

Poddar Projects Ltd. Vs. Magic Deal India Pvt. Ltd.

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Court : Kolkata

Decided On : Aug-27-2014

Judge : Soumen Sen

Appellant : Poddar Projects Ltd.

Respondent : Magic Deal India Pvt. Ltd.

Judgement :

ORDER

SHEET GA No.2704 of 2014 With CS No.222 of 2014 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE PODDAR PROJECTS LTD.Versus MAGIC DEAL INDIA PVT.LTD.BEFORE: The Hon'ble JUSTICE SOUMEN SEN Date : 27th August, 2014.

Appearance: Mr.Ranjan Kr.

Deb, Sr.Adv.Mr.Nirmalya Dasgupta, Adv.Mr.Dibanath Dey, Adv.Mr.A.Basu, Adv.The Court : This is an application for stay of suit under Section 8 of the Arbitration and Conciliation Act, 1996.

The plaintiff defendant.

has filed a suit for eviction against the The reading of plaint would show that the plaintiff asserts its right of eviction in view of the failure on the part of the

defendant to comply with the terms and the agreement dated 7th October, dispute.

2009. The execution of the agreement is not in Prayer (b) of the reliefs in the plaint stated: b) A Decree for mandatory injunction directing the defendant to make over khas possession of the space measuring 4681 square feet more or less as specified and demarcated in the second schedule of the agreement dated 7th October, 2009 of the 5th floor, Gate No.4 of Premises No.18, Rabindra Sarani, Poddar Court, Kolkata - 700 001, to the plaintiff; The plaintiff, in fact, is seeking enforcement of right under the agreement dated 7th October, 2009.

Mr.Ranjan Deb, learned senior counsel appearing on behalf of the plaintiff submits that in deciding an application under Section 8 of the Arbitration and Conciliation Act, 1996, the Court has to form an opinion about the arbitrability of the dispute.

The senior counsel has relied upon a decision of the Supreme Court in Boozallen and Hamilton Inc.

versus SBI Home Finance Limited and Others reported at (2011).SCC532 of The said decision was cited for the purpose that a dispute the present Reference has nature been cannot made to be decided paragraph 36 by of the the arbitrator.

report which specifies the grounds on which the Court retained its jurisdiction and the dispute to be held as non-arbitrable which includes eviction or tenancy matters governed by special statues where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes. However, in the instant case the eviction is not coming within the exception mentioned in paragraph 36 of the said report.

Mr.Deb, learned senior counsel, referred to a decision of the Honble Supreme Court in SMS Tea Estates Private Limited versus Chandmari Tea Company Private Limited reported at (2011)14 SCC66in support of his contention that the agreement for sale being unregistered cannot be looked into and relied upon for the purpose of enforcement arbitration in and/or relied terms of upon by Clause the (z) of defendant the to claim Memorandum of Understanding .

The learned senior counsel has referred to the questions have arisen namely, (i) that consideration, contained in an before Whether unregistered (but the an Honble arbitration compulsorily Court for agreement registerable) instrument is valid and enforceable ?.

(ii) Whether an arbitration agreement in an unregistered instrument which is not duly stamped, is valid and enforceable ?.

(iii) Whether there is an arbitration agreement between the appellant and the respondent and whether an arbitration should be appointed ?.

Of all the questions raised the question that may be relevant for consideration in the present case would be the answer given in relation to question no.2.

The Honble Supreme Court held that if the document is found to be not duly stamped, Section 35 of the Stamp Act bars the said document being acted upon.

Consequently, therein cannot be acted upon.

even the arbitration clause The Court should then proceed to impound the document under Section 33 of the Stamp Act and follow the procedure under Section 35 and 38 of the Stamp Act.

The plaintiff having relied upon the said document and the dispute being inextricably connected with the adjudication to be arrived at on the basis of said document, the argument made on behalf of the plaintiff that the said document is required to be impounded and the procedure under Section 35 and 38 of the Stamp Act is to be followed would be self-defeating as the plaintiff would be unable to lead any evidence in the suit.

Since the plaintiff has relied upon the said document and adjudication is called plaintiff for to on pay the said document the requisite stamp duty is incumbent and upon penalty.

the The plaintiff if wants to rely upon the said document, the plaintiff would be required to pay stamp duty and penalty to be adjudicated by the collector and on completion of such adjudication order, the entire dispute shall be referred to

arbitration.

Accordingly, the said document is impounded.

remain stayed.

The contention of the defendant that the dispute is arbitrable, is answered in affirmative.

the fact prescribed that in The suit shall the Clause However, in view of document is unregistered, 22.2 SMS Tea in Estates the procedure Private Limited (supra) is required to be followed.

The matter may be referred to arbitration of after on impounding the said document adjudication made by the collector on the said document.

and Stamp duty and penalties are paid.

The memorandum of agreement be sent to the collector for adjudication.

All proceedings in CS No.222 of 2014 shall remain stayed.

At this stage, the parties have agreed to refer the dispute to Mr.Hirak Kr.

Mitra, a senior Advocate and member of the Bar Library Club.

Accordingly the dispute forming the subject matter of the suit is referred to Mr.Hirak Kr.

Mitra, learned Senior Advocate to arbitrate with a request to conclude the proceeding within a period of six months from the date of completion of pleadings.

The plaintiff shall pay the stamp duty and the penalty.

The plaintiff shall be entitled to claim the stamp duty and the other charges paid for registration of the said agreement if an award is passed in favour of the plaintiff.

The interim order, however, shall continue till the learned arbitrator enters reference.

It would be open to the parties to approach the learned arbitrator for extension of the order of injunction passed in the suit on 18th July, 2014.

The learned arbitrator shall decide his remuneration.

The cost, charges and expenses of the arbitration shall be borne by the parties equally.

The application stands disposed of.

Certified website copies of this order, if applied for, be urgently supplied to the parties subject to compliance with all requisite formalities.

(SOUMEN SEN, J.) B.Pal

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