

(2023) 06 KL CK 0333
In the High Court Of Kerala
Case No : Arbitration Appeal No.26 Of 2010

K.Ramabhadran

APPELLANT

Vs

M/s Luxury Sands Kerala Private Limited

RESPONDENT

Date of Decision : 22-06-2023

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2023) 06 KL CK 0333

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : Jolly John, S.Sibha, Mathews K. Uthuppachan, P.K.Manojkumar, B.Rahul Krishnan, Joseph Markose, Smitha S.Pillai, Denny Devassy, Senior G.P., R.Chethan Krishna

Final Decision : Disposed Of

Judgement

Sathish Ninan, J

1. Refusal to grant interim relief of injunction in a proceeding under Section 9 of the Arbitration and Conciliation Act, 1996 is assailed in this appeal by the petitioner.
2. The injunction sought for was against alienation of the petition schedule property. The court found that none of the elements required to grant an interim injunction viz. "prima facie case, balance of convenience, irreparable loss and injury" favour the petitioner. It was also held that, "there is no arbitration clause". Accordingly, the application was dismissed.
3. I have heard Sri.Jolly John, learned counsel for the petitioner, Sri.Joseph Markose, learned Senior Counsel on behalf of the respondents 1 and 2, Sri.N.Nandakumara Menon, the learned Senior Counsel for the Addl. 3rd respondent, and also Sri.Chethan Krishna R, learned Amicus Curiae.
4. Though elaborate arguments were addressed as to whether the petitioner-

appellant is entitled to commence arbitration proceedings in view of the finding in the impugned order that there is no arbitration clause, I am reminded that the scope of the appeal is only to decide on the correctness of the order declining interim injunction in a Section 9 proceeding. In this appeal this Court is not called upon to consider the maintainability of an arbitration proceeding initiated by the petitioner subsequent to the impugned order. Therefore, I confine the discussions to the correctness or otherwise of the order impugned.

5. Noticeably, the Section 9 proceeding was initiated in the year 2010. Court found that the petitioner has failed to satisfy the ingredients necessary for grant of an interim order. At this distance of time, I do not consider it necessary to venture on a discussion on the same. Even the parties do not call upon this Court to enter a finding thereon.

6. The grievance of the appellant-petitioner is regarding the finding by the court that there is no arbitration clause. Ext.A1 is the MOU dated 26.04.2009 executed between the parties. Clause 20 in Ext.A1 reads "any dispute arising out of this MOU is to be settled by arbitration". Though the said clause suggests for settlement of disputes between the parties by arbitration, the District Court held that it is not a legally valid arbitration clause.

7. The finding by the District Court regarding the validity of the arbitration clause, need only be taken to be a prima facie opinion expressed by the Court and shall not bind the parties in the subsequent proceedings.

No other interference is called for in this appeal. The appeal is disposed of as above.