

HONOURABLE SRI JUSTICE K. LAKSHMAN

ARBITRATION APPLICATION No.207 OF 2022

ORDER:

The present Arbitration Application is filed under Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') for appointment of a sole arbitrator to adjudicate the disputes between the parties.

2. Heard Sri G.M. Mohiuddin, learned counsel for the applicants, Smt. G Rama Manjuna, learned counsel appearing for Respondent No1, Sri V Venkata Rama Narsaiah, learned counsel appearing for Respondent No 2, Sri Ravikiran Singh, learned counsel appearing for Respondent No.3. Despite service of notice, there is no representation on behalf of Respondent No.4.

3. The Applicants and Respondents entered into a registered Agreement of Sale-cum-Irrevocable General Power of Attorney (hereinafter 'the subject agreement') bearing Doc.No.5475/2019 with possession on 24.06.2019 with regard to the sale of land admeasuring 7935 Square Yards out of 79376 Square Yards, part of Revenue Survey

No. 139, correlated to Town Survey No. 2, Ward No. 172, Block No. E of Saidabad Village and Mandal, Hyderabad District.

4. As per the subject agreement, the Respondents agreed to convey to the Applicants the developed area of about 7935 Sq.Yds. out of Ac.16-16 Gts. or 79376 Sq. Yds., which the Respondents were entitled to under the said agreement. It is noted that the development of the entire extent of Ac. 16-16 Gts. is yet to be completed. The Respondents are in dispute with the Developers, and legal proceedings are said to be pending between them.

5. The Respondents herein have failed to fulfil their obligations under the subject agreement, They have issued false notices, published misleading information, and filed baseless cases against the Applicants, unnecessarily complicating matters that could have been resolved amicably. The Respondents issued a caution notice in Deccan Chronicle English Daily dated 09.09.2022 claiming to cancel the subject agreement.

6. The subject agreement remains valid and binding on the Respondents, despite their false claims of its invalidity due to alleged

violations by the Applicants. In fact, it is the Respondents who have breached the terms of the subject agreement.

7. The Respondents have failed to adhere to the Arbitration clause i.e. Clause 8 of the subject agreement.. The Applicants invoking said Clause No.8 to resolve the disputes between them, have issued legal notice dated 21.09.2022. The Clause No.8 of the subject agreement is relevant and the same is extracted below:-

"8. Dispute Resolution: In the event of there being any dispute with regard to this Agreement or the interpretation of any terms hereof, the same shall be referred to arbitration in accordance with the terms and provisions of the Arbitration and Conciliation Act, 1996. The arbitral panel shall comprise of sole arbitrator mutually agreed and appointed by the Parties. The venue of arbitration shall be Ranga Reddy District. The arbitration proceedings shall be in English language. The decision of the arbitrator shall be final and binding on both parties. The parties hereto specifically agree that they will not seek any interim relief in India under the Arbitration and Conciliation Act, 1996, including Section 9 thereof."

8. The Applicants through their legal notice dated 21.9.2022, requested the Respondents to select any of the three (3) persons named therein to arbitrate the disputes as per the subject agreement within thirty (30) days from the date of receiving the notice. Alternatively, the Respondents were asked to provide the names of three (3) persons from their side, allowing the Applicants to appoint one of them as Arbitrator. The Applicants further informed the Respondents that failing to comply

with the above demand within the specified time, they would initiate legal proceedings against the respondents.

9. The legal notice dated 21.09.2022 was duly served upon all the Respondents. Respondent Nos. 3 and 2 issued reply notices dated 15.10.2022 and 20.10.2022 respectively claiming that the subject agreement lacks legal sanctity and is void and thus, the Arbitration clause does not apply.

10. Despite the expiry of thirty (30) days from the receipt of the notice dated 21.09.2022, the Respondents have not nominated any person to be appointed as the sole Arbitrator from their side.

11. Respondents in their reply notice dated 20.10.2022 mentioned about the proceedings in suits vide O.S.No.225 of 2022 and O.S.No.404 of 2022 on file of II Additional Chief Judge, City Civil Courts, at Hyderabad, filed by them seeking cancellation of subject agreement.

12. Respondent No.1 in his counter admitting the existence of subject agreement between them, stated that there are several civil disputes with regard to the property under subject agreement pending before the City Civil Court, Hyderabad. He has further stated that third

party claims also exists over the scheduled property, arising from the sale of parts of undeveloped land and thereby creating third party interests.

13. Learned Counsel for the respondents further contended that at the time of entering into the agreement, it was expressly agreed that the consideration would be provided in the form of post-dated cheques. However, it was argued that some of these cheques were defaulted and returned unpaid. Consequently, it is asserted that due to the failure to fulfill the consideration, the subject agreement is deemed null and void. Additionally, it was stated that the respondents issued a caution notice in the Deccan Chronicle dated 09.09.2022.

14. Respondents have also admitted to the existence of an arbitral clause in their counter but contend that the non-payment of the agreed consideration, there is a breach of the subject agreement and the Applicants are bound by Clause No.8 of the subject agreement.

15. Respondents further contend that the original owner of the scheduled property lands Mr. H.E.H Nawab Mir Osman Ali Khan has filed a suit vide O.S.No.13 of 2023 against the Applicants and Respondents herein and the other private respondents seeking declaration

of the agreement vide Doc.No. 2422 of 1963 dated 20.08.1963 and registered in the office of Registrar of Hyderabad executed by Mr. H.E.H. Nizam Mir Osman Ali Khan represented by his Attorneys Mr. Deen Yar Jung and Mr. L. N. Reddy for the property mentioned in H.E.H The Nizam's Properties List No.11 at Serial No.3 as null and void in O.S No. 5596/2023 on the file of XIX Junior Civil Judge, City Civil Courts, at Hyderabad.

16. Thus, there are disputes between the Applicants and Respondents which are arbitrable in nature.

17. It is relevant to note that the scope of power of High Court under Section 11 of the Act, 1996 is extremely limited. The Court has to only see whether *prima facie* an arbitration agreement exists. The Court cannot go into disputed questions of facts which are to be decided by the arbitrator.

18. In **Duro Felguera, S.A. v. Gangavaram Port Ltd.**¹, the Hon'ble Supreme Court, at paragraph No. 59, has held as under:

¹ (2017) 9 SCC 729

“The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. [SBP and Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] and BogharaPolyfab [National Insurance Co.Ltd. v. BogharaPolyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117]. This position continued till the amendment brought about in 2015. After the amendment, all that **the courts need to see is whether an arbitration agreement exists nothing more, nothing less.** The legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected.”

19. It is relevant to note that the Apex Court in **Vidya Drolia v. Durga Trading Corporation**² laid down the test to exercise power under Section 11 of the Act, 1996 and held as follows:

244. Before we part, the conclusions reached, with respect to Question 1, are:

244.1. Sections 8 and 11 of the Act have the same ambit with respect to judicial interference.

244.2. Usually, subject-matter arbitrability cannot be decided at the stage of Section 8 or 11 of the Act, unless it is a clear case of deadwood.

244.3. The court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non-existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding.

²(2021) 2 SCC 1.

244.4. The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above i.e. “when in doubt, do refer”.

244.5. The scope of the court to examine the prima facie validity of an arbitration agreement includes only:

244.5.1. Whether the arbitration agreement was in writing? or

244.5.2. Whether the arbitration agreement was contained in exchange of letters, telecommunication, etc.?

244.5.3. Whether the core contractual ingredients qua the arbitration agreement were fulfilled?

244.5.4. On rare occasions, whether the subject-matter of dispute is arbitrable?

20. As discussed supra, there are arbitral disputes between the Applicants and the Respondents which form the subject matter of adjudication by an Arbitrator.

21. In the present case, there is no dispute between the parties regarding the Arbitration Clause contained in Clause 8 of the subject agreement. Therefore, it is appropriate to refer the dispute to arbitration. The parties are at liberty to take all the available defences before the learned Arbitrator.

22. In light of the aforesaid discussion and the law laid down by the Hon’ble Supreme Court, the present Arbitration Application is

allowed. Accordingly, **Sri Justice A. Rajashekher Reddy, Former Judge, High Court for the State of Telangana, Hyderabad**, is appointed as the sole arbitrator to adjudicate the disputes between the parties.

As a sequel, the miscellaneous applications, if any, pending in the Arbitration Application shall stand closed

JUSTICE K. LAKSHMAN

Date:03.05.2024
VVR.