

(2000) 10 DEL CK 0028
In the Delhi High Court
Case No : AA No. 2 of 2000

Aruna Builders (P) Ltd.

APPELLANT

Vs

Gayatri Co-op Group Housing Society Ltd.

RESPONDENT

Date of Decision : 30-10-2000

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2001) 58 DRJ 434

Hon'ble Judges : C.K. Mahajan, J

Bench : Single Bench

Advocate : M.S. Vinayak, for the Appellant; Rakesh Munjal, for the Respondent

Judgement

C.K. Mahajan, J.—M/s. Gayatri Cooperative Group Housing Society Ltd. entered into a contract with the petitioner for the construction of 105 DU's at plot No. 9. Sector 9, Dwarka. Phase - I, New Delhi on 18.12.1996. The agreement consists an arbitration Clause No. 5.8.6 according to which all questions, disputes or differences between the parties were referable to an arbitrator to be appointed in terms of the said clause. The petitioner could not complete the work within the stipulated time because of the delay on the part of the respondent in approving the plans, drawings, specifications and pattern etc. in time. On 10.10.1998 a Memorandum of Linder standing was signed between the parties. This was in furtherance of the contract dated 18.12.1996 which provided for the completion of work by 31.10.1999, on the basis of the revised bar chart supplied by the respondent. The respondent also agreed to release the R.A. Bill payments within seven days from the issue of certificate by the architects. The respondent failed to honour its commitments in the Memorandum of Understanding, delayed in submitting the plans, drawings, etc. and failed to release the R.A. Bills for payments. Thus the petitioner could not commence any work. In supersession of the arbitration procedure set up in the original agreement, Sh. I.M. Garg of M/s. Garg and Associates was nominated as arbitrator to decide the disputes between the parties as contemplated in the Memorandum of Understanding dated

10.10.1998. Hence the petitioner has moved the present petition for referring the disputes between the parties to an arbitrator to be appointed by this Court.

2. In its reply the respondent had denied having committed any breach of contract and submitted that the petitioner deliberately delayed the work. The extended period of contract has already expired on 30.10.1999. It is contended that the arbitration Clause 5.8.6 of the agreement dated 18.12.1996 has been superseded and the petitioner agreed to the appointment of Sh. I.M. Garg of M/s. Garg & Associates as arbitrator.

3. I have heard learned counsel for the parties and examined the agreement dated 18.12.1996 and the Memorandum of Understanding dated 10.10.1998.

4. The petitioner has placed reliance on Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and Others, and B.W.L. Ltd. Vs. M.T.N.L., . The reliance placed on the aforesaid judgments is misplaced as facts of these cases are distinguishable having no bearing on the facts of the present case.

5. In the memorandum of understanding dated 10.10.1998 the parties had agreed that in case the contract fails to cover-up the backlog of the work in the succeeding month as per the notice or fails to give any Explanation to the Society's satisfaction, it shall be a "dispute" referable to the sole arbitration of Sh. I.M. Garg of M/s. Garg and Associates and neither parties shall file any civil suit for the same. The petitioner having agreed to the appointment of Mr. I.M. Garg as Arbitrator cannot now take a somersault and press for the appointment of an arbitrator in terms of Clause 5.8.6 of the agreement dated 18.12.19%. The said arbitration clause stand superseded in view of the Memorandum of Understanding dated 10.10.1998. The petitioner is bound by the arbitration clause in the Memorandum of Understanding.

6. Accordingly Mr. I.M. Garg, is appointed as the arbitrator in terms of the Memorandum of Understanding to adjudicate upon the disputes and differences arisen between the parties.

7. The petition is disposed of in the aforesaid terms,

It is stated by learned counsel for the petitioner that the petitioner be permitted to remove the machinery lying in the godown of the respondent.

A legal Commissioner was appointed by the Court who prepared an inventory of the machinery. The machinery that admittedly belongs to the petitioner shall be returned by the respondent forthwith.