

(2015) 11 KAR CK 0283
In the Karnataka High Court
Case No : M.F.A. No. 2897 of 2011(AA)

Manohar Dayaram Chatlani and Others	APPELLANT
Vs	
Parvathamma and Others	RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 37

Citation : (2015) 11 KAR CK 0283

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : B. Pramod, Advocate, for the Appellant; G. Papi Reddy, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Waingankar, J.—This appeal under Section 37 of the Arbitration and Conciliation Act, 1966 is against judgment and decree dated 31.01.2011 in Arbitration Suit No. 16/2008 on the file of VI Additional City Civil Judge, Bangalore city, whereby the application under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the arbitration award dated 05.03.2008 in Arbitration Case No. 3/2007 came to be dismissed.

2. Brief facts which gave rise to this appeal are as under:

The respondent Nos. 1 to 6 are the owners of the property No. 47, 2nd cross road, Wheelers Road, Corporation Division No. 87, Bangalore, a building measuring East - West: 80 feet and North-South: 120 feet (totally 9600 Sq. Ft.). It was inherited by them from their late father Padmanabhan who died on 08.07.1981. The respondent Nos. 1 to 6 wanted to develop the said property, but they did not have necessary funds, knowledge and expertise. The appellants, who are the developers, approached respondent Nos. 1 to 6 to develop the schedule property. A Joint Development Agreement dated 24.11.1995 came to be executed between the appellants and respondent Nos. 1 to 6 for the

development of the property in the ratio of 50:50 whereunder the respondent Nos. 1 to 6 received certain amount from the appellants. Since the property was in possession of a tenant and eviction proceedings were pending before the Small Causes Court, the respondent Nos. 1 to 6 could not perform their part of the contract and thereby the property could not be developed in pursuance of agreement dated 24.11.1995. So, a supplemental agreement came to be entered between the parties for the development of the property dated 20.11.1998. As per the supplemental agreement also the property could not be developed. As such, another supplemental agreement dated 17.11.2001 came to be entered between the parties for the very same purpose of development of the schedule property. The respondent Nos. 1 to 6 failed to obtain the vacant possession of the property from the tenant and to handover the same to the appellants. The respondent Nos. 1 to 6 also failed to find out a buyer to purchase the property in terms of the agreement and refund the amount received from the appellants. Thus, the respondent Nos. 1 to 6 failed to perform their part of the contract and hand over the vacant possession for the development of the property nor they returned the amount received from the appellants. As such, a dispute arose between the parties. In terms of the Arbitration Clause in the agreement, the dispute was referred to respondent No. 7 an arbitrator duly appointed by this Court to resolve.

The Arbitrator entered the reference. The parties appeared before the Arbitrator, filed their pleadings with documents. They led their evidence. The Arbitrator upon going through the material placed before him and upon going through the terms and conditions of the agreement entered between the parties, declined to grant specific performance of the contract by directing the respondent Nos. 1 to 6 to hand over the vacant possession of the schedule property in favour of the appellants/developers. Instead, the Arbitrator, by his award dated 05.03.2008 in Arbitration Case No. 3/2007 ordered for refund of the amount received by respondent Nos. 1 to 6 from the appellants together with interest.

Aggrieved by the award passed by the Arbitrator, the appellants filed an application under Section 34 of the Arbitration and Conciliation Act to set aside the award, in Arbitration Suit No. 16/2008 before the VI Additional City Civil Judge, Bangalore City. Upon merits, the suit came to be dismissed by judgment and decree dated 31.01.2011. Aggrieved by the dismissal of the suit, this appeal is preferred.

3. We have heard the learned counsel for the appellants since the counsels representing the respondent Nos. 1 to 6 failed to address their arguments. Perused the Arbitration Award and judgment and decree passed by the City Civil Judge in Arbitration Suit No. 16/2008.

4. The submission of the learned counsel appearing for the appellants is that though there was ample material on record so as to grant decree for specific performance of the contract in favour of the appellants, the learned Arbitrator without assigning proper reasons declined to grant a decree for specific

performance of the contract and ordered for refund of the amount received by respondent Nos. 1 to 6 from the appellants with interest. The learned City Civil Judge, upon perusal of the material placed before him, without properly appreciating the evidence, has dismissed the suit and hence, the learned counsel sought to set aside the judgment and decree passed in Arbitration Suit No. 16/2008 by the City Civil Judge and the award passed by the learned Arbitrator and to grant a decree in favour of the appellants for specific performance of the contract.

5. Having heard the submissions made by the learned counsel for the appellants and on perusal of judgment and decree passed by the City Civil Judge and the award passed by the learned Arbitrator, the only point that would arise for our consideration is as under:

"Whether the judgment and decree passed in Arbitration Suit No. 16/2008 calls for our interference?"

6. Upon going through the entire material on record including the award passed by the Arbitrator and the judgment and decree passed by the City Civil Judge, the undisputed facts emerging are that respondent Nos. 1 to 6 as the owner of the schedule property is not in dispute. It is also not in dispute that the appellants approached the respondent Nos. 1 to 6 for development of the property as the respondent Nos. 1 to 6 had no funds, expertise or knowledge to develop the property though they were desirous of the same. It is further not in dispute that a Joint Development Agreement came to be entered in between the appellants and respondent Nos. 1 to 6 for the development of the property in the ratio of 50:50. It is evident from the records that though the respondent Nos. 1 to 6 had agreed to hand over the vacant possession of the property in favour of the appellants, they could not do so since the property was in occupation of the tenant against whom eviction proceedings initiated by respondent Nos. 1 to 6 were pending before the Small Causes Court, Bangalore. In other words, the respondent Nos. 1 to 6 could not perform their part of the contract though they had received amount from the appellants. As such, two Supplemental Agreements came to be entered between the parties for the very same reason. Thus, even after five to six years from the date of the Original Development Agreement, the respondent Nos. 1 to 6 could not hand over the vacant possession. When they were called upon to hand over the vacant possession by the appellants, they did not show any interest. Therefore, dispute arose between the parties. In terms of the Arbitration Clause in the agreement, it was referred to respondent No. 7 the arbitrator appointed by this Court. The Arbitrator upon hearing both the parties to the agreement and upon consideration of the entire material placed before him by both the parties and looking to the terms and conditions of the agreement, declined to grant a decree for specific performance of the contract in favour of the appellants. On the other hand, the Arbitrator thought it fit to order the respondent Nos. 1 to 6 to refund the amount received from the appellants with interest.

7. Dissatisfied with the Arbitration Award, the appellants filed an application under Section 34 of the Arbitration and Conciliation Act to set aside the award before the City Civil Judge. The City Civil Judge by exercising his limited jurisdiction to interfere in the Arbitration Award under the provisions of the Arbitration and Conciliation Act, 1996 declined to interfere and thereby the application filed under Section 34 of the Arbitration and Conciliation Act in Arbitration Suit No. 16/2008 came to be dismissed. Upon going through both the Arbitration Award and judgment and decree passed by the Court below, it is pertinent to note that a relief to be granted under the Specific Reliefs Act is equitable and discretionary relief. The learned Arbitrator meticulously went through the terms and conditions of the Joint Development Agreement entered between the parties. The agreement provides that in the event, respondent Nos. 1 to 6 failed to hand over the vacant possession of the property, they are entitled to refund the amount received from the appellants together with interest. The Arbitrator also felt that except the schedule property, respondent Nos. 1 to 6 have no other property. Taking into consideration this aspect and in view of the terms and conditions of the agreement, the Arbitrator by exercising his discretion ordered for refund of the amount received from the appellants together with interest, while declining to grant decree for specific performance of the contract. Rightly for the said reason, the learned Civil Judge declined to interfere in the award passed by the arbitrator.

8. Even otherwise, the scope to interfere with the Arbitral Award by the Civil Court under the Arbitration and Conciliation Act, 1996 is very limited. The Arbitration Award can be set aside by the Court only on the grounds mentioned under Section 34 of the Arbitration and Conciliation Act, that is to say that if the award is opposed to the public policy, there is apparent error on the face of the award or misconduct on the part of the arbitrator. If the award passed by the arbitrator is probed into in the light of the aforesaid grounds under Section 34 of the Arbitration and Conciliation Act, we do not find any of the grounds made out. Rightly the Civil Court dismissed the suit to set-aside the arbitration award. There is no merit in this appeal. Accordingly, the appeal is dismissed as devoid of merits.