IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

268

ARB-536-2025 (O&M)
Date of Decision:06.04.2026

M/S VCA Estate Private Limited

.....Petitioner

Versus

Baldev Raj and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ambanshu Sahni, Advocate for the petitioner.

Mr. Deepak Basatia, Advocate for respondents No.2 and 3.

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JASGURPREET SINGH PURI J.(Oral)

1. The present is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeking appointment of a sole arbitrator in the present case.

2. Learned counsel for the petitioner submitted that in pursuance of the order passed by this Court on 26.02.2026, he has today produced the original agreement before this Court and a photocopy of the same has already been attached along with the present petition as Annexure P-1. The aforesaid original agreement has been shown to this Court as well as to learned counsel for respondents Nos. 2 and 3. Learned counsel for respondents No. 2 and 3 states that there is no dispute with regard to the aforesaid agreement being executed between the parties, but he has various

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other objections with regard to the present petition filed under Section 11 of the Act. The aforesaid original agreement, after being shown to this Court and to the learned counsel for respondents No. 2 and 3, has been returned to the learned counsel for the petitioner.

3. Learned counsel for the petitioner submitted that there exists an agreement to sell between the parties vide Annexure P-1. The agreement to sell was for the purpose of sale of some land belonging to the respondents, regarding which some earnest money has also been given to the respondents, and the agreement contains an arbitration clause, i.e., Clause No. 23, which provides that in the event of any disputes or differences arising out of the agreement, the same shall be referred to arbitration and the arbitration proceedings shall be conducted by a sole arbitrator mutually appointed by the parties. He further submitted that, since a dispute arose between the parties, the petitioner served a notice upon the respondents vide Annexure P-4 for invoking the arbitration clause and also proposed the names of arbitrators, but a reply was received from the respondents wherein they did not agree to the aforesaid appointment of the arbitrator. Therefore, he submitted that this Hon'ble Court may appoint a sole arbitrator for adjudicating the dispute.

4. On the other hand, learned counsel for respondents Nos. 2 and 3 submitted that he has four-fold objections. Firstly, although there exists an arbitration clause at Clause No. 23, which has been referred to by learned counsel for the petitioner, yet in addition thereto, there exists another clause, being Clause No. 20, which provides for the remedy of

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specific performance, and therefore, the petitioner ought to have filed a suit for specific performance instead of filing the present petition under Section 11 of the Act. Secondly, the signatures on the agreement were obtained from the respondents under undue influence and coercion. Thirdly, the terms and conditions of the agreement were never agreed to by the respondents and were also unreasonable in nature. Fourthly, the phone numbers which have been mentioned against the names of the respondents in the agreement do not belong to the respondents and, in fact, the same belong to the petitioner and some witnesses, which supports the arguments of the respondents that there was an element of undue influence and coercion. Learned counsel for respondents Nos. 2 and 3 further submitted that, in view of the aforesaid four objections, the present petition is liable to be dismissed.

5. He also submitted that, insofar as the earnest money paid by the petitioner to the respondents is concerned, the only amount transferred in favour of the respondents is Rs. 15,93,000/-, which is not in dispute; however, the respondents are ready and willing to refund the said amount to the petitioner, and therefore, the present petition is liable to be dismissed.

6. I have heard learned counsels for the parties.

7. Clauses No.20 and 23 of the agreement are reproduced hereunder:-

> "*20. That in case the Vendors fails to perform their part of the contract, in that event the VENDEE shall be*

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entitled to get this agreement enforced against the VENDORS through specific performance through Civil Court as contemplated under this agreement, Yamuna Nagar Jurisdiction. All costs and expenses incurred by the VENDEE in instituting and prosecuting litigation shall be borne by the VENDORS.

23. That in the event of any disputes or differences arising out of this agreement between the Parties to this Agreement, the same shall be attempted to be resolved through good faith consultation mutually within a period of 15 (fifteen) days from the date of dispute, failing which either Party shall be entitled to refer such a dispute or differences to arbitration. The arbitration proceedings shall be conducted by a sole arbitrator as mutually appointed by the Parties and the arbitration proceedings shall be conducted in accordance with the provision of the Arbitration and Conciliation Act, 1996 and amendments made therein from time to time. The place of arbitration shall be at Yamuna Nagar and the language for arbitration shall be in English. The courts at Yamuna Nagar shall have supervisory jurisdiction over the said arbitration proceedings."

8. The agreement between the parties, of which the original has been produced before this Court and which has been shown to learned

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counsel for respondents No. 2 and 3 as well, has not been disputed by learned counsel for respondents No. 2 and 3. The invocation of the arbitration clause by issuance of notice (Annexure P-4) has also not been disputed by learned counsel for the respondents No. 2 and 3.

9. The four objections which have been raised by learned counsel for respondents Nos. 2 and 3 can be considered. The second, third and fourth objections, being overlapping in nature, can be considered together.

10. It was the argument of learned counsel for respondents No. 2 and 3 that the signatures on the original agreement were obtained by undue influence and coercion and the respondents had never agreed to the terms and conditions of the agreement and the same were also unreasonable and also that the phone numbers were incorrectly mentioned. These objections are to the effect that, on account thereof, the petition under Section 11 of the Act would not lie. However, this Court is of the considered view that these three objections which have been raised by learned counsel for the respondents are unsustainable. It is a settled law that, at the stage of reference, the Court only has to see the *prima facie* existence of an arbitration clause and its invocation thereof by issuance of a notice. Both the aforesaid conditions, which are *sine qua non,* exist in the present case and, rather, they are not disputed by learned counsel for respondents No. 2 and 3. So far as the aforesaid objections which have been raised on merits are concerned, this Court would not go into the same because it would constitute a mini trial, which is not permissible under Section 11 of the Act.

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At the reference stage, the Court would not hold a mini trial because the scope and subject matter of the same lie with the Arbitrator and not before the reference Court. The existence of the aforesaid two conditions, i.e. *prima facie* existence of the arbitration clause and its invocation thereof, is only to be seen-nothing more, nothing less. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in "***SBI General Insurance Company Limited Vs. Krish Spinning***", ***2024 SCC Online SC 1754*** and also another judgment of Hon'ble Supreme Court in "***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re*** *" (2024) 6 SCC 1* and therefore, the law is no longer *res integra. The relevant portion of the aforesaid judgment of Hon'ble Supreme Court passed in* ***SBI General Insurance Company Limited's case (Supra)*** *is reproduced as under:-*

> *"110. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.*
>
> *111. The use of the term 'examination' under Section 11(6-A) as distinguished from the use of the term 'rule' under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the*

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arbitration agreement, and does not include a contested or laborious enquiry, which is left for the arbitral tribunal to 'rule' under Section 16. The prima facie view on existence of the arbitration agreement taken by the referral court does not bind either the arbitral tribunal or the court enforcing the arbitral award.

112. The aforesaid approach serves a two-fold purpose – firstly, it allows the referral court to weed out nonexistent arbitration agreements, and secondly, it protects the jurisdictional competence of the arbitral tribunal to rule on the issue of existence of the arbitration agreement in depth.

113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re: Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

> *"209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall "examine the existence of a prima facie arbitration agreement and not other issues". These other issues not only pertain to the validity of the*

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arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the "other issues" also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. […]

(Emphasis supplied)

114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply

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despite the subsequent decision in In Re: Interplay (supra).

115. The dispute pertaining to the "accord and satisfaction" of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by "accord and satisfaction"

116. The question of "accord and satisfaction", being a mixed question of law and fact, comes within the exclusive jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the arbitral tribunal, should not be looked into by the referral court, even for a prima facie determination, before the arbitral tribunal first has had the opportunity of looking into it."

11. The relevant paragraphs of the aforesaid judgment passed in ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re Case (Supra)*** are also reproduced as under:-

"120. In view of the above discussion, we formulate our

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conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence of an arbitration agreement. Second, parties to an arbitration agreement mutually intend to confer jurisdiction on the arbitral tribunal to determine questions as to jurisdiction as well as substantive contractual disputes between them. The separability presumption gives effect to this by ensuring the validity of an arbitration agreement contained in an underlying contract, notwithstanding the invalidity, illegality, or termination of such contract. Third, when the parties append their signatures to a contract containing an arbitration agreement, they are regarded in effect as independently appending their signatures to the arbitration agreement. The reason is that the parties intend to treat an arbitration agreement contained in an underlying contract as distinct from the other terms of the contract; and Fourth, the validity of an arbitration agreement, in the face of the invalidity of the underlying contract, allows the Arbitral Tribunal to assume jurisdiction and decide on its own jurisdiction by determining the existence and validity of the arbitration agreement. In the process, the separability

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presumption gives effect to the doctrine of competence-competence.

xx xx xx

165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from section 7 of the Arbitration Act. In Duro Felguera (supra), this Court held that the referral courts only need to consider one aspect to determine the existence of an arbitration agreement - whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the

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issue of substantive existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia (supra) in the context of Section 8 and section 11of the Arbitration Act.

166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the referral court. The referral court is not the appropriate forum to conduct a minitrial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the arbitral tribunal. This position of law can also be gauged from the plain language of the statute."

12. In view of the aforesaid settled position of law, the three objections raised by learned counsel for respondents No. 2 and 3 do not sustain and are accordingly rejected.

13. Insofar as the first objection raised by learned counsel for respondents No. 2 and 3 regarding the existence of another clause

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providing for filing of a suit for specific performance is concerned, the same is also not tenable in view of the aforesaid settled position of law. When in an agreement, there exists a specific clause pertaining to arbitration, which remains undisputed then the mere fact that there is some other clause providing entitlement to file a suit for specific performance cannot oust the relevance and operation of the arbitration clause. It is not a case that there is any ambiguity with regard to the arbitration clause. On the other hand, Clause 23, as reproduced above, is rather very clear. Therefore, this Court is of the considered view that the mere fact that there exists another clause, i.e., Clause 20, would not mean that the effect of the arbitration clause gets obliterated, hence, this objection raised by learned counsel for respondents No. 2 and 3 is also rejected.

14. Consequently, the present petition is allowed. Hon'ble Ms. Justice Sneh Prashar (retired), resident of House No. 482, Sector2, Panchkula, Mobile No. 8558809939 is nominated as the Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions including Section 12 of the Act.

15. Parties are directed to appear before learned Arbitrator on date, time and place to be fixed and communicated by learned Arbitrator at her convenience.

16. Fee shall be paid to learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.

17. Learned Arbitrator is also requested to complete the

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proceedings as per the time limit prescribed under Section 29-A of the Act.

18. A request letter alongwith a copy of the order be sent to Hon'ble Ms. Justice Sneh Prashar (retired).

06.04.2026 **(JASGURPREET SINGH PURI)**
shweta **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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