
(2009) 01 DEL CK 0114

In the Delhi High Court

Case No : CS (OS) No. 2582 of 2008 and IA No. 425 of 2009

Drishticon Properties (P) Ltd.

APPELLANT

Vs

Chopra Marketing Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Citation : (2009) 158 DLT 119 : (2010) 7 RCR(Civil) 449

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Valmiki Mehta and Sanat Kumar, for the Appellant; Rajiv Nayyar Abhishek Singh, Ankur Chawla and Rahul, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The plaintiff filed this suit for declaration and injunction making a prayer that this Court should declare the alleged

agreement to sell dated 18th July, 2006, which contains an arbitration clause, as null and void being forged and fabricated. The other prayer made

is that the Arbitrator appointed by the defendants be restrained from proceeding with the arbitration matter in pursuant to the arbitration Clause

contained in the alleged agreement to sell.

2. After receiving a notice of this suit, defendant filed an application u/s 8 of the Arbitration and Conciliation Act with a prayer that the suit for

declaration would not lie in view of the provisions of Arbitration and Conciliation Act and the parties should be referred to the Arbitrator who was

already ceased with the matter. The arbitration Clause was invoked by the defendant by serving a notice of reference dated 19th October, 2008

u/s 21 of Arbitration and Conciliation Act read with Clause 35 of the agreement

thereby appointing Justice (retired) Dr. A.R. Laxman as the sole Arbitrator.

3. It is submitted by Counsel for the plaintiff that this Court has jurisdiction to entertain the suit and decide the issue whether the arbitration

agreement relied upon by the defendant before the Arbitrator was a forged document or not. Counsel drew the attention of the Court that the

alleged signatures of petitioner, Ajay Gupta on the agreement to sell, which contains arbitration Clause do not tally with the signatures of Mr. Ajay

Gupta as appearing on the undisputed documents executed by him prior to the alleged agreement. These documents were placed on record and

attention of this Court was drawn to the signatures appearing on these documents and the agreement to sell in question. It was further submitted

that in the alleged agreement to sell no details of payment of Rs. 94 lakhs allegedly paid have been given as no such payment was made. In fact the

parties were having business transactions prior to the date of alleged agreement and the plaintiff had taken unsecured loan from the defendant on

various dates. Part of this loan had been paid back and part of this loan was outstanding. This amount of Rs. 94 lakhs though at one time was the

outstanding unsecured loan but it was never a consideration received against agreement to sell. Counsel for the plaintiff took me through different

loan transactions.

4. Another submission made by the plaintiff's Counsel is that in application u/s 9 of Arbitration and Conciliation Act made by the defendant, it was mentioned:

9. That pursuant to such agreement an oral agreement to sell was reached between the parties where under Petitioner made payments of a sum of

Rs. 94,00,000/- (Ninety Four lacs Only) by way of various cheques.

10. That thereafter a Written Agreement to Sell was entered into between the parties where under the receipt of consideration of a sum of Rs.

94,00,000/- (Rupees Ninety Four lacs only) was admitted by the Respondents, it was also agreed that the total consideration for the sale of the

aforesaid premises shall be Rs. 4 crores only and on receipt of the balance consideration amount of Rs. 3 crores 6 lacs the respondent company

will execute the requisite conveyance deeds.

5. It is submitted that the allegation made in Section 9 application, of payment of Rs. 94 lakhs as consideration for the agreement by various

cheques was a white lie since no details of the cheques have been mentioned, either in Section 9 application or in the alleged agreement to sell. On

the other hand, plaintiff has placed on record the details of unsecured loan procured by it from the defendant which amounted to Rs. 94 lakhs and

also placed on record the transactions showing that part of this was paid back.

6. Counsel for the plaintiff submitted that Mr. Naresh Chopra, one of the Directors of defendant No. 1 and brother of defendants No. 2 and 3 was

taken as an additional Director by the plaintiff in its company and Mr. Naresh Chopra, was aware of the loan transactions. He, in connivance with

his two brothers, to benefit defendant No. 1 & themselves, prepared a forged agreement to sell. The consideration of Rs. 4 crore as mentioned in

the alleged agreement dated 18.7.2006 was much less than the consideration paid by the plaintiff for purchase of this property, i.e. Rs. 5.02 crores

and it could not be imagined that the plaintiff could have agreed to sell the property at an amount lesser than for what he had purchased it about 2

years prior to the alleged agreement to sell. It is further submitted that the plaintiff learnt about this alleged agreement to sell when a notice was

received by the plaintiff on behalf of the defendants on 19th October, 2008 and the plaintiff, vide its reply immediately refuted the agreement.

7. Counsel for the defendants on the other hand argued that all the issues raised by the plaintiff before this Court can be raised before the

Arbitrator and the Arbitrator alone was competent to decide about the validity of the agreement as well as about his own jurisdiction. He submits

since the matter was already pending before the Arbitrator and there was no doubt about competency of the Arbitrator to decide this issue, this

Court should restrain its hands in entertaining the suit and the application.

8. Both the parties relied upon S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, in support of their contention. The majority decision in this

case has been summarized in para 47 of the judgment which reads as under:

We, therefore, sum up our conclusions as follows:

(i) The power exercised by the Chief Justice of the High Court or the Chief Justice of India u/s 11(6) of the Act is not an administrative power. It is

a judicial power.

(ii) The power u/s 11(6) of the act, in its entirety, could be delegated, by the chief Justice of the High Court only to another Judge of the Supreme Court.

(iii) In case of designation of a Judge of the High Court or of the Supreme Court, the power that is exercise by the designated Judge would be that of the Chief Justice as conferred by the statute.

(iv) The Chief Justice or the designated Judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment.

These will be his own jurisdiction to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators. The Chief Justice or the

designated Jude would be entitled to seek the opinion of an institution in the matter of nominating an arbitrator qualified in terms of Section 11(8) of

the act if the need arises but the order appointing the arbitrator could only be that of the Chief Justice or the designated Judge.

(v) Designation of a District Judge as the authority u/s 11(6) of the Act by the Chief Justice of the High Court is not warranted on the scheme of the Act.

(vi) Once the matter reaches the Arbitral Tribunal or the sole arbitrator, the High Court would not interfere with the orders passed by the arbitrator

or the Arbitral Tribunal during the course of the arbitration proceedings and the parties could approach the Court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

(vii) Since an order passed by the Chief Justice of the High Court or by the designated Judge of that Court is a judicial order, an appeal will lie against that order only under Article 136 of the Constitution to the Supreme Court.

(viii) There can be no appeal against an order of the Chief Justice of India or a Judge of the Supreme Court designated by him while entertaining an application u/s 11(6) of the Act.

(ix) In a case where an Arbitral Tribunal has been constituted by the parties without having recourse to Section 11(6) of the Act, the Arbitral

Tribunal will have the jurisdiction to decide all matters as contemplated by Section 16 of the Act.

(x) Since all were guided by the decision of this Court in *Konkan Rly. Corporation Ltd. v. Rani Construction (P) Ltd.* and orders u/s 11(6) of the

Act have been made based on the position adopted in that decision, we clarify that appointments of arbitrators or Arbitral Tribunals thus far made,

are to be treated as valid, all objections being left to be decided u/s 16 of the Act. As and from this date, the position as adopted in this judgment

will govern even pending applications u/s 11(6) of the Act.

(xi) Where District Judges had been designated by the Chief Justice of the High Court u/s 11(6) of the Act, the appointment orders thus far made

by them will be treated as valid; but applications if any pending before them as on this date will stand transferred, to be dealt with by the Chief

Justice of the High Court concerned or a Judge of that Court designated by the Chief Justice.

(xii) The decision in *Konkan Rly. Corporation Ltd. v. Rani Construction (P) Ltd.* is overruled.

9. A perusal of above conclusions would show that once the matter has been referred to the Arbitral Tribunal, the High Court could not interfere

with the proceedings or the orders passed by the Arbitral Tribunal and parties can approach the High Court only in terms of Section 37 of the Act

or in terms of the Section 34 of the Act. It is also clear that the Tribunal has jurisdiction to rule, not only about its own jurisdiction but also about

the validity of the agreement and all the issues raised by the plaintiff before this Court can be raised by the plaintiff before the Tribunal. It is not a

case u/s 11(6) where a prayer for appointment of an Arbitrator has been made and the opposite side has challenged the validity of the arbitration

agreement and Court, before referring or appointing the Arbitrator has to adjudicate about the validity of the agreement. It is also not a case where

a suit has been filed before appointment of the Arbitrator and during pendency defendant has made an application that the matter be referred to the

Arbitrator in terms of Section 8 of the Arbitration Act because there is an arbitration clause. It is a case where arbitration Clause contained in the

alleged forged agreement has already been invoked and the matter has been referred by the defendants to the Arbitrator. Once the matter is

already referred to the Arbitrator, Section 5 of the Arbitration and Conciliation Act would come into operation which prohibits judicial authority

from intervening in the proceedings unless it is otherwise provided in the Act. I do not find any provision under the Act where once the arbitration

proceedings had started on the matter having been referred to the Arbitrator by a party in terms of the agreement, the other party can seek a

declaration that the agreement or contract was null and void being a forgery.

10. Counsel for the plaintiff also placed reliance on Vijay Vishwanath Talwar Vs. Mashreq Bank, PSC and Others, . The facts of this case are

altogether different. In this case, one of the party was in jail when the other party got an MoU signed under threat and the MoU contained an

arbitration clause. In the present case, the plaintiff has alleged that signatures of his director were forged and therefore agreement was null and

void. I consider that this aspect, as well as other aspects, can be gone into by the Arbitrator and the Arbitrator can decide about the validity of this

agreement. This court had no jurisdiction to entertain such a suit. The suit is therefore liable to be dismissed and is hereby dismissed.