

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Arbitration Application No. 36 of 2023

M/s Bodhraj Construction, having office at Katwin House, Niwaranpur, P.O. Doranda, P.S. Chutia, District Ranchi-834002, through its Proprietor Mr. Gurnam Singh, Son of Late Raghubir Singh, aged about 57 years, Resident of Overbridge, Krishna Niwas, Third Street, P.O. Anantpur, P.S. Chutia, District Ranchi.... ... Petitioner

Versus

1 (a) Snehanshu Sinha, Son of Late Ajay Kumar Sinha, Resident of Flat No. F-1, Bodhraj Enclave, Anantpur, P.O. Doranda, P.S. Chutia, District Ranchi-834002

1 (b) Divyanshu Sinha, Daughter of Late Ajay Kumar Sinha, Resident of Flat No. F-1, Bodhraj Enclave, Anantpur, P.O. Doranda, P.S. Chutia, District Ranchi-834002

2. Bandana Sinha, Wife of Ajay Kumar Sinha, Resident of Flat No. F-1, Bodhraj Enclave, Anantpur, P.O. Doranda, P.S. Chutia, District Ranchi-834002 Respondents

CORAM: HON'BLE THE CHIEF JUSTICE

For the petitioner: Mr. Prashant Pallav, Advocate

Mr. Parth Jalan, Advocate

For the Respondents: Mr. Pandey Neeraj Roy, Advocate

Reserved on: 28.02.2025

Pronounced on: 04 / 04/2025

M.S. Ramachandra Rao, C.J.(Oral)

1) This arbitration application has been filed under section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator to resolve the dispute between the applicant and the respondents arising out of an agreement for sale dt. 27.9.2010 executed between the applicant and the deceased 1st respondent.

- 2) The said agreement for sale dt. 27.9.2010 was executed between the applicant and the deceased 1st respondent for sale of a property situated being Flat No. F- 1, 1st Floor, Bodhraj Enclave, Anantpur, P.O. Doranda, P.S. Chutia, District Ranchi.
- 3) Clause 18 of the said agreement contains the arbitration clause.
- 4) Disputes arose between the parties with regard to certain additional construction allegedly made by the applicant at the request of the deceased 1st respondent and also certain extra work allegedly done by the applicant on his request.

The case of the applicant

- 5) The claim of the applicant is that only some payment was made to the applicant but a balance payment of Rs. 8,32,400/- (INR Eight Lakhs Thirty-Two Thousand Four Hundred Only) was not made though applicant handed over the possession of the property in April, 2011 to the 1st respondent. The applicant contended that it declined to execute registered sale deed unless balance amount is paid by the 1st respondent.
- 6) The applicant invoked Clause 18 of the agreement for sale dt. 27.9.2010 and issued a notice on 10.10.2023 to the 1st respondent for appointment of an arbitrator for adjudication of the dispute between the parties. The applicant proposed the name of an advocate as an independent arbitrator for adjudication of the dispute between the parties.
- 7) The respondent sent a reply on 11.11.2023 stating that there was an order passed by the Chief Executive Officer, Ranchi Municipal Corporation under section 21 (2) & (3) of the Jharkhand Apartment

(Flat) Ownership Act, 2011 in Case No. 146 of 2014 which had been decided on 29.01.2018 asking the respondent to make certain payments; and the respondent had filed an appeal against the said order which is pending.

8) The applicant, therefore, sought for appointment of an arbitrator on the ground that the 1st respondent had refused to appoint an arbitrator.

9) Pending the arbitration application, the 1st respondent died and his wife was impleaded as his legal representatives.

The stand of the respondents

10) The respondents contended that they had filed a J.A. Reg. Case No. 146 of 2014 under section 21 (2) & (3) of the Jharkhand Apartment (Flat) Ownership Act, 2011 praying for execution and registration of the flat in question in their favour in which the applicant was arrayed as O.P. No. 5; that certain findings had been recorded in the order dt. 29.1.2018 passed in the said case by the Chief Executive Officer, Ranchi Municipal Corporation to which the respondents objected; and thereafter proceedings were dropped in the said case on 10.6.2019 which were challenged by them in Appeal No. 28 of 2019 under section 33 of the Act before the Commissioner, South Chhotanagpur Division, Ranchi.

11) The respondents contended that to avoid a decision therein, the applicant had got issued the legal notice dt. 11.8.2023. It is also contended that instead of contesting the pending appeal, the applicant

issued a notice dt. 29.9.2023 invoking the arbitration clause in the agreement of sale dt. 27.9.2010 making certain claims therein.

12) It is contended that no appointment of arbitrator to be made which would invite parallel adjudication or would circumvent the adjudication already made or pending before another competent forum. Therefore, the powers under section 11 of the Arbitration and Conciliation Act, cannot be exercised in the instant case.

Rejoinder of the applicant

13) A rejoinder was filed thereto by the applicant contending that the proceeding initiated under the Jharkhand Apartment (Flat) Ownership Act, 2011 was dismissed by the primary authority on 10.6.2019 but an appeal is pending before the appellate authority.

14) According to the applicant, in the application filed by the respondent in the said forum, the relief sought is covered under section 32 of the Jharkhand Apartment (Flat) Ownership Act, 2011 but the claim of the applicant does not fall within the scope of the said law.

15) It is contended that the plea of the applicant relates to the alleged illegal occupation of the premises by the respondents and the applicant is seeking their eviction and is also seeking damages which reliefs cannot be granted by the authorities under the Act of 2011.

16) Counsel for the applicant contended that in view of Clause 18 of the agreement to sale executed between the parties, it is incumbent on the part of this Court to appoint an arbitrator in view of the refusal of the respondent to do so.

17) Counsel for the respondents, on the contrary, contended that it was the duty of the applicant to raise an objection in the proceedings taken under the Jharkhand Apartment (Flat) Ownership Act, 2011 by the respondent to the continuation of the said proceeding by invoking section 8 of the Arbitration and Conciliation Act, 1996 and stall the proceeding under the said law.

Consideration by the Court

18) Admittedly, under section 8 of the Arbitration and Conciliation Act, 1996 a *judicial* authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.

19) Thus, the question arises whether the competent authority under the 2011 Act is a judicial authority.

20) Section 3(1) of the Act defines “competent authority” as an officer or authority who or which may be vested by the State Government by a notification in the official gazette with “*executive powers*” to perform duties and function of the competent Authority and for implementing the provisions of the Act and the rules made there under for such areas as may be specified in the notification under the general guidance, superintendence and control of the State Government.

21) Thus, what power is conferred on the “competent authority” under the Act of 2011 is only an *executive power* and not a judicial power and, therefore, he is not a judicial authority.

22) No doubt section 21 of the Jharkhand Apartment (Flat) Ownership Act, 2011 confers certain powers on the competent authority to impose a penalty in the case of failure on the part of the promoters of the Apartments to execute a deed of the Apartment/Flat in certain circumstances and empowers it to issue a certificate to a registration officer that it is a fit case for enforcing registration and to direct the applicant to present a deed of apartment though not executed by other party for unilateral execution and registration and the registering authority should then register the instrument.

23) But this power is not a judicial power as he is not required to adjudicate anything and he only exercises an executive power akin to that exercised under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The said provision has been interpreted by the Supreme Court in the case of *Balkrishna Rama. Tarle v. Phoenix ARC (P) Limited*¹, and in *NKGSB Cooperative Bank Limited v. Subir Chakravarty and others*², to be simply a *ministerial power* and that it does not involve any element of quasi-judicial function or application of mind and a magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more.

¹ (2023) 1 SCC 622

² (2022) 10 SCC 286

24) It was held in *M/s. R. D Jain and co. v. Capital First Limited and others* (2023) 1 SCC 675, that section 14 does not involve an adjudicatory process at all.

25) When the only power conferred under the 2011 Act on the competent authority is a mere executive power and not a quasi-judicial or judicial power(having regard to the language in section 3(1) of the 2011 Act), it is not open to the respondents to contend that on account of pendency of some proceedings under the 2011 Act, an arbitrator cannot be appointed notwithstanding the existence of the arbitration clause between the parties in the agreement of sale in spite of a notice having been issued invoking the said clause.

26) In this view of the matter, this application is allowed and Sri Rajesh Kumar Vaish, retired Principal District & Sessions Judge of this Court is hereby appointed as the Sole Arbitrator to preside over the Arbitral Tribunal and arbitrate the dispute between the parties.

27) Learned Arbitrator would be free to lay down the fees and other expenses towards conduct of the arbitration proceedings, however keeping into account the ceiling prescribed under Schedule IV of the Act of 1996 as amended. Learned Arbitrator would endeavor to conclude the proceedings expeditiously, also taking into regard the mandate of the Legislature under Section 29-A of the Act of 1996.

28) The Registry is directed to intimate the arbitrator so appointed to take up the arbitration proceeding and provide photocopy of the entire pleadings along with copy of the entire order sheet to the learned Arbitrator.

- 29) Pending Interlocutory Applications, if any, stand disposed of.
- 30) Urgent Certified Copies as per Rules.

(M.S. Ramachandra Rao, C.J.)

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