
(2019) 02 DEL CK 0390

In the Delhi High Court

Case No : Civil Suits (OS) 3891 Of 2014, Miscellaneous Application No. 5501 Of 2015

Gurcharan Singh Sahney & Ors

APPELLANT

Vs

Harpreet Singh Chhabra & Anr

RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8, 11, 12, 14, 15, 15(2)
Negotiable Instruments Act, 1881 — Section 138
Indian Penal Code, 1860 — Section 120(b), 192, 406, 408, 409, 420, 467, 465, 471
Information Technologies Act, 2000 — Section 65, 66, 71, 72, 73, 74

Citation : (2019) 02 DEL CK 0390

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Sandeep Sharma, Amit Choudhary Rakshay, Virmani Sukhmeet
Singh Lamba, H. S. Kohli

Judgement

Prathiba M. Singh, J

I.A. 15997/2015 (u/S 8 of the Arbitration and Conciliation Act, 1996)

1. The Plaintiffs have filed the present suit for cancellation, declaration, recovery, permanent injunction and mandatory injunction, seeking the following reliefs:

"(a) pass and pronounce a decree to cancel the settlement deed dated 30.04.2012, letter of guarantee dated 30.04.2012, ratification deed dated 03.05.2012 and the special power of attorney dated 28.05.2012 against the Defendants and in favour of the Plaintiffs;

(b) pass and pronounce a decree to declare null and void the settlement deed dated 30.04.2012, letter of guarantee dated 30.04.2012, ratification deed dated 03.05.2012 and the special power of attorney dated 28.05.2012, against the Defendants and in favour of the Plaintiffs;

(c) pass and pronounce a money decree of Rs. 1.30 Crores, jointly and severally

against the Defendants and in favour of the Plaintiffs;

(d) pass and pronounce a decree of permanent injunction to not to perform the settlement deed dated 30.04.2012, letter of guarantee dated 30.04.2012, ratification deed dated 03.05.2012 and the special power of attorney dated 28.05.2012, against the Defendants and in favour of the Plaintiffs;

(e) pass and pronounce a decree of Mandatory Injunction against the Defendants and in favour of the Plaintiffs to return all the papers signed by the Plaintiff under force and coercion.

(f) award the costs of this suit;"

2. The Defendants have filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter the "Act") praying that the parties be referred to arbitration. Ld. counsel for the Defendants submits that the arbitration clause in the Settlement Agreement dated 30th April, 2012, which has been challenged by the Plaintiffs in the present case, has already been invoked by the Plaintiffs and several orders have come to be passed by the High Court of Andhra Pradesh in respect of the said agreement. It is further submitted by Ld. counsel for the Defendants that the High Court of Andhra Pradesh was completely seized of the matter and the disputes between the parties, not once but in two rounds of litigation. The Plaintiffs have themselves invoked arbitration and thereafter filed an application under Section 11 for appointment of Arbitrator. The High Court of Andhra Pradesh appointed the Arbitrator referred to in the Settlement Agreement, which order was also confirmed by the Supreme Court on 11th August, 2014. Thereafter, the Plaintiffs sought termination of the mandate of the Ld. Arbitrator by way of a petition under Sections 14 & 15 of the Act before the City Civil Court, which was dismissed vide order dated 30th April, 2015. This order came to be challenged in a Civil Revision Petition before the Andhra Pradesh High Court, which was also dismissed. Thereafter, another application under Section 14 was filed and the Commercial Court in Hyderabad, terminated the mandate of the Arbitrator, giving the parties liberty to approach the High Court under Section 15(2) for appointment of an Arbitrator. This order came to be challenged in the Andhra Pradesh High Court, and the Division Bench on 7th September, 2018 set aside the said judgment of the Commercial Court, refusing to terminate the mandate of the Arbitrator, and held as follows:

"69) For the aforesaid reasons, the Civil Revision Petition is allowed holding that the order under challenge terminating the mandate of the arbitrator is illegal and incorrect, and accordingly, the same is set aside."

3. On the last date of hearing i.e., on 12th December, 2018, a submission was made that a Special Leave Petition has been filed challenging the judgment dated 7th September 2018, of the Andhra Pradesh High Court and adjournment was sought on that ground. The matter was thereafter listed today. It is submitted by Ld. counsel for the Defendants that the SLP was not filed as on 12th December, 2018. In fact, the Defendants have filed a caveat but have not been served with

any SLP till date.

4. On the other hand, Mr. Sandeep Sharma, Ld. counsel appearing for the Plaintiffs submits that the Plaintiffs have raised serious issues as to the circumstances under which the Settlement Agreement was entered into between the parties. It is his submission that at the time when the Settlement Agreement was signed, two of the Plaintiffs were in judicial custody, though they subsequently ratified the agreement under duress and coercion. It is further submitted that the named Arbitrator, Mr. Ravinder Singh Sarna is related to both the parties, but is biased in favour of the Defendants. He further submits that the issues raised in the present suit, having not been considered in any earlier dispute, the present suit is maintainable.

5. The Court has heard the parties. The Court has perused the Settlement Agreement dated 30th April, 2012 as also the ratification deed dated 3rd May, 2012. There is no doubt that the Plaintiff Nos.3 & 5 had themselves not signed the Settlement Agreement but their family members had signed the same on their behalf. It is a matter of fact that both Plaintiff Nos.3 & 5 were in judicial custody in view of the various criminal complaints, which were filed by the Defendants against them. However, the Plaintiffs invoked the arbitration clause in the settlement agreement dated 30th April 2012, vide letter dated 25th July, 2012 in which they stated as under:

"Therefore, our clients have no other option except invoking the arbitration clause N(ii) of the settlement deed dated 30.04.2012 to refer the dispute to the named arbitrator, Mr. Ravinder Singh Sarna, we hereby inform you the addressee no.1 & 2 to take necessary steps for referring disputes to the said arbitrator."

6. After the said notice was issued by the Plaintiffs, the Plaintiffs themselves approached the High Court of Andhra Pradesh for appointment of an Arbitrator. Vide order dated 15th March, 2013 Ld. Single Judge of the Andhra Pradesh High Court referred the disputes to the arbitration. The relevant portion of the said order reads as under:

"As agreed, the applicants and the respondents shall refer their disputes to Mr. Ravindra Singh Sarna, whom they have already appointed as sole Arbitrator, for resolution of disputes between them in terms of the arbitration clause in the Settlement Deed. The Arbitrator so appointed, is at liberty to take the assistance of an Advocate/legal counsel/expert, if required, for assessing the damage caused. He is at liberty to fix his fee as also that of the fee of the Advocate/legal counsel/expert, if he so chooses to take his or her assistance, for assessing the damage caused. Accordingly, the arbitration application is allowed. No costs."

7. A perusal of the above order shows that the same is a consent order.

8. Thereafter, a review application was filed by the Plaintiffs in the Andhra Pradesh High Court, which was dismissed on 13th September, 2013. The said order was also challenged before the Supreme Court and on 11th August, 2014,

the following order was passed by the Supreme Court.

"Mr. M.L. Varma, learned senior counsel for the petitioners submits that petitioners have already made an application under Section 12 of the Arbitration & Conciliation Act, 1996 before the arbitrator.

Obviously that application will have to be decided by the arbitrator appropriately in accordance with law without being influenced by the orders of the High Court.

Special Leave Petitions are dismissed accordingly."

9. Thus, the order appointing the Arbitrator has attained finality in terms of the order passed by the Supreme Court, giving the Plaintiffs an opportunity to move an application under Section 12 of the Act. It is submitted that an application under Section 12 was filed before the Arbitrator which was rejected. Thereafter, the Plaintiffs filed a petition under Sections 14 & 15 of the Act seeking termination of the mandate of Ld. Arbitrator. The said petition was dismissed on 30th April, 2015. The revision petition filed against the said order was also dismissed on 6th March, 2016.

The Plaintiffs thereafter preferred another application under Section 14 of the Act, which was allowed by the Commercial Court at Hyderabad, however, in a challenge before the Division Bench, the Division Bench vide judgment dated 7th September, 2018 allowed the revision petition and the order of the Commercial Court was set aside.

10. Ld. counsels for the Plaintiffs has referred to two judgments of this Courts in *Vijay Vishwanath Talwar v. Mashreq Bank, PSC & ORS.*, 2004 (1) R.A.J. 588 (Del) and *Villayati Ram Mittal Pvt. Ltd. & Ors. v. Institute for Socialist Education, CM (M) No.769/2017 & CM No.26038/2017*, decided on 29th May, 2018 to argue that if the agreement is signed under coercion, pressure or duress, the arbitration clause would be inapplicable.

11. It is the settled position in law that the arbitrability of the disputes has to be gone into at the stage of reference. The Court has to satisfy itself that the disputes are arbitrable. However, this is not a case where issues of coercion and duress are being raised for the first time. The Plaintiffs have, after signing the Settlement Agreement, invoked the arbitration clause of their own volition. Repeated orders and judgments that have been passed by various Courts as also the Andhra Pradesh High Court in various petitions clearly show that the same very arguments in respect of coercion and duress were raised even there, as can be seen from the following extracts:

"A. Order dated 15th March, 2013 in Arb. Application No.54/2012, by High Court of Judicature of Andhra Pradesh at Hyderabad - Petition under Section 11(5) and 11(6) of the Act Applicant No.2 further stated that the respondents had taken a loan of Rs.20.00 crores from and they issued cheques for Rs.14.91 crores and when the presented the cheques issued by them in their bank at Delhi, they were dishonoured. Therefore, they filed cases under Section 138 of the Negotiable

Instruments Act. While so, after lapse of nearly one and a half years, the respondents filed private complaint on the file of II Additional Chief Metropolitan Magistrate, Hyderabad, which was referred to the Police Station Abids, who registered the same as Crime No.27/2012. Thereafter, it was transferred to CCS, Hyderabad, who numbered it as Crime No.59/2012 for the offences punishable under Section 420, 465, 467, 471, 406, 408, 409, 192 and 120(b) I.P.C. and also under Sections 65, 66, 71, 72, 73 and 74 of the Information Technologies Act, 2000. Himself and applicant No.5 were arrested and remanded to judicial custody. While they were in judicial custody, the respondent approached him and applicant Nos. 1 and 3 and forced them to execute settlement deed dated 30.04.2012 and obtained 35 cheques for Rs.25.00 lakhs and also collected Rs.25.00 lakhs. Thereafter, after their release on bail, the respondents forced them to execute necessary document, ratifying the settlement deed dated 30.04.2012. Accordingly, they executed the ratification deed on 03.05.2012.

B. Order dated 30th April, 2015 in Arb. O.P. No. 2889/2014, by XXV Addl. Chief Judge, City Civil Court, Hyderabad 2 (i).....The petitioners therefore, under duress, signed a settlement deed dt. 30.04.2012, letter of guarantee dt. 30.04.2012 and ratification deed dt. 03.05.2012. The petitioner further stated that the respondent No.6 herein is the husband of Mrs. Sumeet Kaur Sarna, who is the sister of petitioner No.7 and respondent No.5. the respondent no.6 supported the respondent in cracking the conspiracy against the petitioner. There are instances when the learned sole arbitrator has forced the petitioners to agree to the illegitimate demands of the respondents. The learned sole arbitrator has been mute spectator of the hardship faced by the petitioners due to the omission and commission of the respondents. The petitioner further pleaded that unfortunately the respondents at the time of forcefully getting the signatures of the petitioners on the Settlement Deed, letter of guarantee and Ratification deed did not allow them to read the contents of the same. At the time of signing the documents, they are unaware of the contents of those documents.

C. Order dated 6th March, 2016 in Civil Revision Petition No.1861/2015 by High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh In the petition filed, the said O.P. before the Court below, the petitioners stated that the wives of the 6th respondent-Arbitrator and the 4th petitioner are sisters, and the 1st respondent is their brother; while the petitioners are from Delhi, the sole arbitrator and the other respondents reside in Hyderabad; during the years 2007-2010, they had lent around Rs. 20 crores to the respondents as the said amount was not returned, they instituted proceedings for recovery under Section 138 of the Negotiable Instruments Act; as a counter-blast the respondents filed police complaint in Cr. No. 59 of 2012, two years after the petitioner had initiated proceedings against them; in their complaint, the respondents concocted a story that they had to recover Rs. 2 crores from the petitioners who had played fraud on them; petitioners 3 and 5 were arrested by the CCS police, Hyderabad and, while in custody, they were forced by the respondents to agree to pay Rs. 9 crores; under duress, the

petitioner signed the settlement deed dated 30.03.2012, the letter of guarantee dated 30.04.2012, and the ratification deed dated 03.05.2012; the petitioners were not allowed to read the contents of these documents when they signed it; they were unaware of the contents of the aforesaid documents;....."

D. Judgment dated 7th September, 2018 in C.O.M.C.A. No. 2/2018 by High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh

18).....During the years 2007-2010, the petitioners lent a sum of Rs.20.00 crores to the respondents. As the said amount was not returned, the petitioners filed suits for recovery of money and also a complaint under Section 138 of the Negotiable Instrument Act. It is said that as a counter blast, the respondents got registered a Criminal Case vide Cr. No. 59 of 2012, against the petitioner. In the said case, petitioners 3 and 4 arrested by the Central Crime Station, Hyderabad and while in custody they were forced to agree to pay a sum of Rs.9.00 crores to the respondent. Under duress and force, the petitioners are alleged to have signed the settlement deed dated 30.04.2012, letter of guarantee dated 30.04.2012 and ratification deed dated 03.05.2012. It is said that the petitioners were not allowed to read the contents of the documents, which they signed and they were not aware about the contents, including the appointment of the arbitrator."

12. Despite the above pleas, the petitions seeking filed by the Petitioners were repeatedly rejected by the Courts.

13. The Plaintiffs have, parallelly, now chosen to approach this Court challenging the Settlement Agreement, including the arbitration clause therein on similar pleas as were raised in the proceedings mentioned above. The order of termination of mandate of the Ld. Arbitrator has been set aside and the Arbitrator continues to be in seisen of disputes between the parties. Whatsoever may be the issues in respect of the Arbitrator being biased etc. the Plaintiffs were given permission by the Supreme Court to raise the same before the Arbitrator. The Plaintiffs' counsel submits that the issues in respect of Section 12 of the Act were raised before the Ld. Arbitrator, which were dismissed. Thus, it is clear that though the issue of arbitrability ought to have been raised prior to seeing reference to the Arbitrator, the Plaintiffs by their own conduct have invoked the arbitration clause and now are before the Ld. Arbitrator. The prayer seeking termination of mandate has been rejected and the Ld. Arbitrator being seized of the disputes between the parties, the issues cannot be parallelly adjudicated in this manner in two forums.

14. The plaint has raised various issues in respect of the circumstances, which were prevalent at the time when the Settlement Agreement was signed and these circumstances would have to be raised by the Plaintiffs before the Ld. Arbitrator, or in the appropriate forum, if and when the Ld. Arbitrator rules on the matter.

15. This Court has put to the Defendants if they are agreeable to the appointment of an independent Arbitrator, however, Ld. counsel for the Defendants, upon instructions, submits that he cannot consent for appointment of an independent Arbitrator. Under these circumstances, though the allegations raised in the plaint are of a serious nature, the Plaintiff has left this Court with no option but to reject the suit as the disputes raised therein have already been referred to arbitration in the various proceedings detailed above. I.A. is allowed.

16. The suit is thus rejected as being not maintainable and the parties are relegated to the arbitral proceedings, leaving all contentions open. All pending applications also stand disposed of.