
(1999) 08 DEL CK 0016

In the Delhi High Court

Case No : Original Misc. Petition No. 192 of 1998

Kamal Promoters and Devp. (Const.) P. Ltd.

APPELLANT

Vs

Diesel Shed Co-op. Group Housing Society Ltd.

RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 9

Citation : (1999) 5 AD 631

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. O.P. Khadaria, for the Appellant; Mr. D.P. Sharma, for the Respondent

Judgement

Manmohan Sarin, J.—This is a petition filed u/s 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act". The prayers made in the petition are to quash or set aside the letter of termination dated 13.8.1998 and to direct the respondent Society to allow the petitioner to execute the contract as per the sanctioned building plan. Further, restraint is sought against the defendant from dispossessing the plaintiff from the plot in question bearing No. 26, Sector X, Dwarka Phase-10, New Delhi, where the construction work was being executed, till the payment for the work executed Along with 15 per cent profit computed on the value of the balance work, is made to the petitioner by the defendant Society.

2. Another interim application, viz. IA. 7438/98 has also been filed, wherein directions are sought to permit the petitioner to execute the contract as per the agreement dated 30th April, 1997 and stay of the letter of termination etc. It is further prayed that direction be issued to the respondent to make regular payments and supply the material for execution of the work. Further, the respondents be restrained from dispossessing the petitioner, its employees etc. from the site. It would be seen that prayers are almost similar to the ones made in the main petition.

3. Pleadings are complete. I heard learned counsel for the parties at length on 19.8.1999 as well as today. The relevant facts giving rise to the present controversy may be briefly noted:

i) Petitioner had been awarded a contract for construction of 75 dwelling units by the respondent Society. Agreement dated 30.4.1997 was executed between the parties. Petitioner, however claims that there was an earlier agreement also in February 1997, which was signed by the parties. The factum of execution of any agreement in February 1997 is denied by the respondents. In any case the controversy with regard to the execution or non-execution of the agreement in February 1997, need not detain us from dealing with the present petition.

ii) It is not in dispute that respondents have terminated the agreement with the petitioner by issuing letter dated 13.8.1998. The receipt of this letter is not disputed. In fact, Petitioner has based his claim on the fact that in terms of the agreement dated 30.4.1997, the respondents are required to make payment for the work executed and for the balance work 15 per cent of value thereof as loss of profit to the petitioner. Respondents, on the other hand, deny and disown the part of the agreement clause, which makes provision for payment of 15 per cent amount of the value of the remaining work. Respondent's case is that these lines in the clause have been fraudulently forged and added to the agreement. Petitioner claims the value of the 15 per cent of balance work as Rs. 58.0 lacs. Further value of work executed is claimed Rs. 3,14,80,166.00. The outstanding payment due claimed as Rs. 1.68 crores plus Rs 58.0 lacs as loss of profit. Respondents refute the allegations and claim that petitioner has extracted huge amounts without executing the works and is, in fact, liable to refund certain amounts.

iii) A local Commissioner had been appointed vide order dated 31.8.1998 who has submitted detailed report with regard to the measurement and quantum of work executed. It also indicates the value of the work executed as well as the value of the remaining work. Respondent have filed their objections to the said report.

4. The question which springs up for consideration is whether the petitioner deserves an interim protection at this stage, as claimed by him. Petitioner has invoked the jurisdiction of this Court u/s 9 of the Act, which presupposes the existence of an arbitration agreement between the parties. Not only this petitioner has also invoked the jurisdiction of this Court u/s 11 of the Act and has filed a petition bearing No. AA. 187/99. In these circumstances, it would prima facie, appear, that petitioner's claim for 15 per cent of the value of the balance work in case of termination of contract would require adjudication by the arbitration especially in view of the fact that respondents deny the existence of any such stipulation or agreement clause providing 15 per cent payment. In view of the fact that the contract has been terminated, the question of validity or otherwise of the termination would also be a matter before the arbitrator, as and when appointed.

5. Learned counsel for the petitioner urged that respondent be restrained from dispossessing the petitioner and/or from handing over any of the flats to its members till their claims and outstanding payments are cleared. In my view, the contract of the petitioner having been terminated, his remedy would be by way of damages, which would be adjudicated in arbitration proceedings. Petitioner cannot lay any claim to the site. Reference in this connection may be made to the decision of this Court in Master Builders and Another Vs. United States of America, . However, considering that respondent is a cooperative society, which would eventually be handing over the flats constructed to its members and the limited resources that are available to a cooperative society, which gets its funds from the members only, in my view, in the interest of justice, it would be appropriate to restrain the respondents from allotting and handing over possession of flats to the members without the leave of the Court or the arbitrator, as the case may be, Ordered accordingly.

6. It is made clear that respondent Society is free to have the remaining work executed by any other agency, especially when the measurements have been taken and filed in Court. Petitioner shall take steps to remove all his material lying at the site within two weeks. In case the same is not done, respondents would be at liberty to have the same removed and stored at the risk and cost of the plaintiff.

The stay order dated, 31.8.1998 stands vacated and substituted by this order.

Petition and the interim applications stand disposed of.