
(2016) 11 KAR CK 0045

In the Karnataka High Court

Case No : Civil Miscellaneous Petition No. 127 of 2015

Friends Projects Private Limited

APPELLANT

Vs

Indian Oil Corporation Limited

RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2017) 2 KantLJ 259

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Sri Ramana E V, Advocate, for the Petitioner; Sri R. Gopalakrishna, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court in this petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to resolve the dispute between the parties.

2. At the first instance, the respondent though served was not represented and in that circumstance, the instant petition was disposed of by the order dated 25-1-2016 whereby this Court had appointed the learned Arbitrator to resolve the dispute between the parties. On receipt of notice from the Arbitrator, the respondent have thereafter filed a review petition in R.P. No. 205 of 2015 before this Court. This Court through the order dated 22-6-2015 allowed the same by reviewing the order and the petition was restored for reconsideration. It is in that circumstance the present petition has arisen for consideration.

3. Learned Counsel for the petitioner at this stage would also submit that the respondent in the referred arbitration matter at an earlier point had appeared and filed their version as against the claim petition filed by the petitioner. Though such contention is urged, considering that the same was not one of the aspects which had been taken into consideration when the review petition was

considered, I am of the opinion that at this juncture all that is necessary to be taken note is as to whether there is an arbitration clause in the agreement guiding the parties and as to whether on the other hand the contention put forth by the learned Counsel for the respondent that there is no such arbitration clause is what requires consideration.

4. Heard the learned Counsel for the parties and perused the petition papers.

5. Learned Counsel for the petitioner refers to the clauses at Articles 3 and 4 in the form of contract dated 6-11-2013 to contend that the same provides for arbitration. In that view, the dispute arising between the parties is to be resolved through arbitration.

6. The respondent through their objection statement contended that the said clause does not specifically indicate that the parties have agreed on an arbitration clause and in any event by the special terms and conditions of the contract, Clause 34 contains that the alternate dispute resolution machinery agreed to in the contract would stand deleted. In that view it is contended that at the point when the alleged dispute has arisen, the arbitration clause was not available in the contract and therefore the petition is not maintainable.

7. Learned Counsel for the petitioner would however refer to Clause 46 (hereto and contend that it is only a partial deletion and in that light if the same is taken into consideration, the agreement between the parties to refer the dispute to arbitration would still continue and as such the Arbitrator is required to be appointed.

8. In order to appreciate the rival contentions, it is necessary to extract the clauses on which the reliance has been placed. Clauses 3 and 4 reads as follows:

"Article-3

Jurisdiction

3.1. Notwithstanding any other Court of Courts having jurisdiction to decide the question(s) forming the subject-matter of the reference if the same had been the subject-matter of a suit, any and all actions and proceedings arising out of or relative to the contract (including any arbitration in terms thereof) shall lie only in the Court of competent civil jurisdiction in this behalf at Bangalore (where this contract has been signed on behalf of the OWNER) and only the said Court(s) shall have jurisdiction to entertain and try any such action(s) and/or proceedings(s) to the exclusion of all other Courts.

"Article-4

Entire Contract

4.0 -The Contract Documents mentioned in Article I hereof embody the entire Contract between the parties hereto, and the parties declare that in entering into this Contract they do not rely upon any previous representation, whether express

or implied and whether written or oral, or any inducement, understanding or agreements of any kind not included within the CONTRACT DOCUMENTS and all prior negotiations, representations, Contracts and/or agreements and understandings relative to the work are hereby cancelled."

9. The respondent on the other hand has relied on Clause 34 contained in Annexure-R1 produced along with the objections and another relevant clause is 46 contained in Annexure-R2 produced along with the objection statement.

10. Having taken note of the relevant clauses, at the outset the clause at Article 2 refers to the jurisdiction. While stating so, it has been indicated "including any arbitration in terms thereof". Therefore, the very clause itself is not arbitration clause wherein the parties have agreed to refer the matter to the arbitration. However, as rightly contended by the learned Counsel for the petitioner, such reference would relate to the clause contained in the general conditions of contracts subject to terms and conditions of the contract and also the general conditions of contract. Even if that aspect of the matter is kept in view and it is agreed that at an earlier point, the general conditions of contract provided for arbitration, the clause contained in the special terms and conditions of contract (Annexure-R2) would indicate that the parties have agreed that such clause would stand deleted. Therefore, at a point when a dispute has arisen between the parties, there was no specific agreement between the parties that such dispute would be referred to arbitration.

11. If that be the position, when the parties themselves have not agreed upon referring the matter to arbitration, this Court through this petition under Section 11 of the Arbitration and Conciliation Act, 1996 cannot appoint an Arbitrator.

12. In that view, the prayer made in the petition is declined. The petition is accordingly disposed of.