

MOOT COURT PROBLEM

Ghanshyam Das

...Appellant

Versus

M/s. green valley Properties Ltd.

..Respondent

1. The respondent became the owner of the plot no. 05, Phase –II, shrikrishna Avenue, Dhanwantri Nagar, Kanpur measuring about 10568 square meters (hereinafter referred to as the 'property in dispute') by a sale-deed dated 15th of January 1999 executed by the Kanpur Development Board.
2. The appellant and the respondent entered into an agreement for sale of the property in dispute on 1st of December 2003 for a sum of Rs.5,00,00,000/- in which an advance of Rs.2,00,00,000/- (Two Crore Only) was paid to the respondent at the time of executing the agreement for sale. One of the stipulation in the agreement for sale was that the balance amount of the consideration money shall be paid to the respondent at the time of registration of the Sale Deed which shall be executed within ninety days from the date of execution of the agreement for sale. The agreement for sale specifically mentioned that it was the obligation of the respondent to keep the title good till the execution and registration of the sale deed and further to keep the property in dispute free from all encumbrances or charges. It was also agreed that the respondent shall pay all rates, taxes and cesses in regard to the property in dispute upto the date of sale and all dues prior to the Sale Deed. It was further agreed that in case of dispute, the same should be referred to Arbitration under the provisions of Arbitration and Conciliation Act, 1996 (in short the 'Act').
3. The respondent borrowed funds from KDB and various other financial institutions for installation of various kinds of fittings and fixtures and constructed a huge structure and created equitable mortgage by way of deposit of title deeds with various financial institutions. It was clearly understood that at the time of registration of the sale deed, vacant and peaceful physical possession of property in dispute would be delivered by the respondent to the appellant and that the respondent would be bound to remove all plants and structure, fittings and fixtures from their plot in order to deliver possession to the appellant after clearing all its dues to the various financial institutions and keep the title deed ready.
4. For the purpose of execution of the sale deed, the appellant started doubting its bona-fide and, therefore, by a letter/notice dated 1st Feb of February 2004 called upon the respondent to execute the sale deed so that the vacant possession of the

property in dispute could be delivered to him. On 10th of February 2004, the appellant received a letter from the respondent asking him to complete the sale transaction on the very next day i.e. on 11th of February 2004. After the receipt of the letter mentioned above, the appellant approached the respondent and requested the respondent to perform their part of the obligation. The respondent assured the appellant that they would require some more time to remove the structure, fittings and fixtures from the property in dispute as they were very huge in size. They also informed the appellant that they required some more time to make alternative arrangement of other premises where their fittings and fixtures could be kept as they were very expensive and involved a lot of money. As the appellant had already paid an amount of Rs.2,00,00,000/- to the respondent, he had no choice but to keep quiet.

5. The appellant, however, having believed the version of the respondent that they had difficulty in shifting all the fittings and fixtures within a short notice kept quiet till he realized that the intention of the respondent was not honest as he found that the respondent was trying to sell the property in dispute to some other party at a much higher price. Having found that the respondent was not interested to execute the sale deed as agreed upon, he approached the respondent on 1st of July, 2004 to execute the sale deed, when he also intimated the respondent that he was ready and willing to perform his part of the contract to execute the sale deed, the respondent refused to perform its part of the contract and informed that they would not execute the sale deed until and unless the appellant agreed to pay a higher sale consideration over and above what was agreed to between the parties.
6. Having found that the respondent was trying to sell the property in dispute to a third party at a higher price, the appellant filed an application under Section 9 of the Act on 23rd of Sep 2004, before the Civil Judge, Kanpur for injunction restraining the respondent from alienating, altering or creating any third party interest in respect of the property in dispute. With the application, the appellant also filed an application under Order 39 Rule 1 and 2 read with Section 151 CPC for temporary injunction restraining the respondent from transferring, alienating or creating any third party interest in the same.
7. The respondent entered appearance and denied the material allegations made in the application for injunction. It was the specific case of the respondent that since time was the essence of the contract and the appellant having failed to perform his part of the obligation of the contract, the respondent was not bound to execute the sale deed and therefore, the agreement for sale was cancelled by the respondent. Accordingly, it was alleged by the respondent that the application for injunction must be rejected.
8. The Civil Judge at Kanpur by his order dated 20th of November 2004 allowed the application filed by the appellant, inter alia, on a finding that "there are serious issues to be tried before the arbitrator and that the appellant has successfully made out a prima facie case for grant of injunction in the manner prayed for in the application." The learned Civil Judge, Kanpur, while disposing of the application for injunction, came to a finding prima facie that the respondent intended to sell the property in dispute to some other persons at a higher price as it was found that the intending purchasers were frequently visiting for the purpose

of purchasing the property in dispute. The Civil Judge, Kanpur, therefore, held prima facie that the respondent was likely to sell the property in dispute and if it was sold, it would make the award of the learned Arbitrator infructuous for which, the appellant shall suffer irreparable loss and injury. Accordingly, upon the aforesaid findings, the Civil Judge, Kanpur disposed of the application for injunction directing the parties to maintain status quo in the matter of transferring, alienating and creating any third party interest in respect of the property in dispute.

9. It is against this order of Civil Judge, Kanpur, an appeal was filed by the respondent under Section 34 (1) of the Act before the High Court.
10. Before proceeding further, it may be kept on record that in the meantime, an application was filed under Section 11 of the Act by the appellant before the High Court for appointment of an Arbitrator. The High Court by its order dated 27th of February 2005 appointed a retired Judge of the High Court as the sole Arbitrator to decide the disputes raised by the parties.

11. The appeal filed by the respondent against the order of the Civil Judge, Kanpur directing the parties to maintain status quo, was taken up for hearing by the High Court and the High Court, by its impugned order, set aside the order of the Civil Judge, Bangalore and made a final order in the following manner :

2. The order dated 20.11.2004 passed by the Civil Judge, Kanpur in A.A.No.30/04 is set aside subject to the condition that the appellant deposits a sum of RS.3,00,00,000/- (Rupees Three crores) only in fixed deposit for a minimum period of six months initially in a nationalized bank and renew the same till the disposal of dispute before the Arbitrator. The original fixed deposit receipt shall be surrendered to the arbitrator.

It is this order of the High Court, which was challenged by way of a Special Leave Petition, which on grant of leave, was heard in the presence of the learned counsel for the parties.

Issues:-

1. Whether time was the essence of the Contract?
2. Whether High Court acted arbitrary?
3. Is the scope of arbitration proceeding restricted by the orders of the High Court?
4. Whether the order made by the civil Judge is correct or not?