

(1999) 01 DEL CK 0009

In the Delhi High Court

Case No : I.A.No. 6850 of 1998 In Suit No.1661 of 1998

Architectural Innovations

APPELLANT

Vs

Rajasthan Coop. Group Housing Society

RESPONDENT

Date of Decision : 01-01-1999

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1999) 1 AD 619 : (1999) 48 DRJ 440

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. N.B. Joshi and Mr. V.S. Rawat, for the Appellant; Mr. S.N. Kumar and Mr. S.K. Gupta, for the Respondent

Judgement

DR. M.K. Sharma, J.—The plaintiff instituted the present suit seeking for a decree for specific performance of building contract entered into between the plaintiff and defendants on 16th May, 1996. The plaintiff is stated to be an architectural firm. On 16.5.1996 an agreement was entered into between the plaintiff and the defendants whereby the plaintiff was appointed as an architect for development of the land allotted to the defendants and also for supervising the construction of dwelling units for the members of the defendants. During the course of execution of the aforesaid agreement certain disputes arose between the parties and the defendants being allegedly dissatisfied with the work of the plaintiff terminated the agreement entered into with the plaintiff. A public notice was issued by the defendants in the daily issue of the Hindustan Times, Delhi Edition on 13.7.1998 whereby an advertisement was carried out to the effect that the services of the plaintiff had been terminated. The plaintiff by its letter dated 5.8.1998 addressed to the defendants pointed out various alleged illegalities committed by the defendants during the course of the association between the parties. Being aggrieved by the action taken by the defendants, the plaintiff instituted the present suit for passing a decree in favor of the plaintiff and against the defendants enforcing specific performance of the contract dated 16.5.1996 for

construction of buildings and execution of development work on plot No.36, Sector 4, Dwarka, New Delhi and also for issue of a declaration to the effect that the letter dated 27.7.1998 terminating the agreement is a nullity. In the aforesaid suit instituted by the plaintiff an application under Order 39 Rules 1 & 2 was filed by the plaintiff seeking for a temporary injunction restraining the defendants, their servants and agents from terminating the services of the plaintiff and restraining them further from appointing any new architect in place of the plaintiff.

2. Summons and notices were issued to the defendants on the said suit as also on the injunction application and by order dated 11.8.1998 an interim injunction was passed by this court directing that status quo as of that date with regard to the appointment of an architect shall be maintained till the next date.

3. On service of summons and notices the defendants appeared in the suit and filed their reply to the application under Order 39 Rules 1 & 2 contending inter alias that the suit is not maintainable in view of clause 13 of the contract providing that the society has the right to terminate the contract at any stage if they find that the services of the architect are not satisfactory and that the payment made up to that stage would be treated as final payment. It was further stated in the said reply that the suit is also not maintainable in view of the provisions of clause 15 of the agreement which provides that in the event of any dispute, difference or question arising out of the agreement or execution of the said work the same shall be referred to the arbitration of 2 qualified and experienced professionals, one each appointed by the parties, who may in turn appoint an umpire and their decision shall be binding on both the parties. It is stated that in terms of the provisions of section 8 of the Arbitration and Conciliation Act, 1996 the matter in controversy between the plaintiff and the respondent society has to be decided through arbitration.

4. The defendants also contested the application filed by the plaintiff seeking for temporary injunction contending inter alias that the plaintiff is not entitled to any interim injunction as sought for in the suit. It is stated that there were misrepresentations on behalf of Shri Jaswant Rai representing him as one of the partners of the plaintiff and believing the misrepresentations as correct, the defendant society entrusted the professional responsibility in terms of the agreement to the plaintiff. It is also stated that the action taken by the plaintiff has caused considerable loss to the defendants and Therefore, the defendants were not satisfied with the services of the architect which were found to be not satisfactory and accordingly the services of the architect were terminated on the basis of the resolution of the General Body of the Society and the said decision was intimated through publication in the Hindustan Times.

5. I have heard the learned counsel appearing for the plaintiff as also the counsel appearing for the defendants at length, who have taken me through the documents placed on record in support of their contentions. Counsel appearing for the plaintiff during the course of his submissions submitted that the plaintiff

stands by all the terms and conditions of the agreement which also contains an arbitration clause being clause No.15. The said clause provides that in case of any dispute arising between the parties out of the agreement has to be resolved and decided through the process of arbitration. The disputes that are stated to have arisen between the parties as set out in the plaint are necessarily disputes within the ambit of the agreement dated 16.5.1996. Clause 5 of the said agreement lays down the nature of duties of the architect and services to be rendered by them. In short the same specifies the nature of services to be provided by the architect in developing the land allotted to the society and construction of houses for the members of the defendant. The fee and reimbursement payable to the architect for his work is prescribed in clause 6 of the agreement. Clause 8 provides that the design prepared by the architect would be the copyright of the architect. Clause 13 on the other hand provides as to how and when the contract could be terminated by the society when it has stated that the society would have the right to terminate the contract at any stage if they find that the services of the architect are not satisfactory and that the payment made up to that stage would be treated as final. The agreement also empowers the architect to terminate the contract if his professional fees are not paid as per the agreement. Clause 15 on the other hand is the arbitration clause which further provides that the arbitration proceedings would be separately conducted and the society would make its own arrangement for progress of the incomplete work and that the progress of work would not be stopped before the arbitration proceedings are pending.

6. A careful glance over the averments made in the plaint would make it crystal clear that each one of the allegations and statements made therein and the claims raised in the plaint revolve around and fall within the ambit and the terms and conditions of the contract. Thus the said disputes and claims arise out of the contract and are Therefore, required to be resolved through the process of arbitration in terms of clause 15 which is an arbitration clause.

7. Section 8 of the Arbitration and Conciliation Act lays down that a judicial authority before whom an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of dispute, refer the parties to arbitration. In the instant case the defendants who are parties to the agreement have applied to this court while submitting their first statement to the substance of the disputes in the present suit for such a reference. Thus the provisions of Section 8 of the Act become fully applicable to the facts of the present case and this court has no other option but to refer the parties to arbitration in terms of the provisions of Section 8 of the Arbitration and Conciliation Act.

8. I am informed at the Bar that the defendants have already appointed its arbitrator with regard to their claims and the same was intimated to the plaintiff upon which the plaintiff has also appointed its arbitrator. Now Therefore, in terms of the provisions of sections 10 & 11 of the Act the third arbitrator is to be

appointed by the two appointed arbitrators who would function as the presiding arbitrator. Since the parties have taken recourse to arbitration proceedings in respect of some of the claims arising out of the contract the disputes raised herein are also required to be resolved through the process of arbitration in terms of the arbitration clause and Therefore, the parties are directed to resort to arbitration, and the suit stands thus disposed of.

9. Having decided so with regard to the suit I am still required to decide about the interim order passed by this court on 11.8.1998. Counsel for the plaintiff submitted that the injunction application could be treated as an application u/s 9 of the Arbitration and Conciliation Act, for which an averment has also been made in the rejoinder filed to treat the application as one u/s 9 of the Act and requested me to direct that the said interim order would continue to operate till any decision is taken in that regard by the arbitral tribunal. Counsel appearing for the defendant however, submitted that since no specific application u/s 9 of the Arbitration Act has been filed this court shall have no jurisdiction to continue the interim injunction in respect of a suit which is not maintainable in this court and the counsel wanted me to vacate the injunction order.

10. Counsel for the plaintiff submitted that the design on the basis of which construction is being carried out for and on behalf of the defendant is the design of the architect namely of the plaintiff who holds a copyright in the said design and Therefore, in the event of the defendant allowing any other architect to continue construction on the basis of the design prepared by the plaintiff the same would amount to infringement of the copyright held by the plaintiff. It was submitted that out of 7 tower blocks to be constructed one had been completed under the supervision of the plaintiff and the basic foundation in respect of the other six tower blocks has also been already completed and Therefore, there could be no change to the design by any other architect, particularly when the said design has been approved by the competent authority also. Counsel for the defendants however, brought to my notice that out of the total amount payable to the architect amounting to Rs.22 lacs an amount of Rs.12 lacs and odd has already been paid to the Architect. He also submitted that in terms of the agreement the contract with the plaintiff could be terminated at any stage if it is found that the services of the architect are not satisfactory and whatever payment is made up to that stage would be treated as final payment. Thus according to the counsel no further payment is to be made to the plaintiff and the contract has been terminated in accordance with the terms and conditions of the contract and if there be any dispute with regard to the said payment the same could at best be a matter of dispute triable and adjudicated upon through the process of arbitration for which no interim injunction could be granted restraining the defendants from appointing a new architect. I find sufficient force in the contention of the learned counsel appearing for the defendants. It is an admitted position that more than 50% of the total amount of remuneration payable to the plaintiff has been paid. The defendants have categorically stated that they are not satisfied with the work of the architect and accordingly have

terminated the contract. If there be any further dues in respect of the remuneration of the plaintiff the same could be agitated and resolved through the process of arbitration. The claim of the plaintiff is for payment of his remuneration and Therefore, is a money claim. Clause 15 also provides that the arbitration proceedings would be separately conducted and the society could make its own arrangement for progress of the incomplete work and the progress of the work would not be stopped because of the arbitration proceedings pending. If the defendants are further restrained from appointing a new architect the entire progress of the construction work carried on at the premises of the defendant would have to be stopped and thus the aforesaid condition set out in the agreement could be rendered nugatory, apart from sufferance of monetary loss by the defendant society in view of increase in the cost of construction every day in and around Delhi. It is true that clause 8 provides that for the design prepared by the architect for the defendants copyright is vested with the plaintiff. But the said design which is being used for construction of the houses for the members of the defendant is meant for the defendant for which remuneration has also been paid to the plaintiff. Counsel for the defendant has placed on record a copy of the design and the plan which is signed by Mr. Rajiv Aggarwal with a certificate that the aforesaid drawing is the property and copyright of M/s. Architectural Innovations and the same is not to be used and/or reproduced in any form for any purpose by any other individual or agency, which makes it crystal clear that the defendant is kept out of the ambit of the aforesaid set of persons. Therefore, the plaintiff cannot seek for a restraint order against the defendants from appointing a new architect because there is a clause providing that the design prepared by the architect would be a copyright of the architect. If the said design is used by any other person at any other place the plaintiff may have a cause of action and that also for damages. Same interpretation cannot be given to the case of the defendant who have paid a price for the design prepared by the plaintiff and even assuming that such a cause of action might arise the same would also be for damages which again could be compensated in terms of money.

11. Taking the totality of the circumstances, in my considered opinion the plaintiff has failed to make out a prima facie case for continuation of the interim injunction in its favour. The plaintiff, in my considered opinion, has also failed to make out a case of balance of convenience in its favour. Since irreparable injury, if any, suffered by it could be compensated in terms of money, no case is made out on that count also. Therefore, the application has no merit, and is dismissed.