
(2005) 02 MAD CK 0085

In the Madras High Court

Case No : C.R.P. No. 1177 of 2004 and C.M.P. No. 11527 of 2004

Ford Credit Kotak Mahindra Limited

APPELLANT

Vs

M. Swaminathan

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : AIR 2005 Mad 218 : (2005) 2 ARBLR 468 : (2005) 2 CTC 487 : (2006) 1 LW 758 : (2005) 2 MLJ 137

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : Abdul Hameed, for Anand, Abdul and Vinodh Associates, for the Appellant; T.T. Ravichandran, for the Respondent

Final Decision : Allowed

Judgement

A. Kulasekaran, J.—This revision is filed against the order of dismissal of the application u/s 8 read with Section 5 of the Arbitration and

Conciliation Act, 1996, filed by the petitioner herein.

2. The petitioner and the respondent entered into a loan agreement No. 21602081 dated 30-09-2001 whereby the respondent availed financial

assistance from the petitioner to the extent of Rs. 4,93,000/- for purchase of Ford icon car. The respondent herein agreed to pay the said sum in

36 monthly installments commencing from 03-11-2001 to 03-10-2004. Clause 29 of the said agreement contemplates arbitration clause. The

petitioner herein has issued loan recall notice on 12-01-2004 invoking clause 14 of the agreement as the respondent committed default in repaying

the monthly installments and as on 29-02-2004, the respondent was liable to pay a sum of Rs. 2,68,062/-. The petitioner has also issued a

telegram on 14-01-2004 to the respondent terminating the said loan agreement. The respondent has filed the suit O.S. No. 854 of 2004 before

VIII Assistant City Civil Court, Madras for permanent injunction restraining the petitioner from in any manner re-possessing the vehicle. In the said

suit, the petitioner has filed I.A. No. 3259 of 2004 for injunction, and order of status-quo was granted on 26-02-2004.

3. The petitioner herein has filed I.A. No. 3762 of 2004 in the said suit u/s 8A read with Section 5 of the Arbitration and Conciliation Act, 1996.

The said application was dismissed on the ground that clause 29 of the agreement contemplates that disputes and differences to be settled by the

Arbitrators nominated by the petitioner and the proceedings to be held at Mumbai; whereas clause 30 of the agreement confers jurisdiction of the

Courts at Chennai; that the loan agreement was terminated, hence the arbitration clause contain in the arbitration no longer exists and the Civil

Court is vested with the jurisdiction to entertain the suit and that the respondent has paid 26 installments, only 10 installments remains to be paid.

4. The learned counsel for the revision petitioner submits that when agreement contains arbitration clause, it is mandatory on the part of the civil

court to refer the matter to arbitrator; that the findings of the court below that clause 29 is contradictory to clause 30 is unsustainable; clause 29

stipulates the venue of arbitration at Mumbai, whereas clause 30 confers jurisdiction on the Courts at Chennai to decide the dispute arising out of

the agreement, hence they are not contradictory; that the court below erred in holding that once agreement is rescinded, the arbitration clause also

no longer exists; that the arbitration clause in an agreement is an agreement by itself and the same shall not be deemed to have been terminated by

reason of termination of agreement, when an agreement containing arbitration clause is terminated, the parties to the agreement have to work out

their remedy only by way of arbitration under the terms of the agreement and not otherwise and prayed for setting aside the order passed by the

court below.

5. In support of his contentions, the learned counsel for the petitioner relied on the below mentioned decisions:-

i) Chairman and M.D., N.T.P.C. Ltd. Vs. Reshmi Constructions, Builders and Contractors, wherein the Honourable Supreme Court held in

Paragraph No. 27, 28, 29 and 36 as follows:-

27. Even when rights and obligations of the parties are worked out the contract does not come to an end inter alia for the purpose of

determination of the disputes arising thereunder, and, thus, the arbitration agreement can be invoked. Although it may not be strictly in place but we

cannot shut our eyes to the ground reality that in the cases where a contractor has made huge investment, he cannot afford not to take from the

employment the amount under the bills, for various reasons which may include discharge of his liability towards the banks, financial institutions and

other persons. In such a situation, the public sector undertakings would have an upper hand. They would not ordinarily release the money unless a

"No demand Certificate" is signed. Each case, therefore, is required to be considered on its own facts.

28. Further, necessities non habet legem is an old age maxim which means necessity knows no law. A person may sometimes have to succumb to

the pressure of other party to the bargain who is on a stronger position.

29. We may, however, hasten to add that such a case has to be made out and proved before the Arbitrator for obtaining an award.

36. The appellant has in its letter dated 20th December, 1990 has used the term "without prejudice". It has explained the situation under which the

amount under the "No Demand Certificate" had to be signed. The question may have to be considered from that angle. Furthermore, the question

as to whether the respondent has waived its contractual right to receive the amount or is otherwise estopped from pleading otherwise will itself be a

fact which has to be determined by the arbitral tribunal.

In this case, final bill was submitted by the contractor and the same was returned by the principal disputing the amount. The contractor issued "No

demand Certificate" for releasing of security deposit. The Honourable Supreme Court held that notwithstanding the issue of No Objection

Certificate, the contractor can raise dispute regarding non payment. The question as to whether the respondent has waived its contractual right to

receive the amount or is otherwise estopped from pleading otherwise will itself be a fact which has to be determined by the arbitral tribunal.

ii) (NIIT Limited vs. Ashish Deb and Anr.) 2004 (2) R.A.J. 505 wherein a Division Bench of this Court, in para-15 held thus:-

"15. Though the respondents/ plaintiffs have challenged the validity of the agreement on the ground that a fraud was played on them, the same also can be gone into by the Arbitrator in view of powers given u/s 16 of the Act. This aspect was not considered by the learned Judge while rejecting the application filed u/s 8 of the Act by the appellant/defendant. Hence, we are inclined to interfere with the order passed by the learned Judge."

In that case, the respondent filed a suit to declare the license agreement as invalid and to direct the respondent to pay certain amount towards loss

sustained by the them. The defendant filed an application u/s 8 of the Arbitration and Conciliation Act, 1996 to stay all further proceedings of the

suit and to refer the dispute for arbitration, which was dismissed by the civil court holding that the prayer sought for in the suit cannot be decided

by the arbitrator. The division bench of this Court held that Section 16 of the Arbitration and Conciliation Act gives power to the Arbitrator to

decide even the validity of the agreement. Once it is brought to the notice of the civil court that there was an arbitration agreement, it is obligatory

for the court to refer the matter for arbitration in terms of the arbitration clause and ultimately set aside the order of dismissal passed by the civil

court in the application filed u/s 8 of the Act and held that even validity of the agreement on the ground that fraud was played on them can be gone

into by the Arbitrator by virtue of the powers given u/s 16 of the Act.

iii) Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums, wherein the Honourable Supreme Court, in para-15 held thus:-

15. The question would arise what would be the role of the civil court when an agreement is raised that such an arbitration clause does not apply to

the facts of the case in hand? Learned counsel for the appellant contends that it is a matter which should be raised before the arbitrator who is

competent to adjudicate upon the same and the civil court should not embark upon an inquiry in regard to the applicability of the arbitration clause

to the facts of the case. While learned counsel appearing for the respondent contends that since the applicability of the arbitration clause to the

facts of the case goes to the very root of the jurisdiction of the reference to arbitration, this question will have to be decided by the Civil Court

before referring the matter to arbitration even in cases where there is admittedly an arbitration clause. The answer to this argument, in our opinion is

found in Section 16 of the Act itself. It has empowered the Arbitral Tribunal to rule on its own jurisdiction including rule on any objection with

respect to the existence or validity of the arbitration agreement....

In dealership agreement between the parties, clause 40 contemplates reference of all disputes to sole arbitrator. The corporation, in terms of

contractual powers suspended supply of sales to respondent on account of breach of conditions. The respondent filed suit challenging the decision

of the corporation. The corporation filed application u/s 8 of the Arbitration and Conciliation Act. The Honourable Supreme Court, while setting

aside the order of the trial court as well as the high court held that judicial authorities are mandated to refer the parties to arbitration, once existence

of clause is pointed out and such reference is obligatory. Any objection as to applicability of arbitration clause to the facts of the case has to be

raised before the arbitral tribunal and the tribunal has to consider the same u/s 16 of the Arbitration and Conciliation Act, 1996.

6. The learned counsel for the respondent submits that once the agreement is terminated, the clauses contained in the agreement also gets

terminated automatically; that the petitioner has obtained signatures in blank papers and that the respondent cannot get any relief from the

arbitrator, who has been appointed by the petitioner hence there is every likelihood of bias.

7. In support of this contention, the learned counsel for the respondent relied on the below mentioned decisions.

i) Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and Another, wherein the Honourable Supreme Court, in para Nos. 12, 13 and 14 held

thus:-

12. For interpretation of Section 8, Section 5 would have no bearing because it only contemplates that in the matters governed by Part I of the

Act, Judicial authority shall not intervene except where so provided in the Act. Except Section 8, there is no other provision in the Act that in a

pending suit, the dispute is required to be referred to the arbitrator. Further, the matter is not required to be referred to the arbitral Tribunal, if - (1)

the parties to the arbitration agreement have not filed any such application for referring the dispute to the arbitrator; (2) in a pending suit, such

application is not filed before submitting first statement on the substance of the

dispute; or (3) such application is not accompanied by the original arbitration agreement or duly certified copy thereof. This would, therefore, mean that Arbitration Act does not oust the jurisdiction of the Civil Court to decide the dispute in a case where parties to the Arbitration Agreement do not take appropriate steps as contemplated under Sub-sections (1) & (2) of Section 8 of the Act.

13. Secondly, there is no provision in the Act that when the subject matter of the suit includes subject matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referred the subject matter of the suit to the arbitrators.

14. Thirdly, there is no provision - as to what is required to be done in a case where some parties to the suit are not parties to the arbitration agreement. As against this, u/s 24 of the Arbitration Act, 1940, some of the parties to a suit could apply that the matters in difference between them be referred to arbitration and the Court may refer the same to arbitration provided that the same can be separated from the rest of the subject matter of the suit. Section also provided that the suit would continue so far as it related to parties who have not joined in such application.

In this case, it was held by the Honourable Supreme Court that the Arbitration Act does not oust the jurisdiction of the Civil Court to decide the dispute in a case where parties to the Arbitration agreement do not take appropriate steps as contemplated under sub-sections 1 and 2 of Section 8 of the Act; that when parties to arbitral agreement have not filed any application for referring the dispute to arbitration and in pending suit such application was not filed before submitting first statement on substance of dispute or such application is not accompanied by original arbitration agreement or certified copy thereof, then the matter is not required to be referred to arbitration.

ii) S. Viswanathan and Another Vs. Ashok Leyland Finance Ltd. and Others, , wherein a single judge of this Court held thus:-

4. I have already found that defendants 2 and 3 are neither parties to the house loan agreement dated 1.9.1995, which is between the plaintiffs on the one hand and the first defendant on the other hand, nor they are parties to the letter dated 10.1.2000, which admittedly is written by the second

defendant to the first defendant. The reliefs prayed for in the suit is to set aside the sale of the property forming the subject matter of the suit

executed by the first defendant, in favour of defendants 2 and 3; for recovery of possession from them and for other reliefs.

In this case, the lender, under housing loan agreement executed sale deed in favour of two third parties on the strength of power of attorney

executed by borrower. Housing loan agreement contains clause for arbitration. The borrower and guarantor challenges the execution of sale deed

by way of suit. Purchasers of property are not parties to housing loan agreement. Subsequent correspondence between borrower and lender did

not constitute concluded contract. Dispute raised did not fall within the arbitration clause and lender could not successfully maintain application u/s

8 for referring the disputes to arbitrator.

iii) Dharma Prathishthanam Vs. Madhok Construction Pvt. Ltd., wherein the Honourable Supreme Court held in para-12 thus:-

12. On a plain reading of the several provisions referred to herein above, we are clearly of the opinion that the procedure followed and the

methodology adopted by the respondent is wholly unknown to law and the appointment of the sole arbitrator Shri Swamy Dayal, the reference of

disputes to such arbitrator and the ex parte proceedings and award given by the arbitrator are all void ab initio and hence nullity, liable to be

ignored. In case of arbitration without the intervention of the Court, the parties must rigorously stick to the agreement entered into between the

two. If the arbitration clause names an arbitrator as the one already agreed upon, the appointment of an arbitrator poses no difficulty. If the

arbitration clause does not name an arbitrator but provides for the manner in which the arbitrator is to be chosen and appointed, then the parties

are bound to act accordingly. If the parties do not agree then arises the complication which has to be resolved by reference to the provisions of the

Act. One party cannot usurp the jurisdiction of the Court and proceed to act unilaterally. A unilateral appointment and a unilateral reference - both

will be illegal. It may make a difference if in respect of a unilateral appointment and reference the other party submits to the jurisdiction of the

arbitrator and waives its rights which it has under the agreement, then the arbitrator may proceed with the reference and the party submitting to his

jurisdiction and participating in the proceedings before him may later on be precluded and estopped from raising any objection in that regard...

In this case, the Apex Court held that if the arbitration clause does not name an arbitrator but provides for the manner in which the arbitrator is to

be chosen and appointed, then the parties are bound to act accordingly. If the arbitration clause does not name an arbitrator but provides for the

manner in which the arbitrator is to be chosen and appointed, then the parties are bound to act accordingly. If the parties do not agree then it has

to be resolved by reference to the provisions of the Act. Unilateral appointment and unilateral reference - both will be illegal. Ex parte proceedings

and award given by such arbitrator are void ab initio. It may make a difference if in respect of unilateral appointment and reference the other party

submits to the jurisdiction of the arbitrator and waives its rights which it has under the agreement, then the arbitrator may proceed with the

reference and the party submitting to his jurisdiction and participating in the proceedings before him may later on be precluded and estopped from

raising any objection in that regard.

8. In the light of the arguments of the counsel on either side and also the decisions relied on by them, I proceed to consider the dispute involved in

this case.

9. Section 2-b, 5, 7 and 8 of the Arbitration and Conciliation Act, 1996 are relevant for this case, which runs as follows:-

Sec. 2. Definitions:- ...

(b) "arbitration agreement" means an agreement referred to in Section 7.

Sec. 5. Extent of judicial intervention:- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this

Part, no judicial authority shall intervene except where so provided in this part.

Sec. 7. Arbitration agreement:- (1) In this part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain

disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. (2) An

arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in -

(a) a document signed by the parties:

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and

the reference is such as to make that arbitration clause part of the contract.

Sec. 8. Power to refer parties to arbitration where there is an arbitration agreement:- (1) A judicial authority before which an action is brought in a

matter which is the subject matter of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the

substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly

certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an

arbitration may be commenced or continued and an arbitral award made.

10. The definition of Section 2-b of the Act defines that an arbitration agreement means an agreement referred to in Section 7. Section 7 is quite

comprehensive compared to the definition of the expression "arbitration agreement" as contained in Section 2(a) of the Arbitration Act, 1940. The

provisions of Section 7(1), 7(2), 7(3) and 7(4) and Section 7(5) of the Act materially correspond to Section 6(1), 6 (2), 5 (2), 5 and Section 5 (6)

of the English Arbitration Act, 1996 respectively. Section 7 of the Act is modelled after Article 7 of the Model Law. The reference in a contract to

a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that

arbitration clause part of the contract. The arbitration clause is distinct from the other clauses in the contract. Total breach of the substantive

stipulations, even when it is accepted by other party does not abrogate the arbitration clause and even the party in default may invoke that clause.

The arbitration clause stands apart from the rest of the contract. For deciding whether an agreement is an arbitration agreement under the Act

1996, the test is whether the proposed arbitrator/Tribunal is expected to decide a dispute, contention of the parties and to decide per Law.

Followed K.K. Modi Vs. K.N. Modi and Others, wherein the Honourable Supreme Court in para-17 and 18 held thus:-

17. Among the attributes which must be present for an agreement to be considered as an arbitration agreement are:

(1) The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement,

(2) That the jurisdiction of the tribunal to decide the rights of parties must derive either from the consent of the parties or from an order of the court

or from a statute, the terms of which make it clear that the process is to be an arbitration,

(3) The agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal,

(4) That the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness

towards both sides,

(5) That the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly,

(6) The agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference

is made to the tribunal.

18. The other factors which are relevant include, whether the agreement contemplates that the tribunal will receive evidence from both sides and

hear their contentions or at least give the parties an opportunity to put them forward; Whether the wording of the agreement is consistent or

inconsistent with the view that the process was intended to be an arbitration, and whether the agreement requires the tribunal to decide the dispute

according to law.

11. Section 5 of Arbitration and Conciliation Act, 1996 corresponds to Section 32 of Arbitration and Conciliation Act, 1940. Section 5 of the

new Act, 1996 also corresponds to Article 5 of the UNICITRAL Model Law. Part 4 (v) of the Statement of object and reason to the Act states

that the main objective of the bill is "to minimise the supervisory role of Courts in arbitral process. Coupled with this, the Act, as per provisions of

this Section makes it abundantly clear that no judicial authority shall intervene except where so provided in this part". The scheme of the Act is to

prevent the parties to an arbitration agitating questions relating to the arbitration in any manner other than that provided by the Act. So, a suit where

any question may be raised with regard to the existence or validity of an award is expressly barred by the section. Section 30 of the Specific Relief

Act does not override the provisions of this section, which applies notwithstanding any Law for the time being in force. The stipulations in the Act

vest more authority in the arbitral tribunal to determine the scope and extent of arbitral process rather in the Court, as under the old Act. Under the

Arbitration Act, 1940, a party can approach the Court u/s 33 for determination of the effect of the agreement or its validity and seek injunction for

forestalling the arbitral proceedings u/s 41(b) read with Schedule II Rule 4. If the party succeeded in getting injunction, it would continue with this

for couple of years or more before the matter would finally come before the Court for final disposal. The said tactics resulted in frustrating the

efforts of the aggrieved party to have the claim adjudicated upon. The present Act has changed the situation altogether and instead of rushing to the

Courts on every little excuse as under the old Act, the parties can challenge the validity of the arbitral Tribunal before the Arbitral Tribunal itself

and, the Arbitral Tribunal, after affording an opportunity of being heard to both the parties, it shall act on its own jurisdiction where the arbitral

tribunal takes a decision rejecting the plea to continue with the arbitral proceedings and make an arbitral award.

12. Under the new Act, 1996, there are three sections which basically confers power on Court to intervene in the matter. The main section is

Section 34, which recourse to a Court against the arbitral award by making an application to set aside. The next section, which confers power on

the Court for judicial intervention is Section 37(2) under which appeal can be filed against the order passed by the Arbitral Tribunal u/s 16 (2) or

(3) or against granting or refusing to grant interim measures u/s 17. The Court can intervene also on application u/s 14(2). A conjoint reading of

Sections 5, 17(2), 34 and 37 will show that the Court can intervene only in cases covered u/s 14(2), 34 and 37.

13. Section 8(1) corresponds to Section 34 of the old Act with some difference. Section 8 also corresponds to Article 8 of UNICITERAL model

law. Section 8 contemplates that a party should invoke the attention of the judicial authority to the arbitration agreement and pray for stay so that

the arbitration agreement may be carried out. Where disputes and differences have arisen between the parties to an agreement, the same have to

be settled by the Arbitrator. The Court, u/s 8, has no other option but to direct the parties to the arbitration. The provisions of Section 8 are

mandatory in nature and the appropriate remedies for the parties would be to go to arbitration. Under the provisions of 1996 Act, an arbitrator has

been vested with the power to adjudicate even the validity of an action of termination of contract. Thus, the parties have no other forum to agitate

the matter relating to termination of contract except by the Arbitrator, in the Arbitration forum.

14. Section 8 is intended to make arbitration agreement effective and to prevent a party from going to Court contrary to its own agreement.

Followed Union of India (UOI) Vs. Surjeet Singh Atwal, .

15. Where the parties by contract have agreed to refer their disputes to arbitrator, the Court should, as far as possible proceed to give opportunity

for resolution of disputes through arbitration rather than by judicial adjudication. Followed State of Punjab Vs. Geeta Iron and Brass Works Ltd., .

16. In the case on hand, the respondent herein has committed default, with the result, the petitioner terminated the contract and recalled the entire

amount. Aggrieved by the said action of the petitioner, the respondent has filed the suit. It is argued by the respondent that once the main contract

is terminated, the arbitration clause cannot operate. On behalf of the petitioner, arguments were placed that despite termination, the arbitration

clause is still in existence. It is relevant to refer the judgment of the Apex Court reported in (The Union of India vs. Kishorilal Gupta & Brothers)

Volume XXIII - The Supreme Court Journal Page No. 1102) = AIR 1959 SC 1632 wherein in Page No. 1111, it was held thus:-

The following principles relevant to the present case emerge from the aforesaid discussion: (1) An arbitration clause is a collateral term of a

contract as distinguished from its substantive terms; but nonetheless it is an integral part of it; (2) however comprehensive the terms of an arbitration

clause may be, the existence of the contract is a necessary condition for its operation; it perishes with the contract; (3) the contract may be nonest

in the sense that it never came legally into existence or it was void ab initio; (4) though the contract was validly executed, the parties may put an

end to it as if it had never existed and substitute a new contract for it solely governing their rights and liabilities thereunder; (5) in the former case, if

the original contract has no legal existence, the arbitration clause also cannot operate, for along with the original contract, it is also void; in the latter

case, as the original contract is extinguished by the substituted one, the arbitration clause of the original contract perishes with it; and (6) between

the two falls many categories of disputes in connection with a contract, such as the question of repudiation, frustration, breach etc. In those cases it

is the performance of the contract that has come to an end, but the contract is still in existence for certain purposes in respect of disputes arising

under it or in connection with it. As the contract subsists for certain purposes, the arbitration clause operates in respect of these purposes.

We have held that the three contracts were settled and the third settlement contract was in substitution of the three contracts; and, after its

execution, all the earlier contracts were extinguished and the arbitration clause contained therein also perished along with them. We have also held

that the new contract was not a conditional one and after its execution the parties should work out their rights only under its terms. In this view, the

judgment of the High Court is correct. This appeal fails and is dismissed with costs.

In the above decision, the Honourable Supreme Court held that many categories of disputes in connection with a contract, such as the question of

repudiation, frustration, breach etc., In those cases, it is the performance of the contract that has come to an end, but the contract is still in

existence for certain purposes in respect of disputes arising under it or in connection with it. As the contract subsists for certain purposes the

arbitration clause operates in respect of these purposes.

17. Considering the facts involved in this case, I hold that even after termination of the agreement, the arbitration clause subsists.

18. The above mentioned decisions and also the provisions of Arbitration and Conciliation Act, 1996 make it clear that if a suit is brought by a

party to the arbitration agreement namely suit to challenge the agreement or award, suit to affirm agreement or award, suit inspite of arbitration

agreement are clearly barred by the provisions of Section 8 of the Act and relief, if any, has to be by way of provisions of the Arbitration Act itself.

19. It is not in dispute that the petitioner herein has satisfied the requirements of Section 8 before the trial court. The trial court passed the

impugned order in contravention of Section 8 of the Arbitration and Conciliation Act, hence the same is liable to be set aside and accordingly it is

set aside. The dispute in O.S. No. 854 of 2004 is referred to the arbitrator as mentioned in clause 29 of the agreement. The respondent is at

liberty to canvas all the points and disputes, which are raised in the suit, before the Arbitrator.

20. The Civil Revision Petition is allowed. No costs. Consequently, connected CMP is closed.