2023 INSC 454

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2927 OF 2023

M/S. ASIAN AVENUES PVT LTD. ... APPELLANT

versus

SRI SYED SHOUKAT HUSSAIN ... RESPONDENT

J U D G M E N T

ABHAY S. OKA, J.

FACTS

1. The present appeal is by the defendant in a suit filed by the respondent. The respondent-plaintiff claims to be the owner of the suit property, more particularly described in the plaint. There was a Development Agreement-cum-General Power of Attorney (for short, 'the Development Agreement') executed on 23rd October 2008 by and between the appellant and the respondent. By the Development Agreement, the appellant was granted permissive possession for the purposes of carrying out development work on the property subject

matter of the Development Agreement. There was a dispute between the parties, which led to the respondent cancelling the Development Agreement. The respondent issued a legal notice to the appellant calling upon him to execute a deed of cancellation of the Development Agreement. The prayer in the suit is for a decree directing the appellant to execute a deed of cancellation in respect of the Development Agreement. There is also a prayer for the delivery of possession of the suit property.

2. After the suit summons was served, the appellant filed an application under Rule 11 of Order VII of the Code of Civil Procedure, 1908 (for short, 'CPC'). The application was filed on the ground that in view of the arbitration clause in the Development Agreement, the dispute ought to be referred to arbitration. There was a prayer made for referring the dispute to arbitration. The Trial Court rejected the plaint. The Trial Court also exercised power under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act'). The Trial Court directed the parties to refer their dispute to arbitration. In a revision application preferred by the respondent, the High Court has interfered and has set aside the order of the Trial Court.

SUBMISSIONS

3. The learned counsel appearing for the appellant pointed out that the High Court relied upon a decision of the Division Bench of the same Court, which holds that the adjudication on the issue whether there is a cancellation of the Development

Agreement will operate *in rem* and therefore, the arbitration clause cannot be invoked.

4. The learned counsel appearing for the appellant relied upon a decision of the Bench of three Hon'ble Judges of this Court in the case of ***Deccan Paper Mills Company Limited v. Regency Mahavir Properties and Ors.***[1]. He submitted that this Court has held that action instituted under Section 31 of the Specific Relief Act, 1963 (for short 'the Specific Relief Act') is not an action *in rem*. He would, therefore, submit that the order of the High Court is erroneous and, therefore, the order of the Trial Court be restored.

5. The learned counsel appearing for the respondent submitted that the arbitration clause will not apply as the prayer in the suit is for cancellation of the agreement in accordance with Section 31 of the Specific Relief Act. Her submission is that the issues arising under Section 31 of the Specific Relief Act can be adjudicated only by a competent Civil Court.

OUR VIEW

6. We have considered the submissions. Admittedly, there is an arbitration clause in the Development Agreement, which reads thus:

> "**All the disputes arising out of or in connection with this agreement** shall be initially resolved by mutual discussions among the developer and landowner or the nominated representatives of both the

[1] (2021) 4 SCC 786

> parties. **In case of disputes not resolved by mutual discussions, the same shall be referred to the arbitration in accordance with the provisions of the Arbitration and Conciliation Act 1996.** The disputes shall be referred to the mutually agreed arbitrator within from the cause of action. The award of the arbitrator shall be binding and final on both the parties."
>
> (emphasis added)

7. The dispute, whether the Development Agreement stands cancelled or whether the agreement can be lawfully cancelled, is a dispute arising out of or in connection with the Development Agreement. Therefore, as per the arbitration clause, if the issue concerning cancellation is not mutually resolved, the same must be referred to arbitration.

8. The only ground on which the High Court has interfered is that the adjudication pursuant to invocation of Section 31 of the Specific Relief Act is an adjudication *in rem*. However, in the case of ***Deccan Paper Mills Company Limited*[1]*,*** this Court has categorically held that it is impossible to hold that an action instituted under Section 31 of the Specific Relief for cancellation of an instrument is an action *in rem*. In view of the applicability of the arbitration clause to the dispute subject matter of the suit filed by the respondent, the learned Trial Judge was justified in passing an order under Section 8 of the Arbitration Act by directing that the dispute be referred to the arbitration.

9. Therefore, the appeal succeeds. We set aside the impugned judgment and order of the High Court and restore the judgment and order of the Trial Court. Parties shall act in accordance with the mandate of Section 8 of the Arbitration Act. The appeal is allowed on the above terms with no order as to costs.

.....J.
(Abhay S. Oka)

.....J.
(Rajesh Bindal)

New Delhi;
April 28, 2023.