

(2001) 02 DEL CK 0100

In the Delhi High Court

Case No : OMP 218 of 1999 and AA 48 of 2000

M/s Manohar Singh and Sons

APPELLANT

Vs

Sandeep Co-operative Group Housing Society Limited

RESPONDENT

Date of Decision : 08-02-2001

Acts Referred:

Citation : (2001) 3 RAJ 200

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Ms. Ansuyya Salwan, for the Appellant; Mr. R.D. Kathuria and Mr. Vivek Dudeja, for the Respondent

Judgement

J.D. Kapoor, J.—These are two petitions, one (OMP 218/99) u/s 9 & another (AA 48/2000) u/s 11 of the Arbitration & Conciliation Act, 1996, moved by the petitioner, which are required to be decided together.

2. Though the Arbitrator was appointed after the petitioner approached this Court for appointment of the Arbitrator u/s 11 of the Arbitration Act, yet the counsel for the petitioner has apprehension that he may not be fairly dealt with by the Arbitrator already appointed by the Architect of the respondent-Society. The appointed by the Architect of the respondent-Society. The main bone of contention between the parties is the non-payment of amount spent by the petitioner in raising construction of 220 Flats. However in the letter dated 26th January, 2000 sent to the Architect of the Society, the petitioner had stated that the work of construction of flats was almost complete and more that Rs. two crores have been held up by the Society, whereas the claim filed by the petitioner before the Arbitrator amounts to more than Rs. 6.5 crores including the interest on delayed payments and loss and damages incurred on account of delay of ten years in execution of the contract etc.

3. However, without prejudice to the rights and claims of the parties in this regard the interests of both the parties can be safeguarded by invoking the

clause of the agreement dated 21st October, 1994. Clause (1) of the agreement reads as under:-

"That for the payments due and payable by the Society to the Contractor, the contractor shall have a lien on the flats thus constructed at the rate of Rs.3 lakhs per flat. The flats shall be released by M/s Manohar Singh & Sons and the possession handed over to the Society in toto or in lots depending upon the quantum of payment to the contractor. The contractor M/s Manohar Singh & Sons shall be entitled to retain possession of such number of flats as are necessary to secure his due payment at the rate of Rupees three lakhs per flat."

4. It was in view of this clause of the agreement that an interim order was passed in the petition u/s 9 of the Arbitration & Conciliation Act, 1996 allowing the petitioner to retain the possession of all the 220 flats in order to secure his due payment @ Rs. three lacs per flat. Since the outstanding amount as on 26th January, 2000, was allegedly more than Rs. two crores exclusive of the interest and other claims of the petitioner, it is ordered that the petitioner shall retain the possession of as many as 70 Flats till the payment of amount in terms of the arbitration award. In order to avoid the hardship to the respondent in keeping the flats unfinished, the respondent shall also be entitled, to complete the unfinished work of the 70 Flats at its own expenses and handover the possession to the petitioner after their completion. The respondent shall file the undertaking in this regard within one week in the form of affidavit where after alone respondent-Society shall be handed over the possession to seventy flats.

5. Since the Arbitrator appointed by the Architect happens to be the retired Judge of this Court, it would not augur well if the Arbitrator is changed.

6. Both the petitions are disposed of accordingly.