



2025:DHC:7387



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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ARB.P. 1076/2025Date of Decision: **19.08.2025****IN THE MATTER OF:****SURENDER BAJAJ**

S/O LATE H.L BAJAJ,
R/O HOUSE B-45, VISHAL ENCLAVE,
RAJOURI GARDEN,
NEW DELHI-110027

.....PETITIONER

(Through: Mr. Kartik Jasra, Mr. Shivam Jasra, Ms. Vidhi Sharma and Mr. Nakul Khanna, Advs.)

Versus

DINESH CHAND GUPTA

S/O LATE BIR SAHAI GUPTA,
R/O HOUSE/PROPERTY NO. 132,
BLOCK 13-1, PASCHIM VIHAR,
NEW DELHI-110063

SEEMA GUPTA

W/O DINESH CHAND GUPTA
R/O HOUSE/PROPERTY NO. 132,
BLOCK 13-1, PASCHIM VIHAR,
NEW DELHI-110063

RAJENDRA SINGH

S/O RAM SWAROOP SINGH
R/O A6/66, THIRD FLOOR
PASCHIM VIHAR,
NEW DELHI-110063

GAYATRI



2025:DHC:7387



W/O RAJENDRA SINGH
R/O A6/66, THIRD FLOOR
PASCHIM VIHAR,
NEW DELHI-110063

RITA JAIN

W/O DEVENDER KUMAR JAIN
R/O 5A MIG DDA FLATS,
PASCHIM VIHAR,
GULABI BAGH, NORTH DELHI-110007

DEVENDER KUMAR JAIN

S/O HUKUM CHAND JAIN
R/O 5A MIG DDA FLATS,
PASCHIM VIHAR,
GULABI BAGH, NORTH DELHI-110007

.....Respondents

(Through: Mr. Tushar Mahajan and Mr. Tanmay, Advs.)

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

This petition seeks for the following reliefs:

"A. Appoint an Independent Arbitrator to adjudicate the dispute that has arisen between the Petitioner and the Respondent.

B. Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present court."

2. Learned counsel for the petitioner submits that as per Clause 17 of the Collaboration Agreement dated 26.11.2018, the dispute is amenable to be referred to the Arbitrator. He, therefore, submits that in the instant case, the Collaboration Agreement was entered into and petitioner was to carry out



the construction. He further states that *in lieu* of the construction, the possession and ownership of the second-floor was to be handed over. He contends that despite the fact that the construction has already been fully carried out, the respondents, on one pretext or the other, are denying the petitioner's rights.

3. Learned counsel for the petitioner, therefore, submits that the dispute be referred to the Arbitrator.

4. *Per contra*, learned counsel for the respondents by way of his reply has vehemently opposed the aforementioned submissions. He contends that the instant petition is devoid of merit and is misconceived.

5. According to learned counsel for the respondents, the respondent no.1 herein had instituted the civil suit before the Court of the Civil Judge-01, Tis Hazari Courts (West), New Delhi. The said civil suit was instituted seeking a decree of permanent injunction against the petitioner herein, namely Mr. Surender Bajaj and others.

6. It is further stated that the respondents' case before the Civil Court was that they are the owners of the property i.e. Plot no. 132, B-1 Paschim Vihar, New Delhi – 110063, which was purchased through a registered sale deed dated 10.08.2018.

7. He, therefore, contends that when the petitioner herein was served with the summons, the petitioner filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act, 1996'*). According to him, the relevant clause, as was relied upon by the petitioner in application under Section 8 of the Act of 1996, is also the subject matter of the instant petition.

8. He then contends that the application under Section 8 of the Act of



1996 filed by the petitioner came to be rejected by the competent Court *vide* order dated 06.05.2023. It is his case that against the said order the petitioner also filed an appeal before the Court of District Judge-07, Tis Hazari Courts, West, Delhi and even the Appellate Court *vide* order dated 18.04.2024 has rejected the appeal. He, therefore, contends that under these circumstances, the petition under Section 11 of the Act of 1996 is not maintainable.

9. Learned counsel for the petitioner controverts the aforesaid submissions, and, according to him, the controversy involved in the civil suit and in the instant petition is distinct. He contends that in the civil suit, a decree of permanent injunction in favour of the plaintiff and other reliefs had been sought for, whereas, in the instant case, the petitioner seeks for possession of the second-floor of the constructed property. He, therefore, contends that even otherwise, the application under Section 8 of the Act of 1996 came to be rejected by the Civil Judge on a technical ground and, therefore, rejection of application under Section 8 of the Act of 1996 would not bar plaintiff to take recourse under Section 11 of the Act, 1996.

10. I have considered the submissions made by learned counsel for the parties and have perused the record.

11. It remains undisputed that *vide* order dated 06.05.2023, the application filed by the petitioner came to be rejected by the Civil Judge. The paragraph nos. 12 to 16 of the said order is extracted as under:

“12. Counsel for plaintiff has stated that the application is filed without filing the written statement. It is to be noted that the application U/s 8 is to be filed before filing of first defence. In case defendants had filed W.S before filing of application U/s 8 then the application would automatically get barred.

13. The genesis of dispute between the parties can be traced back to



collaboration agreement dated 10.12.2018. It is to be noted that the collaboration agreement is only between plaintiff and defendant no.1. Other defendants have not shown any supplementary agreement or ancillary agreement by virtue of which they are also entitled to be referred to arbitration. The non-signatories defendants have not even filed any application U/s 8 of Arbitration & Conciliation Act.

14. The collaboration agreement which contains the signatures of plaintiff and defendant no.1 however, the witnesses have not signed the agreement. It is settled law that even in the absence of signatures of parties the matter can be referred to Arbitrator (reference in this regard can be made to Judgment titled as Swastik Pipe Ltd. Vs. Shri Ram Autotech Pvt. Ltd. ARB P. 241/21 decided on 05.07.2021)

15. The mandatory requirement of Section 8 (2) of Arbitration & Conciliation Act is filing of original agreement or duly certified copy thereof. Defendant no.1 has not filed the original collaboration agreement containing the arbitration clause. Defendant no.1 has not even stated in his application whether the original agreement is in possession of some other party. No application has been filed by defendant no.1 calling the other party to produce the original agreement if the original collaboration agreement was not with the defendant no.1. In view of the above, the application stands dismissed.

16. Defendant no.1 is directed to file his W.S within thirty days with direction to supply advance copy of the same to the opposite party. Other defendants are also given last opportunity to file their W.S within thirty days with direction to supply advance copy of the same to the opposite party.”

12. An appeal was preferred by the petitioner, and the same was also dismissed *vide* order dated 18.04. 2024. In paragraphs nos. 11 and 12, the following findings have been rendered:

“11. The perusal of the prayer clause of the application moved by the appellant reveals that the same was filed only on behalf of defendant no.1 / appellant and through the same he was praying for referring the present case for Arbitration in view of the Clause 17 of the Collaboration Agreement in question. Moreover, during the course of the arguments, Ld. counsel for appellant has prayed for sending the matter to Arbitration only qua him and if this court accede with the request of the appellant, the same would lead to splitting of the parties and referring the part of the subject matter to Arbitration, which is not permissible under the Scheme of A&C Act.

12.The perusal of the plaint filed by the plaintiff / respondent also reveals that the cause of action against defendant no.1 / appellant, defendant 2



2025:DHC:7387



and 3 is a joint cause of action and it is relevant to underline that defendant no.2 and 3 are neither the signatories to the Collaboration Agreement in question dated 10.12.2018 nor they have moved any application seeking the reference of the matter pending before the Ld. Trial Court to Arbitration and have already filed their written statements, disclosing their defence.”s

13. On perusal of the finding rendered in paragraph no.11, the same would clearly reveal that the Court has opined that sending the parties to an Arbitrator would lead to splitting of the parties and referring the part of the subject matter to Arbitration, which is not the scheme of the Act of 1996.

14. Though various submissions have been made by the learned counsel for the petitioner to contend that such a finding is erroneous and does not bind this Court, however, so long as the order dated 08.04.2024 is not set aside or interfered with, the Court is of the opinion that in the instant application, the similar prayer cannot be repeated to refer the parties to the Arbitrator as the same would amount to *res judicata*.

15. Under the aforesaid circumstances, the Court is not inclined to accept the prayer made in the instant application.

16. Accordingly, the instant petition stands dismissed.

17. The petitioner, however, shall be at liberty to take appropriate recourse in accordance with law.

18. In view of this order, the order dated 06.05.2025 passed by the Court ceases to operate.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 19, 2025
aks/mj