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IN THE HIGH COURT OF DELHI

OMP.No.451/2004

Reserved on: 25.02.2005.

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Date of Decision : March /6 , 2005.

#Kunj Vihar Co-operative Group
Housing Society Ltd.

... Petitioner

!

through:

Mr.Valmiki Mehta, Sr.Adv. with
Mr.A.Maitri, Advocate.

VERSUS

\$Vinod Kumar Singhal & Ors.

... Respondents

!

through :

Mr.P.N. Lekhi, Sr.Adv. With
Mr.Neeraj Malhotra, Advocate.

Coram:-

*Hon'ble Mr.Justice S.K. Agarwal

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

S.K. Agarwal, J.

The petition stands disposed of in terms of the detailed order
passed in OMP NO.337/2004.


S. K. AGARWAL, J.

March /6, 2005
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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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IN THE HIGH COURT OF DELHI

OMP.No.337/2004

Reserved on: 25.02.2005.

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Date of Decision : March 16, 2005.

#M/STechno Construction & An. ... Petitioners

through : Mr.P.N. Lekhi, Sr.Adv. With
Mr.Neeraj Malhotra, Advocate.

VERSUS

\$Kunj Vihar Co-operative Group
Housing Society Ltd. ... Respondent

through: Mr.Valmiki Mehta, Sr.Adv. with
Mr.A.Maitri, Advocate.

Coram:-

***Hon'ble Mr.Justice S.K. Agarwal**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest? | 72

S.K. Agarwal, J.

1. By this petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, "the act"), M/s Techno Construction, through one of its partners, has prayed for ad-interim injunction restraining M/s Kunj Vihar Co-operative Group Housing Society Ltd. (hereinafter, "respondents") from terminating the construction agreement dated 13.11.2001 and restraining them from awarding the contract for

completion of the unfinished work, under the said agreement to any third party till the conclusion of arbitral proceedings between the parties.

2. The facts in brief necessary for the disposal of this petition are as follows. The respondents floated tender for construction of high-rise, residential flats at Plot No.19, Sector -12, Dwarka, New Delhi (hereinafter, "the site"). Petitioners' tender was accepted and on 13.11.2001 an agreement was executed, in respect of the construction work (hereinafter, "the Agreement"); possession of the site was given to them and they commenced the construction and completed about 50% of the work in one year. Petitioners in the course of construction raised 13 (thirteen) running bills, which were duly paid. It is pleaded that petitioners continued to work and in the month of August, 2004, bills amounting to Rs.80,00,000/- remained outstanding. Petitioners approached Secretary of the respondents'-society for getting the dues cleared, who assured that the payment would be made in due course. However, nothing was done and petitioners were forced to lodge a report against Secretary to the President of the society and impressed upon him to clear the bills, expeditiously. On or about 10.9.2004 petitioners came to know that the secretary was planning to award the work under the agreement to some third party (Swati Housing Construction, NIC, New Delhi), without following the procedure of inviting the tender. It was also learnt that he had some vested interest in awarding the work to the third party; and

even feelers were sent to them through the Treasurer of the society saying that if the petitioners agree to relinquish remaining part of the contract, then the society can expeditiously settle the unpaid bills. It is also pleaded that on 19.9.2004, petitioners received letter dated 15.9.2004 from society where they were asked to remove material, equipments and labour from the site and hand over the possession of the site to the society, within ten days. Petitioners tried to resolve the differences but in vain. It is pleaded that petitioners made huge investment in the project and that the stand taken by the society is unreasonable and illegal and that the material worth cores of rupees is lying at the site, and it was physically impossible to remove all the material and equipment within the time given. It was further pleaded that there were about 250 labourers and 30 other staff working at the site and it was not possible to absorb them.

3. It is further pleaded that clause 40 of the Agreement provides for resolution of the disputes through arbitrator. Petitioners have issued notice to the respondent under Section 11 of the Act for appointment of an Arbitrator and petitioners apprehended that respondents may not frustrate arbitral process by awarding the contract to any third party and thus prayed for an interim injunction pending adjudication of their respective rights. In support of this petition, petitioners filed photocopies of the tender documents Annexure P2 (at pages 17 to 84). The respondents filed reply inter alia pleading

that the documents filed by the petitioners are forged and fabricated. The clause 40 of the contract provides for termination of the contract upon dissolution of firm which is missing in the documents filed by petitioners. The respondents in support of reply filed original agreement (pages 116 to 178) and the articles of agreement (pages 180-182).

4. The parties have also filed contempt petition against each other under Article 215 of the Constitution of India, read with sections 2(c), 15 and 17 of the Contempt of Court Act, for initiation of contempt proceedings, inter alia on the plea that the documents filed by the other side are forged and fabricated with an intent to mislead the Court. I have heard learned counsel for the parties and have been taken through the record.
5. Learned counsel for petitioners argued that the photocopies of the contract document filed by the petitioners (pages 17 to 84) are genuine and that the original tender documents filed by the respondent (society) (pages 116-178 & 180-181) are forged and fabricated. Mr. Valmiki Mehta, learned senior counsel for the respondent argued to the contrary. It may be noted here that petitioners have based their case only on photocopies of the documents stating that the originals are with respondents and only photocopies are available them. However, the respondents have filed Original documents. The parties have also examined a few witnesses in support of

their respective contentions. Learned counsel for the parties after some arguments agreed that forging of documents and using them as genuine is a serious offence; that the truth can be determined only after thorough investigations by the police, and that matter be referred to the police for registration of the case, for investigation and prosecution of accused person(s), in accordance with law.

6. One thing appears to be certain; either the documents filed by the petitioners are forged or the documents filed by the respondents are forged. The material produced by the parties, prima facie reveals commission of the offence of forging the documents and using them as genuine. I find it expedient and in the interest of justice that report be lodged with Police. Accordingly, appropriate directions are being issued to the Registrar General, of this Court in concluding para of the order.

7. Mr. Lekhi, learned senior counsel next argued that petitioners are ready and willing to get the dispute settled through an arbitrator in terms of Clause 40 of the Agreement. Learned counsel for the respondent on the other hand argued that without prejudice to their contention that the tender documents (Annexure-2) filed by petitioners are not genuine, they have no objection to the appointment of any independent arbitrator for adjudication of the claims and counter claims of the parties. In view of the same arbitrator is being appointed as per the directions in the last para.

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8. Learned counsel for petitioners next argued that the respondent society be restrained from awarding the contract for completion of the remaining work to any third party under the Agreement for construction of the residential flats at the site, pending adjudication of the rights of the parties by the arbitrator. Learned counsel argued that the contract agreement has been forged by the respondent with the intention to gain undue advantage, therefore, they are not entitled to any relief in equity. Reliance is placed on the Supreme Court decisions in (i) Vineet Manchanda Vs. Nishi Housing Cooperative Society 1987 Vol 2 ALR 10 , (ii) Master Builders and An. Vs. United States of America 1991 DLT 719, (iii) B.S.M. Construction Pvt. Ltd Vs. Rajasthan State Building Construction Ltd. 1991 Vol 1 ALR 417, (iv) S.P.Chengalvaraya Naidu Vs. Jagannath AIR 1994 SC 853 paras 7 & 8, (v) Gugarat Bottling Co. Ltd. Vs.Coca Cola Company AIR 1995 SC 2372 paras 45 & 50, (vi) Satrangi Lal Vs. State of Haryana 1995 CrI.L.J. 969 paras 1, 2, 11 & 14 and (vii) Shanti Devi & Ors. Vs. State of Rajasthan 1994 Vol VI SCC 9 paras 5 & 13. Learned counsel for the respondent argued to the contrary, submitting that the photocopies of the contract document filed by the petitioners are forged; that the originals have not been produced; that the contract for construction cannot be specifically enforced; and that the respondent society without prejudice to their case is even ready to deposit the amount claimed by the petitioners, although no bill has been raised. In support of this submission reliance is placed on the

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decision of this Court in Master Builders and Anr. Vs. United States of America 1991 DLT 719.

9. Law with regard to grant of interim injunction while exercising jurisdiction under section 9 of the Arbitration and Conciliation Act, 1996 is well settled. The protection under this section can be granted only when prima facie case, balance of convenience and irreparable loss and injury is made out. The first question requiring consideration is, whether the contract for construction of building can be ordered to be specifically enforced? Section 14 (1) (a) of the Specific Relief Act, 1963 provides that a contract for non-performance, of which compensation in money is adequate relief, cannot be specifically enforced. In a suit for enforcement of contract for construction of a building, the party seeking specific performance of the contract has to satisfy three conditions, contained in proviso to clause (c) of sub-section (3) of Section 14. These are (i) the building or other work is described in the contract in sufficiently precise terms to enable the court to determine the exact nature of the building or work. (ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and (iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed. In short, before a construction contract can be ordered to be enforced, it has to be held that compensation in money is not the adequate relief. It cannot be disputed that where a contract which cannot be enforced by a decree for specific performance, the same cannot be negatively enforced by issue of an injunction.

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10. Now coming back to the facts: It may be recalled that Petitioner- M/s. Techno Construction is a partnership firm; respondent is a Cooperative Group Housing Society. The Society awarded contract to the petitioner for construction of flats for its members at the site. Petitioners started construction and raised 13 running bills which were duly paid. In terms of order dated 29.9.2004 respondent-society has deposited the amount of 14th running bill, Rs.29,52,972/-, with the Registrar General of this Court. The petitioners claimed that in the month of August, 2004, bills payable by the respondent amounted to Rs.80,00,000/- which remained outstanding, despite reminders. The respondents without prejudice to their case have further agreed to deposit the balance amount, on such terms and conditions, as the Court may deem fit. There is a dispute among the partners. There appears to be some dispute even among the executive members of the society. There are allegations and counter allegations about forgery of documents. Police case is being ordered to be registered. The Arbitrator is being appointed to adjudicate upon the respective claims, which is bound to take time. If during this period the construction is stopped, members of the society would unnecessarily suffer. In the facts of this case in my considered view petitioners' interest can be safeguarded by compensation in money; and the case for specific enforcement of the contract is not made out. They cannot be permitted to hold possession of the site and demand not to allow any third party to complete the remaining construction. The remedy of petitioners would be by way of damages which would be adjudicated after considering claims and counter-claims, in the arbitration proceedings. However, considering the society would be eventually handing

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over the flats to its members and limited resources available with the Society, some directions are called for to safeguard petitioners' interest. For the foregoing reasons, it is ordered as under:

(i) The respondents are directed to deposit balance of Rs.80.0 lacs (Rupees eighty lacs only) after adjusting the amount of Rs.29,52,972/-, towards the 14th running bill, within two weeks, in the Office of the Registrar General of this Court. The entire amount (including the amount earlier deposited by the respondents) shall be kept in fixed deposit, pending adjudication of rights of the parties by the arbitral Tribunal.

(ii) The petitioners are directed to take steps to remove all material lying at site within two weeks. If the same is not done for any reason whatsoever, the Society would be at liberty to remove the same at the risk and cost of petitioners, only after depositing the amount as per direction No.(i)

(iii) The respondents shall be free to have the remaining work executed from any other contractor, after taking measurements of the work already done, through the local commissioner, for this purpose, respondents or the petitioners may approach this Court or the learned Arbitrator.

(iv) The society (respondents) are directed not to hand over the possession of the flats to any of its members without leave of this Court or the Arbitrator as the case may be.

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(v) Registrar General of this Court is directed to lodge a complaint to the DCP (Crime Branch), Delhi for registration of the case, investigating and prosecution of accused person (s), in accordance with directions contained in paras 5 and 6 above.

(vi) Justice Anil Dev Singh, Chief Justice (Retd.) C-14/2, DLF Phase I, Gurgaon Ph.95124 2561119, mobile No.9810060203 is hereby appointed as sole arbitrator for adjudicating claims and counter claims of the parties, as expeditiously as possible. Learned arbitrator shall fix his own fee. The fee and expenses shall be borne equally by both the parties. Parties are directed to appear before learned Arbitrator on 21.3.2005 at 2:30 pm.

11. With the above directions, the interim injunction is vacated. The petition and IA.394/2005 stand disposed of.

S. K. Agarwal
S. K. AGARWAL, J.

March 16, 2005

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Order IA 212/05
(for clarification)

⇒ filed IA 2450/05 (4p 151 CP)