
(2014) 04 CAL CK 0017
In the Calcutta High Court
Case No : A.P. No. 646 of 2014

Dinesh Agarwal

APPELLANT

Vs

Knight Deal Trade Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2015) 3 WBLR 330

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Kishore Dutta, Advocate for the Appellant; S.N. Mitra, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.

1. This petition under Section 9 of the Arbitration and Conciliation Act, 1996 is based on an arbitration agreement not contained in the matrix contract executed by the parties or by way of a separate agreement governing the matrix contract involving the petitioner. The petitioner seeks to invoke the arbitration agreement as contained in the original agreement for sale of the concerned immovable property as the petitioner claims to be the assignee thereunder and says that his agreement with the first respondent should be deemed to have incorporated the arbitration clause as part thereof. As the petitioner puts it, "A" entered into an agreement for sale with "B" which "B" subsequently assigned in favour of "C" and which "C" then assigned in favour of "D". The petitioner claims to be in the position of "D" and says that the first respondent is in the position of "C". The petitioner says that the document executed between the petitioner and the first respondent pertaining to the relevant property also included the owner of the property and the initial purchaser as confirming parties.

2. It is well established that an arbitration clause is not to be presumed to have

been incorporated in a subsequent agreement merely because the subsequent agreement refers to the previous agreement or incorporates the terms of the previous agreement. An arbitration agreement has to be specifically incorporated in a subsequent document for the disputes arising under the subsequent agreement to be governed thereby. There are several reasons why the principle remains unchallenged for decades. To begin with, arbitration is by consensus and if there is any doubt, it is settled in favour of the disputes being resolved in accordance with the regular procedure. Secondly, an arbitration agreement takes away the disputes to an arbitral forum and unless the Court is completely satisfied that the parties having expressly agreed on such aspect, the court will not lightly accept the ouster of the court's authority to adjudicate upon the disputes. Thirdly--even though it may not be relevant in the present context, but it is necessary to appreciate the principle--an arbitration agreement may indicate the arbitrator who may be the person of confidence of the parties to the agreement and such person may not enjoy the confidence of the others who are sought to be bound by the arbitration agreement by the doctrine of incorporation.

3. Since the principle has been enunciated recently in a Supreme Court decision reported at M.R. Engineers and Contractors Pvt. Ltd. Vs. Som Datt Builders Ltd., , it needs no further reiteration.

4. AP No. 646 of 2014 is dismissed since it is found that there is no arbitration agreement between the parties. In the light of the ground for not entertaining this petition, the objection as to territorial jurisdiction is not addressed. There will be no order as to costs.