2009 applied for a flat in a project executed by the respondent. He has contended that, a residential apartment being Flat No. 16D on the 16th floor of Tower A was confirmed by the respondent. Respondent had issued a letter of allotment dated June 19, 2010 with regard thereto. Parties had initially agreed that the consideration for the flat would be Rs. 33,44,875/-.

4. Learned Senior Advocate appearing for the appellant has contended that, the parties entered into an agreement for sale which was subsequently modified on March 31, 2011. The consideration had been modified to Rs. 32,44,875/-. Subsequently, by a supplementary agreement, the schedule of payment had been modified.

5. Learned Senior Advocate appearing for the appellant has contended that, the respondent gave permission to the appellant to mortgage the flat to HDFC on October 10, 2010 which the appellant had done.

6. Learned Senior Advocate appearing for the appellant has contended that, the appellant is a cancer surgeon by profession. Due to the pressing professional commitments, there had been delay in payment of the 8th instalment on the part of the appellant. The appellant had been to the site office of the respondent and prayed for extension of deadline by two weeks. Appellants had deposited a sum of Rs. 50,000/- by cheque on October 22, 2011 and Rs. 75,500/- by a cheque dated October 29, 2011. The respondent had encashed such cheques on October 25, 2011 and November 1, 2011 respectively.

7. Learned Senior Advocate appearing for the appellant has contended that, appellant obtained loan from HDFC Bank for purchasing the flat in question. Appellant had made over a cheque for Rs. 5,68,512/- dated November 2, 2011, on November 1, 2011. However, such cheque was not accepted by the respondent. He has referred to various electronic mails issued by the appellant to the respondent in this regard.

8. Learned Senior Advocate appearing for the appellant has submitted that, the appellant came to learn from HDFC that, the respondent cancelled the allotment of the flat on November 29, 2011.

9. Learned Senior Advocate appearing for the appellant has contended that, the respondent had issued a notice dated October 14, 2011. The appellant had paid all instalments. Appellants had obtained an order of injunction under Section 9 of the Act of 1996 on February 9, 2012 restraining the respondent from dealing with the flat in question. He has pointed out that, the respondent created third party rights in respect of the flat in question on February 15, 2012 which is a violation of an order of Court. Therefore, the purported sale in respect of the flat concerned is bad in law.

10. Learned Senior Advocate appearing for the appellant has contended that, it is alleged as against the appellant that the appellant allegedly did not act under Clause 9 of the agreement. He has referred to Clause 9 of the agreement and submitted that, the appellant did not act in violation thereof.

11. Learned Senior Advocate appearing for the appellant has contended that, neither the arbitrator nor the Court under Section 34 of the Act of 1996 considered the fact that the appellant paid the money in terms of the schedule of instalment. Therefore, there was no default on the part of the appellant warranting the

invocation of Clause 9 of the agreement or terminating the agreement.

12. Learned advocate appearing for the respondent has submitted that, the agreement dated November 19, 2010 was cancelled on October 30, 2011 for default committed by the appellant in payment in terms of the schedule of the agreement.

13. Learned advocate appearing for the respondent has submitted that, the respondent did not act in violation of any order of injunction far less the order dated February 9, 2012. He has pointed out that, copy of the order dated February 9, 2012 was despatched by the appellant on February 15, 2012 and received by the respondent on February 17, 2012 while, the third party right was created on February 15, 2012. Therefore, the respondent did not act in violation of the order of injunction dated February 9, 2012.

14. Learned advocate appearing for the respondent has relied upon **2024 Volume 1 Supreme Court Cases 479 (Reliance Infrastructure Limited vs. State of Goa)** and contended that, the application under Section 34 of the Act of 1996 was not within the scope and ambit thereof. He has contended that, the arbitrator considered all the issues raised and passed a reasoned award.

Such award has not been established to be in violation of any provision of law.

15. Learned advocate appearing for the respondent has submitted that, no ground has been made out and none exist warranting the Court to exercise jurisdiction under Section 34 or 37 of the Act of 1996 . He has submitted that, consequently, the appeal should be dismissed.

16. ***Reliance Infrastructure Limited (supra)*** has considered the scope of challenge to an arbitral award under Section 34 and the scope of appeal under Section 37 of the Act of 1996 . It has held that, in an application under Section 34 of the Act of 1996 , Court is not expected to act as an appellate Court and really appreciate the evidence, the scope of interference is limited to the grounds provided under Section 34. It has helped with that, interference under Section 37 of the Act of 1996 cannot travel beyond the restrictions laid down under Section 34. A Court deciding a petition under Section 37 of the Act of 1996 must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision.

17. Section 34 (2) of the Act of 1996 has prescribed that, an arbitral award may be set aside by the Court only if, the party

making the application establishes on the basis of the record of the arbitral tribunal that, a party was under some incapacity or the arbitration agreement is not valid under the law to which the parties have subjected it or failing any indication thereon, under the law for the time being in force or the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present his case or the arbitral award deals with the dispute not contemplated to be or not falling within the terms of the submission to arbitration or it contains decision on matters beyond the scope of submission to arbitration or the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties. Under Section 34 (2) (b) of the Act of 1996 , a Court can set aside an arbitral award if, it finds that, the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force or the arbitral award is in conflict with the public policy of India.

18. Explanation 1 to Section 34 (2) of the Act of 1996 has clarified that, an award is in conflict with the public policy of India only if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75, Section 81 or it is in

contravention with the fundamental policy of Indian law or it is in conflict with the most basic notion of morality or justice. Explanation 2 to Section 34 (2) (b) of the Act of 1996 has specified that the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

19. Appellant has not argued that, the arbitral award is required to be set aside in view of the provisions of Section 34 (2) (b) of the Act of 1996 that is to say that, the subject matter of the dispute is not capable of settlement by arbitration.

20. Essentially, appellant has referred to the merits of the case in order to contend that, the arbitral award is in conflict with the public policy of India. In so contending, appellant has relied upon an order passed under Section 9 of the Act of 1996 and submitted that, the subsequent transfer to the 3rd party is in violation of a subsisting order of Court and that, there was no valid termination of the agreement between the appellant and the respondent which the arbitral tribunal and the Court under Section 34 of the Act of 1996 have failed to appreciate.

21. Appellant had applied for allotment of a residential flat in a project named Eden Court in New Town, Rajarhat, Kolkata on

June 16, 2010. Respondent by a letter dated June 19, 2010 had informed the appellant that apartment No. 16D on the 16th floor in Tower A of such complex was booked in favour of the appellant. Respondent had informed the appellant that the application money of Rs. 3,09,488/- paid by the appellant along with the application form was to be treated as the earnest money which will be adjusted against the total consideration of Rs. 33,44,875/-. Respondent had also informed the appellant that the balance consideration was to be paid by the appellant as stipulated in the schedule enclosed with the letter and that an agreement for sale in standard form prepared by the respondent was required to be executed by the appellant.

22. The parties had executed an agreement for sale on November 19, 2010 in respect of the flat in question. Parties had executed a corrigendum to the original agreement on March 31, 2011 which related to the refund of Value-Added Tax.

23. Appellant had sought permission to mortgage the subject property with HDFC which was granted on October 28, 2010. Since the mortgage required a tripartite agreement, on October 29, 2010, a tripartite agreement between the appellant, respondent and HDFC had been executed.

24. According to the respondent, the appellant had been a chronic and habitual defaulter in payment of instalments. Respondent had reminded the appellant about the same from time to time.

25. By a letter dated October 14, 2011 the respondent had issued a notice informing the appellant of the defaults and invoking clause 9 of the agreement. According to the respondent, as on October 14, 2011, a sum of Rs. 3,92,220/- had become due and payable by the appellant to the respondent.

26. Appellant had paid a sum of Rs. 50,000/- on October 24, 2011 and Rs. 75,000/- on October 29, 2011 to the respondent on account of the margin money required to be paid under the agreement.

27. Respondent did not receive any payment by October 31, 2011. However, the respondent had received a cheque for a sum of Rs. 5,68,512/- dated November 2, 2011.

28. Appellant had obtained an ex parte order under Section 9 of the Act of 1996 restraining the respondent from dealing with the subject flat, on February 9, 2012. However, a copy of such order was dispatched to the respondent on February 15, 2012 which was received by the respondent on February 17, 2012.

29. Respondent had entered into an agreement with the 3rd party on February 15, 2012 and transferred the flat in question to such 3rd party in December 2012.

30. In the arbitration, issue of maintainability of the arbitration proceeding after the sale to the 3rd party was raised. So also was the issue as to the validity of the sale to the 3rd party. On such issues, the learned arbitrator has held that, the appellant did not amend the statement of claim despite knowing creation of third-party interest. Learned arbitrator has held that he cannot set aside the deed executed in favour of the 3rd party by the respondent, without the appellant impleading the third-party in the arbitration proceedings.

31. Learned arbitrator has considered the issue of specific performance of the agreement sought for by the appellant. Learned arbitrator has considered the evidence led by the parties in the arbitration proceedings and held that, the appellant is not entitled to specific performance as prayed for. Learned arbitrator has noticed clause 9 of the agreement between the parties. Learned arbitrator has held that, there was a valid notice for termination and that, the agreement stood terminated on expiry of 15 days from the date of receipt of the notice dated October 14, 2011.

Learned arbitrator has held that, no payment was received by the respondent prior to the termination of the agreement coming into effect.

32. Nothing has been placed before us to suggest let alone establish that, independent of Clause 9 of the agreement between the parties, the agreement could not be terminated. Validity of the termination of the agreement has been held in favour of the respondent by the award.

33. A Court exercising jurisdiction under Section 34 of the Act of 1996 is not called upon to re-evaluate the evidence led before the arbitrator and substitute the findings of the learned arbitrator. The award in question contains reasons. Respective arguments/contentions of the parties are noted in the award. Parties were allowed to lead evidence in support of their respective cases before the arbitrator. Parties were heard by the arbitrator prior to the passing of the award. The award cannot be said to be passed in breach of principles of natural justice or that the appellant was not aware of the arbitration proceedings.

34. In our view, appellant has failed to establish that, the award is against any public policy of India or that, the award was passed by ignoring any fundamental principle of law.

35. By the impugned judgement and order, the learned judge has concurred with the view of the learned arbitrator and refused to set aside the award.

36. In view of the limited scope of interference with regard to award passed under the Act of 1996, we are not minded to interfere with the impugned judgement and order or the award.

37. FMA 2386 of 2016 along with all pending applications are disposed of without any orders to costs.

[DEBANGSU BASAK, J.]

38. I agree.

[PRASENJIT BISWAS, J.]