

Splendor Landbase Ltd vs Aparna Ashram Society And Anr on 20 October, 2022

Author: Anup Jairam Bhambhani

Bench: Anup Jairam Bhambhani

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ ARB.P. 366/2021
SPLENDOR LANDBASE LTD.

Through: Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Gaurav Puri,
Sarthak Gupta and Ms. Yashika
Verma, Advocates.

versus

APARNA ASHRAM SOCIETY and ANR.

Through: Mr. Sanjay Khanna with Ms. Pragy
Bhushan, Mr. Karandeep Singh a
Mr. Tarandeep Singh Advocates
R1 and 2.
Dr. Surya Prakash, Advocate.
Mr. Rahul Gupta with Mr. Shekh
Gupta, Ms. Subhashish Kumar an
Mr. Devanshu Kumar, Advocates
R2.
Mr. Jatin Sehgal with Ms. Devn
Mr. Viren Bansal and Mr. Adhir
Singh, Advocates for proposed
6.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI
ORDER

% 20.10.2022 By way of the present application filed under Order I Rule 10(2) read with section 151 of the Code of Civil Procedure 1908, the petitioner seeks impleadment of 04 corporate entities as party- respondents to the present petition, on the premise that the said parties are necessary and proper parties for a fair and complete adjudication of the arbitration petition.

2. Notice on this application was issued on 13.08.2021; consequent whereupon reply dated 09.09.2021 has been filed on behalf of the proposed respondents, opposing the application.

3. Mr. Sudhir Nandrajog, learned senior counsel appearing for the petitioner/applicant submits that vide Collaboration Agreement dated 08.06.2010 ('collaboration agreement'), respondents Nos. 1 and 2 had entered into a transaction with the petitioner for the development of a parcel of land ad-measuring about 26 acres at Village Silokhera, District Gurgaon, Haryana ('subject land') and for construction of a project thereupon with other attendant and consequential rights to deal with the

subject land. Senior counsel submits that during the currency of the collaboration agreement and in breach of their obligations under that agreement however, respondents Nos. 1 and 2 have executed Sale Deed dated 18.12.2020 ('sale deed') in favour of respondents Nos. 3, 4, 5 and 6, thereby making it necessary for the petitioner to implead the said proposed respondents as parties to the present proceedings.

4. Mr. Nandrajog submits that the sale deed in question has been executed by the aforesaid parties in collusion and behind the petitioner's back, in an attempt to defeat the inviolable rights created in favour of the petitioner under the collaboration agreement. Furthermore, learned senior counsel submits that since the proposed respondents claim ownership and possession of the subject land under the purported sale deed, on their own reckoning, the proposed respondents have stepped into the shoes of respondent No. 1; and would therefore be bound by the terms and conditions of the collaboration agreement.

5. In this behalf, attention of the court is drawn to the definition of the "Parties" to the collaboration agreement, to urge that the parties to the collaboration agreement are expressly defined to mean and include inter-alia their respective nominees, successors-in-interest and assigns, and also including "... all those claiming through them." In light of the definition of 'Parties', it is also pointed-out that the dispute resolution clause in the collaboration agreement reads as under :

"ARTICLE 21 DISPUTE RESOLUTION AND JURISDICTION a. DISPUTES The Parties shall attempt to amicably settle all disputes or difference arising out of this Agreement and the obligations thereunder (the "Dispute"). Either Party may give written notice of the Dispute to the other Party(ies) within 10 (ten) days of the occurrence of the event which gives rise to such dispute or such event came to the notice of the concerned party.

b. ARBITRATION If any claim, dispute or differences arising out of, or relating to this Agreement in respect of interpretation of any Clause or otherwise, is not amicably resolved through joint discussions, the same shall be referred to and finally settled by arbitration. The arbitration proceedings shall be governed by the provisions of Arbitration and Conciliation Act, 1996 including any statutory modification or amendment thereto. Seat of Arbitration shall be at New Delhi. The decision of the arbitrator(s) shall be final and binding on the Parties.

(underscoring supplied; bold in original) Notably, Article 19(iii) of the collaboration agreement recites as follows :

" ARTICLE 19 OTHER TERMS AND CONDITIONS:

(iii) ASSIGNMENTS, WAIVER OF RIGHTS, COMPROMISES This Agreement shall be binding on the Parties and their respective successors and assigns. None of the Parties shall be entitled to assign any of their rights or obligations under this Agreement except as permitted in this Agreement."

(underscoring supplied; bold in original)

6. Mr. Nandrajog argues, that on point of law, section 48 of the Transfer of Property Act, 1882 ('TPA') specifically contemplates the situation obtaining in the present case, viz. where 'priority of rights' is created by transfer, which provision reads as under :

"48. Priority of rights created by transfer.--Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created."

7. This, it is contended, brings the proposed respondents squarely within the description of 'successors-in-interest' and 'assigns', and in any case within the meaning of 'parties claiming through' respondents Nos. 1 and 2.

8. Opposing the present application, Mr.Jatin Sehgal, learned counsel appearing for the proposed respondents submits, that the proposed respondents were neither parties nor privies to the collaboration agreement; and have acquired 'independent' rights, titles and interests to the subject land by way of the registered Sale Deed dated 18.12.2020, which deed carries no reference to the collaboration agreement. Counsel submits that it be noted that the proposed respondents have not received any interest in the subject land by 'assignment' of any rights or obligations of respondents Nos. 1 and 2 under the collaboration agreement.

9. Mr. Sehgal argues, that most importantly, the proposed respondents are not signatories to any arbitration agreement with the petitioner and are bona-fide purchasers of the subject land, with no contractual obligations towards the petitioner under the collaboration agreement in any manner whatsoever. Counsel submits that there are no inter-se disputes as between the petitioner and the proposed respondents; and as far as the proposed respondents understand it, the collaboration agreement between the petitioner and respondents Nos.1 and 2 is, by its very nature, a determinable contract, which can be terminated for non-performance and for which monetary compensation would be adequate relief. Counsel submits that the proposed respondents are also not covered within the ambit of the arbitration agreement on the principles laid-down in Chloro Controls India Pvt Ltd. vs. Severn Trent Water Purification Inc. &Ors 1, which judgement deals with the 'group company doctrine' since it is no one's case that the proposed respondents are group companies of respondents Nos. 1 & (2013) 1 SCC 641 2; nor are they parties claiming through or under respondents Nos. 1 & 2.

10. In particular, counsel for the proposed respondents invites attention to the reply filed by the petitioner hereinto I.A No. 3130/2021 filed in O.M.P.(I)(COMM.) No. 25/2021 - which interestingly, was an application filed by the proposed respondents seeking impleadment in those proceedings - in which the petitioner had taken the stand that the proposed respondents could not be impleaded in that matter since only respondents Nos. 1 and 2 were signatories to the arbitration clause. Counsel for the proposed respondents accordingly submits, that the petitioner is now taking a completely

contradictory stand in the present proceedings, which is impermissible.

11. Rejoining to the aforesaid response, Mr. Nandrajog submits that for one it is worthy of note, that in the section 9 proceedings, the proposed respondents had themselves applied to be impleaded as party-respondents, contending that the petitioner had no claim to the subject land under the collaboration agreement and asserting that it was imperative that the proposed respondents be impleaded in the section 9 proceedings to assist the court to bring on record the correct facts. Moreover, it is pointed-out, that the said application was eventually withdrawn, thereby bringing that matter to a close.

12. Senior counsel also points-out, that as recorded in order dated 24.01.2022 made in O.M.P.(I)(COMM.) No. 25/2021, the withdrawal happened for the following reasons :

"Pleadings in the captioned IA qua petitioner are already complete. At this stage, it is stated by learned counsel for the proposed respondent/applicant that she has instructions that the proposed respondent is not pressing the captioned IA at this stage as the petitioner has moved another IA, inter alia, for impleadment of the proposed respondent.

The statement of learned counsel is taken on record. In view of the same, the captioned IA stands disposed off as not pressed at thi (sic) stage.

Renotify on next date."

(emphasis supplied) implying thereby, that the proposed respondents, who had initially filed an application seeking impleadment in the section 9 proceedings, subsequently withdrew their application only because the petitioner had itself filed an application seeking their impleadment in that matter.

13. In view of the limited scope of consideration in proceedings under section 11 of the A&C Act, based on the rival contentions of the petitioner and the proposed respondents, in the opinion of this court, the following inferences arise :

a. The transaction between the petitioner and respondents Nos. 1 and 2 as comprised in the collaboration agreement, evidently creates in favour of the petitioner certain rights and interests in and to the subject land; and there is nothing on record to say, nor any allegation by either of the parties, that the collaboration agreement was terminated or was otherwise brought to a close; b. The disputes that are sought to be referred to arbitration by way of the present petition, have clearly arisen from the collaboration agreement, to which the petitioner and respondents Nos. 1 and 2 are signatories;

c. However, there is no cavil with the position that by way of the sale deed, respondents Nos. 1 and 2 have purported to transfer title to the subject land unto and

in favour of proposed respondents Nos. 3, 4, 5 and 6; meaning thereby, that the proposed respondents have acquired title to the subject land from respondents Nos. 1 and 2. No amount of semantics or nuance of phrase, will support the submission of the proposed respondents that they are not successors-in-interest of respondents Nos. 1 and 2 in relation to the subject land. Though it is pre-mature to comment on whether the proposed respondents can be deemed to be 'assigns' under the collaboration agreement, it cannot be gainsaid that the proposed respondents claim title to the subject land through respondents Nos. 1 and 2;

d. Section 48 of the TPA, as cited on behalf of the petitioner, deals with exactly such a situation, where rights over the same immovable property are created by transfer at different times, which rights cannot all co-exist or be fully exercised together. The said statutory provision contemplates that in such situation, a right created later shall be subject to a previously created right, unless there is a special contract or reservation in that behalf. The contention of the proposed respondents that the sale deed in their favour carries no reference to the collaboration agreement in fact invites the applicability of section 48 of the TPA, since when there is no such reference, there is no special contract or reservation binding the petitioner, in whose favour the earlier right was created, by the right created later in favour of respondents Nos. 1 and 2;

e. Furthermore, the fact that in connected proceedings under section 9 of the A&C Act, the same proposed respondents had sought impleadment vide I.A. No. 3130/2021, shows that they have a stake in the disputes that have arisen between the petitioner and respondents Nos. 1 and 2 from the collaboration agreement; and the only reason that the said application was withdrawn was because the petitioner had itself moved an application bearing I.A. No. 10177/2022 seeking impleadment of the proposed respondents in the same proceedings; f. Lastly, it also cannot be ignored that in view of the definition of the term "Parties" as contained in the collaboration agreement, and the fact that the collaboration agreement is intended to be binding on the successors of the signatory parties, surely, the presence of such successors-in-interest, whose rights are bound to be affected by the outcome of possible arbitral proceedings, would have to be made parties to the present petition seeking appointment of an arbitrator;

g. Though the present order pertains only to the issue of impleadment of the proposed respondents in the present proceedings and does not purport to decide whether the proposed respondents are to be referred to arbitration or not, to address an argument made by the proposed respondents that they are not covered within the 'group company doctrine' enunciated in Chloro Controls India Pvt Ltd. (supra), it may be observed that reference of non-signatory parties to arbitration is not unknown to law, nor is it impermissible. This however is a matter to be dealt with subsequently at the stage of deciding the arbitration petition itself.

14. At this point, a word on the peculiar stand taken by the petitioner and the proposed respondents in the section 9 proceedings may not be out of place. Though strictly speaking, the petitioner's stand in its reply to I.A No. 3130/2021 in the section 9 petition was contrary to what the petitioner is saying in the present application; clearly, so was the position taken by the proposed respondents based on which I.A No. 3130/2021 was filed by the proposed respondents in the first place. Notwithstanding these contradictory stands taken by both sides, this court must proceed objectively on whether the proposed respondents are indeed necessary or proper parties to the present proceedings. It is relevant to note, that the basis for withdrawal of I.A No. 3130/2021 was the fact that the petitioner had moved I.A. No.10177/2021 in the same section 9 petition seeking impleadment of the proposed respondents. Curiously however, even in its reply to I.A.No.10177/2021, the proposed respondents opposed their impleadment in the matter.

15. In view of the above discussion, in the opinion of this court, the proposed respondents cannot but be said to be successors-in-interest of respondents Nos. 1 and 2 in relation to the subject land, which land is the subject-matter both of the collaboration agreement and the sale deed. Though the proposed respondents did not sign the collaboration agreement, since the proposed respondents are included within the definition of "Parties" as contained in the collaboration agreement, the proposed respondents must be deemed to have stepped into the shoes of respondents Nos.1 and 2 in relation to the subject land. It is not necessary to decide, at this stage, whether the proposed respondents are 'assigns' under the collaboration agreement or what rights and obligations under the collaboration agreement have travelled to the proposed respondents.

16. For the reasons discussed above, in the opinion of this court, the proposed respondents are 'necessary', and in any case, 'proper' parties to the present proceedings.

17. Accordingly, the present application is allowed; and the proposed respondents are impleaded as respondents Nos. 3, 4, 5 and 6 to the petition.

18. Let the amended memo of parties filed along with the application, be taken on record.

19. The application stands disposed-of in the above terms.

20. Nothing in this order is an expression on the merits of the arbitration petition pending consideration before the court.

21. Re-notify for consideration on 04th November 2022.

ANUP JAIRAM BHAMBHANI, J OCTOBER 20, 2022/uj