

(2009) 01 GUJ CK 0012

In the Gujarat High Court

Case No : Special Civil Application No. 15935 of 2008

Gujarat Informatics Ltd.

APPELLANT

Vs

Creative Infocity Ltd.

RESPONDENT

Date of Decision : 28-01-2009

Acts Referred:

Arbitration Act, 1940 — Section 2, 36, 8, 9
Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226, 227

Citation : (2009) 1 GLH 464 : (2009) 2 GLR 1281

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : S.N. Soparkar, for Singhi and Co, for the Appellant; D.C. Dave, for the Respondent

Judgement

M.R. Shah, J.—Rule Mr. D.C. Dave, learned Advocate waives the service of notice of rule on behalf of the respondent.

2. With the consent of the learned Advocates appearing on behalf of the respective parties, present petition is taken up for final hearing today.

3. By way of this petition under Article 227 of the Constitution of India, the petitioner-original defendant has prayed for appropriate writ, order and/or direction quashing and setting aside the impugned order passed by the learned 8th Additional Senior Civil Judge and Judicial Magistrate, First Class, Gandhinagar dated 22-12-2008 insofar as directing the parties to the suit to maintain status quo position with respect to the disputed property for a further period of 45 days, While allowing application Exh. 17 submitted by the petitioner-defendant directing the parties to the suit to go for arbitration as per the arbitration clause in the concession agreement.

4. That the concession agreement was executed between the plaintiff and the defendant on 1-8-2000, and thereafter, further Master Lease Agreement came to be executed in furtherance of the aforesaid Concession Agreement dated

26-2-2001. Clause 24.4 of the concession agreement provides for resolving the dispute between the parties through arbitration. Thereafter both, concession agreement and master lease agreement came to be terminated by the petitioner-defendant. The respondent-plaintiff instituted Regular Civil Suit No. 427 of 2008 in the Court of learned Senior Civil Judge, Senior Division, Gandhinagar for permanent injunction only, restraining the defendant its agent, servants etc. from disturbing the plaintiff's possession of the project/site/facilities/building as per the description thereof in the master lease agreement and from obstructing the plaintiff, its servants, agents etc. in carrying on activities there at and collecting rent and other amounts from the sub-lessees and providing facilities to them, mainly contending inter-alia that the plaintiff cannot be dispossessed without following due process of law. In the said suit, the plaintiff submitted application u/s 8 of the Arbitration Act to refer the dispute to the arbitral Tribunal invoking Clause 24.4 of the concession agreement. The said application Exh. 17 came to be allowed by the learned 4th Additional Senior Civil Judge and Judicial Magistrate, First Class, Gandhinagar by directing both the parties to approach arbitral Tribunal or other appropriate forum as provided in the Concession Agreement. However, the learned trial Court further passed an order directing both the parties to maintain status quo position with respect to the disputed property for a further period of 45 years from the date of pronouncement of the said order in order to enable the respondent plaintiff to approach the appropriate forum. Being aggrieved by and dissatisfied with that part of the order passed by the learned trial Court dated 22-12-2008 passed below application Exh. 17 by which the learned trial Court has directed both the parties to maintain status quo position with respect to the disputed property for a further period of 45 days from the date of pronouncement of the said order in order to enable the respondent plaintiff to approach the appropriate forum, the petitioner-defendant has preferred present Special Civil Application under Article 227 of the Constitution of India.

5. Mr. Soparkar, learned Senior Advocate appearing on behalf of the petitioner defendant has vehemently submitted that the impugned order passed by the learned trial Court granting protection/relief in favour of the plaintiff and directing both the parties to maintain status quo with respect to the disputed properties for a further period of 45 days is absolutely illegal and without jurisdiction. It is submitted that once it is held by the learned Judge while allowing application Exh. 17 submitted u/s 8 of the Arbitration that as per Clause 24.4 of the concession agreement (arbitration clause) the dispute is required to be referred to arbitration and when the parties are directed to approach the arbitral Tribunal as per the concession agreement, the trial Court has no jurisdiction to pass any further order.

6. In support of his above submission, Mr. Soparkar has relied upon the decision of the Supreme Court in the case of P. Anand Gajapathi Raju and Others Vs. P.V.G. Raju (Died) and Others, He has further submitted that in the facts and circumstances of the case, the learned trial Court ought not to have exercised

inherent powers u/s 151 of the Code of Civil Procedure. It is submitted that it appears that the learned trial Court has granted interim relief in favour of the plaintiff for a further period of 45 days so as to enable the plaintiff to approach the appropriate forum which is not permissible. It is submitted that once it is held that the parties are governed by the arbitration agreement, in that case, if a party to the said agreement wants to obtain any interim injunction/relief, the same can be done only u/s 9 of the Arbitration Act (concerned District Judge). It is, therefore, submitted that granting of such a relief directing the parties to maintain status quo for a period of 45 days while directing the parties to approach arbitral Tribunal, the learned trial Court has virtually exercised the powers of the District Judge u/s 9 of the Arbitration Act, which is absolutely without jurisdiction as the said Court is not possessing such power u/s 9 of Arbitration Act. Therefore, it is requested to allow present Special Civil Application and quash and set aside that part of the impugned order dated 22-12-2008 by which the learned trial Court has directed both the parties to maintain status quo with respect to the disputed property for a further period of 45 days, while directing the parties to approach arbitral Tribunal.

7. Mr. Soparkar, learned Senior Advocate has relied upon the decision of the Hon'ble Supreme Court in the case of The State of Orissa Vs. Madan Gopal Rungta, in support of his submission that once Court declines to consider the case on merits, and relegated the party to approach the alternative forum and/or appropriate forum, Court cannot grant any further relief/interim relief so as to enable the party to approach appropriate forum and/or competent appropriate forum or appropriate forum.

8. Petition is opposed by Mr. D.C. Dave, learned Advocate appearing on behalf of the respondent-original plaintiff. It is submitted that u/s 151 of the Code of Civil Procedure, the learned trial Court is having ample jurisdiction to pass such orders as may be required in its discretion to meet the ends of justice. It is submitted that when the learned trial Court has granted the said protection for valid reasons, to meet with the ends of justice, it is not open for the respondent to object the same by filing petition under Article 227 of the Constitution.

9. It is submitted that the decision relied upon by the petitioner in the case of The State of Orissa Vs. Madan Gopal Rungta, has no application, as u/s 8 of the Arbitration Act, the trial Court acts in aid of the adjudication of the subject-matter of the suit by relegating the parties to the arbitration. It is submitted that in absence of the contrary provisions u/s 8 of the Arbitration Act, taking away the jurisdiction to pass such further orders in aid of its main object to refer the dispute to arbitration, it has ample jurisdiction u/s 151 of the CPC to grant such protection.

10. Mr. Dave, learned Advocate appearing on behalf of the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, and in the case of Rajasthan SRTC and Others Vs. Mohar Singh, in support of his submission that the plaintiff cannot

be dispossessed without due process of law.

11. By making above submissions and relying upon the decisions aforesaid, it is requested to dismiss the present Special Civil Application.

12. Heard the learned Advocates appearing on behalf of the respective parties.

13. At the outset, it is required to be noted that considering Clause 24.4 of the Concession agreement, the learned trial Court has allowed the application Exh. 17 submitted by the petitioner defendant invoking Section 8 of the Arbitration Act and relegating the parties to arbitration as per Clause 24.4 of the Concession agreement. Thus, the learned trial Court has held that the parties are governed by arbitration agreement and the dispute in the suit is required to be referred to arbitration. Once it is so held, the learned trial Court has no jurisdiction to pass any further order. As held by the Hon''ble Supreme Court in the case of P. Anand Gajapathi Raju (supra), once Court refers the parties to arbitration in terms of the arbitration agreement, nothing remains to be decided in the suit arising therefrom and all the rights, obligations and remedies of the parties would be governed by the Arbitration Act including the right to challenge the award. Even in the said decision the Hon''ble Supreme Court has held that there is no question of stay of proceedings till arbitration proceedings conclude and award becomes final in terms of the provisions of the Arbitration Act. In the case of Adhunik Steels Ltd. Vs. Orissa Manganese and Minerals Pvt. Ltd., in Para 12 the Hon''ble Supreme Court has observed as under:

12. Power and jurisdiction of the Courts in territorial matters has been the subject by and large discussion. The relationship between the Courts and the arbitral Tribunal have been said to swing between forced cohabitation and true partnership. Process of arbitration is dependent on the underlying support of the Courts who alone have power to rescue the system when one party seeks to sabotage it.

14. It appears on considering the impugned order that while directing both the parties to maintain status quo position with respect to the disputed property for a period of 45 days, it appears that the same is granted so as to enable the plaintiff to approach appropriate forum under Arbitration Act as provided in the concession agreement. In Para 20, the learned trial Court has observed as under:

20. It appears that when the present plaintiff has filed the Special Civil Application before the Hon''ble High Court, the defendant has taken stand that the Civil Court has jurisdiction and when the present plaintiff has approached the Civil Court, then the defendant is taking stand that the matter is required to be relegated to the arbitral Tribunal. When the present Court has come to the conclusion that the matter is required to be relegated to the Arbitral Tribunal, then it is expected that the present defendant will give some time to the plaintiff in the interest of justice, to approach the arbitral Tribunal or other appropriate forum as per the stand taken by the defendant so that the matter can be judiciously and amicably decided.

15. As held by the Hon'ble Supreme Court in the case of Madan Gopal Rungta (supra) when the Court declined to decide on the rights of the parties and expressly holds that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution of India.

16. In view of the above, when the learned trial Court allowed application Exh. 17 and directed the parties to approach the arbitral Tribunal and/or appropriate forum as provided under concession agreement, and thereby, declined to consider the case on merits, the learned trial Court is not justified in further granting interim protection and/or interim injunction directing the parties to maintain status quo position with respect to disputed property for a further period of 45 days from the date of the pronouncement of the order, so as to enable the plaintiff to approach appropriate forum. As such, such a direction is without jurisdiction. The contention on behalf of the plaintiff that while directing the parties to maintain status quo for 45 days so as to enable the plaintiff to approach appropriate forum is in exercise of inherent power u/s 151 of the CPC to meet with the ends of justice, is concerned, inherent powers cannot be exercised when the learned trial Court lacks jurisdiction. As stated above, once the learned trial Court has declined to consider the case on merits by relegating the parties to arbitration before the arbitral Tribunal as per concession agreement, the learned trial Court has no jurisdiction to pass any further order much less the interim order, as once application u/s 8 of the Arbitration Act is allowed, nothing further is required to be done by the Court and the proceedings before the Court are to be terminated and/or disposed of.

17. Even the aforesaid aspect is required to be considered from another angle. Considering Section 9 of the Arbitration Act, Section 9 of the Arbitration Act confers jurisdiction upon the Court to pass order for interim measure before or during arbitral proceedings or at any time after making of the arbitral award, but before it is enforced in accordance with Section 36 of the Arbitration Act. Therefore, the parties to the arbitration agreement before or during the arbitral proceedings may apply to a Court for interim measure of protection in respect of any of the matters mentioned in Section 9(ii). As per Section 2(e) "Court" means the Principal Civil Court of original jurisdiction in a District but does not include any Civil Court of a grade inferior to such Principal Civil Court or any Court of Small Causes. Thus, before or during arbitral proceedings, even the concerned District Court only has the jurisdiction to pass any order for an interim measure, and therefore, the learned 8th Additional Senior Civil Judge and Judicial Magistrate, First Class, Gandhinagar cannot be said to be a "Court" within the meaning of Section 2(e) of the Arbitration Act to exercise the powers u/s 9 of the Arbitration Act. Thus, the direction issued by the learned trial Court directing the parties to maintain status quo for a further period of 45 days respect to the disputed properties is without jurisdiction and it can be said that virtually he has taken over the power of the District Court u/s 9 of the Arbitration Act. Under the

circumstances also the impugned order cannot be sustained as the same is without jurisdiction.

18. Now, so far as the decisions relied upon by Mr. Dave, learned Advocate for the original plaintiff are concerned, the same are on merits which are not required to be considered in the present case, as this Court is not called upon to consider the issue/dispute as to whether the original plaintiff can be dispossessed or not.

19. For the reasons stated above, the order passed by the learned 8th Additional Senior Civil Judge and Judicial Magistrate, First Class, Gandhinagar dated 22-12-2008 insofar as directing the parties to the suit to maintain status quo with respect to the disputed property for a further period of 45 days; while allowing application Exh. 17 in Regular Civil Suit No. 427 of 2008 submitted by the petitioner-defendant and thereby, directing the plaintiff to approach the arbitral Tribunal, so as to enable the plaintiff to approach the arbitral Tribunal and/or appropriate forum under the concession agreement, deserves to be quashed and set aside and the same is hereby quashed and set aside. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

After pronouncement of the judgment, Mr. D.C. Dave, learned Advocate appearing on behalf of the petitioner-original defendant has prayed to stay the present judgment and order.

When this Court has held that the learned trial Court has no jurisdiction to pass any further order, once application u/s 8 of the Arbitration Act is allowed and parties are referred to arbitration, no further protection can be granted by this Court. Hence, the prayer of the respondent to stay the judgment and order is rejected.