

(2013) 04 DEL CK 0332

Delhi High Court

Case No: Arbitration Petition No. 355 of 2012

B.K. Gupta

APPELLANT

Vs

Dhanraj Singh

RESPONDENT

Date of Decision: April 23, 2013

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 11

Hon'ble Judges: Manmohan Singh, J

Bench: Single Bench

Advocate: Pramod Bahuguna, Ms. Kavita and Mr. V.S. Negi, for the Appellant;

Final Decision: Allowed

Judgement

Manmohan Singh, J.

The petitioner has filed the present petition u/s 11 of the Arbitration and Conciliation Act, 1996 for appointment of a sole independent arbitrator. Brief facts as culled out from the petition are that the petitioner entered into an agreement dated 9th November, 2009 with the respondent for construction of Ground Floor (UG) of the property bearing No. A-1/174, Safdarjung Enclave, New Delhi-110029. It is stated in the petition that respondent is a resident of Amritsar, Punjab, however, he is carrying out the business activities with the help of his representative/associates in Delhi. It is further stated that the respondent intentionally kept the original agreement dated 9th November, 2009 with him, however, the photocopy of the said agreement was duly signed by the respondent. As per the said agreement, the respondent was required to complete the construction of the building in all respects within twelve months from the date of sanction/approval of building plan by Municipal Corporation. The petitioner paid Rs. 50 lac to the respondent as per the terms of the agreement. The respondent did not provide the important documents like drawings, proof of earthquake resistance and other relevant documents to the petitioner so far.

2. The building plan was approved/sanctioned by the MCD on 25th November, 2009. Therefore, the respondent was bound to give the possession of the said floor on 25th November, 2010. However, the possession was handed over by the respondent on 15th April, 2011 after delay of more than five months. It is further submitted by the petitioner that the quality of construction is neither as per the standards and parameters as per terms of the said agreement. In para 10 of the petition the petitioner has the details of pending works. As the respondent did not pay any heed to the requests of the petitioner, the petitioner sent a legal notice dated 21st May, 2012 whereby he demanded Rs. 56,90,400/- for defective construction, servant room, electricity, plumber etc. and further requested the respondent to appoint an Arbitrator as per Clause 20 of the agreement dated 9th November, 2009. The respondent replied the same by letter dated 29th May, 2012 wherein the respondent denied the claim of the petitioner and did not agree to the name of Sh. Deepak Gupta, as a sole Arbitrator, as proposed by the petitioner. Hence, the present petition.

3. Notice of the petition was issued to the respondent. Counsel for the respondent appeared on 28th January, 2013 and sought time to file the reply and Vakalatnama. However, the same has not been filed by the respondent. Today none is present on behalf of the respondent.

4. There is arbitration clause, i.e., Clause 20, in agreement dated 9th November, 2009 which reads as under:

20. That any dispute and differences arising amongst the parties under this Agreement shall be referred to the Arbitrator to be mutually appointed by the parties whose decision shall be final and binding upon the parties. The provisions of Arbitration and Conciliation Act, 1996 Conciliation Act 1996 shall be applicable to such proceedings. The place of Arbitration shall be New Delhi.

5. From the aforesaid, it is clear that a binding arbitration agreement is in existence between the parties and the claims appear to be live from the correspondence placed on record. Since the respondent has failed to appoint an arbitrator within stipulated time, the present petition is allowed. Accordingly, Justice K.S. Gupta, (Retd.), B-176, Ground Floor Shivalik, New Delhi, Mob. 9868095873, is appointed as a sole Arbitrator to adjudicate the disputes between the parties. The fees of the learned Arbitrator shall be payable according to the schedule of fees fixed by Delhi High Court Arbitration Centre under its rules. Both the parties are granted liberty to file their claims and counter claims before the learned Arbitrator in accordance with law. The petition is disposed of. A copy of the order be communicated to the learned sole Arbitrator. Copy of the order be given dasti to both the parties.