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**Suresh Jaln Vs. Dinesh Kumar**

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**SooperKanoon Citation** : sooperkanoon.com/703848

**Court** : Delhi

**Decided On :** Apr-30-2008

**Reported in** : AIR2008Delhi127; 160(2009)DLT604

**Judge** : Hima Kohli, J.

**Acts** : Arbitration and Conciliation Act, 1996 - Sections 2(1), 9 and 11; Arbitration Act, 1940 - Sections 14; Code of Civil Procedure (CPC) , 1908 - Sections 16

**Appeal No.** : Arb. P. No. 489 of 2007

**Appellant** : Suresh Jain

**Respondent** : Dinesh Kumar

**Advocate for Def.** : N. Malhotra and ; Adarsh Ganesh, Advs.

**Advocate for Pet/Ap.** : Sacchin Puri and; Namitha Mathews, Advs

**Judgement** :
ORDER

**Hima Kohli, J.**

1. By the present order this Court proposes to dispose of Arbitration Petition No. 489/2007 filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') praying inter alia for appointment of

an Arbitrator to adjudicate the disputes that are stated to have arisen between the parties, and OMP No. 641/2007, which is filed by the petitioner under Section 9 of the Act for grant of interim reliefs.

2. It is the case of the petitioner that the petitioner along with one Mr. R.K. Gupta entered into a Joint Venture Agreement (in short, 'JVA') dated 18-6-2005 for developing a commercial complex on a plot of land bearing No. C-5/567, Ward-17, Jagdhari, situated at Jagadhari-Yamunagagar Road, Yamuna Nagar, Harayana measuring 3625 sq. yds. In accordance with the terms and conditions of the JVA. It is stated that the aforesaid JVA was executed in Delhi wherein the petitioner along with one Mr. R.K. Gupta were termed as 'developers' whereas the re spondent was termed as the 'owner' as he is the owner of the suit property. The parties, in compliance of the JVA, undertook some obligations on 1-4-2006 and possession of the said property was handed over by the respondent to the petitioner in terms of Clause 26 of the JVA.

3. On 6-5-2006, the parties executed another JVA by amending the terms of the original JVA dated 18-6-2005. The second JVA dated 6-5-2006 was entered into on account of the fact that the petitioner and Mr. R.K. Gupta constituted a partnership firm, namely, M/s. Remarkable Buildwell as a result of which, the respondent executed the JVA with M/s. Remarkable Buildwell. It is stated that the only clauses that were modified in the second JVA dated 6-5-2006 were clauses No. 6, 9, 13, 14, 15 and 17. However, from amongst the clauses that remained the same, the following are relevant to decide the case in hand:

44) If any dispute or difference of any kind whatsoever shall arise between the parties in connection with or arising out of this Agreement or any part thereof, such dispute or difference shall be referred to an acceptable sole Arbitrator under the provisions of the Indian Arbitration & Conciliation Act, 1996. The venue for arbitration shall be at New Delhi and the language shall be English.

45) The Courts at Delhi shall have exclusive jurisdiction in case of any dispute arising in respect of the subject matter of this agreement or in connection to it.

4. After execution of the second JVA dated 6-5-2006, an MOU dated 25-5-2006 was executed between the parties, whereunder it was recorded that Mr. R.K. Gupta, the partner of the M/s. Remarkable Buildwell had retired from the project and that all the rights, obligation and liabilities of Mr. R.K. Gupta stood vested in the petitioner. Thereafter, the petitioner continued with the JVA and took further steps in terms of the second JVA dated 6-5-2000. However, in the interregnum, certain disputes and differences arose between the parties which led to exchange of various communications between them and ultimately culminated in the petitioner serving a notice dated 4-9-2007 upon the respondent and invoking the arbitration clause governing the parties. The aforesaid notice was replied to by the respondent, vide his letter dated 12-9-2007. The respondent did not deny the fact that the parties were governed by the arbitration clause. However, he proposed the constitution of a Lok Panchayat for resolving the disputes between the parties. In view of the aforesaid stand of the respondent, the petitioner has filed the present petition praying inter alia for appointment of an Arbitrator.

5. Notice was issued on the present petition on 23-11-2007 and appearance was entered on behalf of the respondent on 25-2-2008. A reply to the petition was filed on 8-4-2008, in Para 27 whereof the respon dent stated as below:

27. That the contents of paragraph No. 27 of the application under reply are a matter of record. It is however stated that the disputes sought to be raised by the Petitioner are neither valid nor justifiable. In any case the Respondent is also craving leave of the Court to file claim/counter claim before the Arbitrator appointed by the Court and is consequently seeking reference of his disputes also inter alia, in respect of damages, loss of rental income etc.

6. At the end of the reply, the respondent stated that he did not oppose the application for appointment of an Arbitrator and prayed that the disputes raised by him may also be referred before the Arbitrator to be appointed by this Court. However, at the time of arguments, counsel for the respondent, while conceding that the respondent has not opposed the present petition, submits that in view of the Judgment rendered by the Supreme Court in the case of Harshad Chiman Lal Modi v. DLF Universal Ltd. reported as : AIR 2005 SC4446 , this Court does not

possess the territorial jurisdiction to entertain the present petition for the reason that the property, subject matter of the Arbitration Agreement, is situated beyond the territorial jurisdiction of this Court, i.e. in the State of Haryana. He relies on the provisions of Section 2(1)(e) of the Act which defines the term 'Court' as below:

2. Definitions-(1) In this part, unless the context otherwise requires,-

(e) - 'Court' means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

7. Relying on the provisions of Section 2(1)(e) of the Act, counsel for the respondent submits that the present petition ought to be treated as a 'suit' for all effects and purposes as the property, subject matter of the present petition, is situated beyond the jurisdiction of this Court and the bar of Section 16(d) of the Code of Civil Procedure hits the present petition. He submits that when according to Section 16(d) of CPC, a suit for determination of any other right to or interest in an immovable property can be instituted only in a Court within the local limit of whose jurisdiction the property is situated, then by the same analogy an arbitration petition filed in respect of an immovable property situated beyond the local limits of this Court also ought not to be entertained.

8. Counsel for the respondent particularly draws the attention of this Court to para Nos. 30, 32, 34 & 37 of the judgment in the case of Harshad Chiman Lal Modi AIR 2005 SC 4446 (supra) to state that where a Court does not have jurisdiction over the subject matter of a suit by reason of any limitation imposed by the statute, it cannot take up the cause or matter, and an order passed by such a Court having no jurisdiction, is a nullity. He submits that in the light of the aforesaid judgment, even if the respondent has filed a reply stating that he has no objection to appointment of an Arbitrator by this Court, the respondent cannot be bound by the said consent as it will amount to conferring jurisdiction on a Court which otherwise is incompetent to entertain the disputes between the parties.

9. Conversely, counsel for the petitioner submits that a bare perusal of the JVAs makes it apparent that both the parties were ad idem as to the territorial jurisdiction of the Courts in Delhi in view of Clause 45 of the JVA dated 18-6-2005 and Clause 46 of the second JVA dated 6-5-2006. He further submits that it is not a case where parties have sought to confer jurisdiction on this Court without any cause of action having accrued within its local limits. In fact, he submits that the parties executed both the JVAs at Delhi and it was agreed upon between the parties that the moneys payable under the agreement were also to be paid at Delhi and thus the parties were entitled to confer exclusive jurisdiction upon the Courts at Delhi. He further submits that the disputes, subject matter of arbitration, have to be examined in the light of the terms and conditions of the JVA, irrespective of the location of the subject property which is situated in Jagadhari, Haryana. In this regard, the attention of this Court is particularly drawn to Clauses 3, 8, 13, 15 to 17, 24 to 26, 28, 35, 36, 44, 45, 50, 51, 54 and 55 of the JVA dated 18-6-2005.

10. It is stated that the property in question remains under the ownership and title of the respondent and the petitioner is only a developer of the land who is to contribute the funds towards the development of the project. He further submits that the possession of the property was given to the petitioner only by way of permissive user and possession, within the parameters of the terms and conditions of the JVA, under which the petitioner was restrained from handing over the possession of the said property to any one other than the prospective purchasers. He, therefore, submits that the dispute is not related to the subject property, but to the JVA and thus, the arbitration clause has been rightly invoked by him by approaching this Court. In support of his contention, counsel for the petitioner places reliance on a judgment of the Supreme Court entitled Jatinder Nath v. Chopra Land Developers Pvt. Ltd. and Anr. decided on 2nd March, 2007 reported in : AIR 2007 SC1401 .

11. I have heard the counsels for the parties and have perused the relevant documents placed on the record and the judgments relied upon by the parties. The JVA dated 18-6-2005 as also the second JVA dated 6-5-2006 have admittedly been executed at Delhi. It is also not denied by the respondent that as per the

agreement, the moneys were payable at Delhi. There can therefore be no dispute to the fact that part of the cause of action has arisen within the local limits of this Court. Thus the contention of the respondent that the clause conferring Jurisdiction on the Courts at Delhi cannot bind the respondent as there is no acquiescence/waiver in law, is not acceptable inasmuch as it is not a case where no part of the cause of action has arisen at Delhi at all. No doubt the property, subject matter of the JVA, is situated within the local limits of the State of Haryana, however, the disputes, subject matter of the present petition, have arisen out of an agreement entered into by the parties, of their own free will and volition. By way of the said agreement, the parties chose to execute the agreement at Delhi and also selected the Courts of Delhi as having exclusive jurisdiction in case of any disputes arising in respect of the subject matter of the agreement or in connection thereto. In view of the clear, unambiguous and unequivocal agreement of the parties to the effect that not only the disputes arising in respect of the subject matter of the agreement, but any dispute arising in connection with the agreement shall be within the exclusive jurisdiction of the Courts at Delhi, the argument of the respondent cannot be accepted that the Courts in Delhi do not have the jurisdiction to try and entertain the present petition.

12. The reference made by the counsel for the petitioner to the judgment rendered by the Supreme Court in the case of Jatinder Nath (supra) is of significance as in the aforesaid case also the Supreme Court addressed itself on the question of lack of territorial jurisdiction in the context of an agreement between the owner of a plot of land and the developer. In the said case, the plot of land in question was situated within the territorial jurisdiction of Delhi, whereas the agreement was executed between the parties at Faridabad, Haryana. The appeal was brought before the Supreme Court against the judgment of the High Court of Punjab & Haryana, whereby it upset the judgment passed by the Additional Civil Judge, Faridabad by which an application filed by the developers, respondent in the Supreme Court, under Section 14 of the Arbitration Act, 1940 for seeking enforcement of an award rendered by the Arbitrator, was dismissed for want of jurisdiction. The facts of the case revealed that the appellant remained the owner of the land, the respondent was only the developer/builder. Under the agreement, the developer agreed to construct the complex for which the owner gave

permission to the builder. The entire cost pf construction was to be borne by the developer while the building plans and other statutory documents were to be signed by the appellant/owner. In consideration of the developer's services, the appellant/owner had agreed to allow ownership of certain floors of the complex with interest, to be transferred in the name of the developer. Having regard to the aforesaid facts and circumstances, the Supreme Court held that the agreement in question was purely a development agreement where a party agreed to develop the property for certain consideration, while the appellant continued to remain the owner thereof. Thus, it was observed that it cannot be stated that the Courts at Faridabad had no jurisdiction to make the award rendered by the Arbitrator, rule of Court under Section 14 of the old Act.

13. In the present case also, a reading of the JVAs indicates that they are agreements to develop the plot of land which continues to remain under the ownership of the owner, the developer being merely a contractor/builder. It is not denied by the respondent that the plans in question and all statutory documents were submitted to the authorities in the name of the respondent and that till date, no GPA is registered in favour of the petitioner for the purpose of sale of portions of the construction.

14. In these circumstances, it cannot be stated that the case in hand is similar to a suit for specific performance in respect of an immovable property. A particular clause of the JVA cannot be read in isolation or out of context. All the clauses of the JVA ought to be read harmoniously and in conjunction with each other. Having done so, it is apparent that the parties had entered into the contract and had agreed that this Court shall have the exclusive jurisdiction to decide any disputes arising between the parties out of, or in connection with the agreements. The parties having entered into the contract of their own free will and volition and with open eyes, the respondent cannot be heard to state that a petition of the present nature ought to be treated at par with a suit for specific performance in respect of an immovable property and that as the subject premises is not situated within the local limits of this Court, the petition is liable to be rejected for lack of territorial jurisdiction. Nature of disputes raised by the petitioner hinge on the JVA and the clauses 'contained therein. Further, a perusal of Para 27 of the reply filed by the

respondent, wherein the respondent seeks reference of his disputes in respect of damages, loss of, rental income, etc., makes it apparent that the disputes are not confined only to the immovable property, but includes certain other issues such as damages, etc., which would be on a different scale and much larger in scope than those sought to be adjudicated in a suit for specific performance of an agreement in respect of an immovable property.

15. In the aforesaid facts and circumstances, the petition filed by the petitioner under Section 11 of the Act is allowed. The respondent having failed to appoint an Arbitrator in accordance with the terms and conditions of the JVA, even after receipt of a notice from the petitioner, it is for this Court to appoint an Arbitrator to adjudicate all the disputes that have arisen between the parties. Accordingly, Justice Usha Mehra (Retd.) is appointed as an Arbitrator to adjudicate the disputes between the parties. The parties shall share the fee of the Arbitrator in equal proportion, apart from the administrative expenses. The parties are directed to appear before the learned Arbitrator on 16-5-2008 at 4.30 p.m. Both the parties shall be entitled to submit all their claims/counter claims before the learned Arbitrator.

16. Insofar as the petition filed by the petitioner under Section 9 of the Act is concerned, vide order dated 23rd November, 2007, the parties were directed to maintain status quo as of the said date. Counsels for the parties state that the possession of the premises is with the petitioner who was given the same by the respondent for the purposes of executing the JVA. In view of the fact that an Arbitrator has been appointed in the petition filed by the petitioner under Section 11 of the Act, the present petition is disposed of with the order that the status quo order passed on 23rd November, 2007 shall continue to operate till the said order is modified and/or vacated or any further orders by way of an interim measure are passed by the learned Arbitrator, to safeguard the subject matter of the dispute, on either of the parties filing an appropriate application in this regard.

In terms of the aforesaid order, both the petitions are disposed of.

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