

(2021) 08 KAR CK 0004

In the Karnataka High Court

Case No : Civil Miscellaneous Petition No. 152 Of 2021

Maya Tradelinks Limited

APPELLANT

Vs

Kirti Kumar Kabra

RESPONDENT

Date of Decision : 05-08-2021

Acts Referred:

Citation : (2021) 08 KAR CK 0004

Hon'ble Judges : Krishna S.Dixit, J

Bench : Single Bench

Advocate : Dhananjay Vidyapati Joshi, Jayna Kothari

Final Decision : Allowed

Judgement

Krishna S.Dixit, J

1. Petitioner is knocking at the doors of writ court seeking an order for the appointment of an Arbitrator for adjudging the alleged dispute in question;

after service of notice, the respondents having entered appearance through their counsel, resist the Petition contending there is no dispute at all and

therefore, appointment cannot be made; both the sides have relied upon an avalanche of decisions of which relevant are discussed hereinbelow.

2. Having heard the learned counsel for the parties and having perused the Petition Papers, this Court is inclined to appoint an Arbitrator for the

following reasons:

(a) The vehement contention of learned Sr. Advocate Mr.Dhananjay Vidyapati Joshi that there exists an agreement 24.11.2017 between the parties

and para 8 is incorporated as an arbitration clause, is prima facie substantiated vide Annexure-B; the petitioner had sent a legal notice dated 2.1.2021

mentioning about the dispute and calling upon the respondents to come for

arbitration; paragraphs 10 & 11 of the said notice specifically mention about the acts allegedly done by the petitioner pursuant to the agreement in question.

(b) The respondents vide reply dated 30.01.2021 at para 7 have mentioned as to what all has been done with the scheduled properties and that despite

repeated request, the petitioner did not come forward and make balance payment of certain sum; they have also stated that had the petitioner done his part of the obligation, they would have registered the conveyance in his favour; the respondents have specifically taken up a contention that the

petitioner was not ready and willing to register the conveyance; at para 9 of this reply notice, the respondents have terminated both the agreements

dated 17.7.2014 and 24.11.2017; fairly enough, at para 10, the respondents have stated about the refundability of the amount with 9 %; they have also

called upon the petitioner to return all the original documents within fifteen days; that being the position, it cannot be gainsaid that there does not exist

any dispute between the parties.

(c) Strangely and the above apart, the respondents have sent another reply dated 4.2.2021 wherein para 11 reads as under:

11. Hence, your notice dated 02.01.2021 requesting the matter to be referred to arbitration has no legal basis as my Clients have terminated the

Agreements dated 17.7.2014 and 24.11.2017. There is therefore no dispute remaining as the Agreements themselves have been terminated by my

Clients and they have undertaken to repay your clients the amounts received from them, with interest as per the terms of the said Agreements. Hence

as there is no dispute, you are requested to withdraw your legal notice for arbitration as the same does not survive for any consideration.

(d) In view of the finding of this court that there is an arbitral dispute, the decision in Major (Retd) Inder Singh Rekhi Vs. Delhi Development

Authority, (1988) 2 SCC 338 heavily relied upon by the learned Sr. Advocate Smt. Jayna Kothari, does not come to the rescue of the respondents; the

said decision inter alia lays down the ratio that the existence of a dispute is essential for appointment of an Arbitrator and that there can be a dispute

only when a claim is asserted by one party and denied by the other on whatever grounds; in ascertaining the existence of an arbitrable dispute

between the parties, one need not search for the words ""averred"" and ""denied""; the correspondence between the parties can be kept in view with the

obtaining trade conventions and the existence of a dispute can be ascertained.

3. Learned Sr. Advocate Smt. Jayna Kothari heavily banked upon the decision of the Apex Court in Uttarakhand Purv Sainik Kalyan Nigam Limited

Vs. Northern Coal Field Limited, (2020) 2 SCC 455 which discussed about limited grounds such as limitation, etc., for not appointing an Arbitrator;

however, the argued case of the respondents does not fit into the ratio of this decision; it hardly needs to be stated that a decision is an authority for

the proposition that it actually lays down in the fact matrix of the case and not for all that which logically follows from what has been laid down vide

Lord Halsbury in Quinn Vs. Leathem (1901) A.C. 495.

4. Similarly, the decision in Bharat Sanchar Nigam Ltd. Vs. Nortel Networks India Pvt. Ltd, (2021) SCC Online SC 207 too does not much come to

the aid of the respondents more particularly, when learned Sr. Advocate was referring to an amendment provision of the Arbitration and Conciliation

Act, 1996 that is yet to be notified for taking effect; at para 38 of the said decision, the Apex Court stated that no arbitration can be resorted to where

the case is one of ""manifestly ex facie non existent and invalid arbitration agreements, are non-arbitral disputes""; that is not the case of the petitioner

as emerging from the records; therefore, reliance on this decision is thoroughly misplaced.

In the above circumstances, this Petition succeeds; Justice Sri.K.N.Keshavanarayana, a retired Judge of this court is appointed as and to be the Sole

Arbitrator in the Arbitration and Conciliation Centre (Domestic & International), Bengaluru, as per the extant Rules.

(i) A copy of this order be sent forthwith to the Arbitration and Conciliation Centre (Domestic & International), Khanija Bhavan, Bengaluru, for

proceeding further in the matter.

(ii) Registry is directed to return all original documents produced by any of the parties after obtaining Photostat copies of the same.

All contentions of the parties are kept open. No costs.