
(2010) 12 BOM CK 0152
In the Bombay High Court
Case No : Writ Petition No. 851 of 2010

Mr. Ismail J. Virani

APPELLANT

Vs

Gitanjali Jewellery Retail Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16, 8
Constitution of India, 1950 — Article 227

Citation : (2010) 12 BOM CK 0152

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : S.D. Lotlikar, with Ms. S.P. Kir, for the Appellant; A.N.S. Nadkarni with Mr. D. Lawande, Advocate for respondent No. 1, Mr. J. Godinho, Advocate for respondent nos. 2, 3 and 5 and Mr. A.D. Bhobe, Advocate, for the Respondent

Judgement

A.P. Lavande, J.—Heard Mr. Lotlikar, learned Senior Counsel for the petitioner, Mr. A. N. S. Nadkarni, learned Senior Counsel for respondent No. 1, Mr. J. Godindho, learned Counsel for respondent nos. 2, 3 and 5 and Mr. Bhobe, learned Counsel for respondent No. 4. By this petition under Article 227 of the Constitution of India, the petitioner takes exception to the order dated 15th December, 2010 passed by the Civil Judge, Senior Division, Panaji in Special Civil Suit No. 31/2010/A directing the parties to the suit to act upon the Arbitration Clause in agreement dated 18th September, 2009 in terms of Sections 8 and 16 of the Arbitration and Conciliation Act, 1996 ("The Act" for short.)

2. The petitioner filed the above suit against the respondents seeking declaration that the power of attorney dated 26th December, 2002 was null and void. Further declaration that agreement dated 18th September, 2009 executed by and between defendant No. 1 and defendant No. 3 be illegal, null and void was also sought. The plaintiff/ petitioner also sought permanent injunction restraining defendant nos.1 to 3 and 5 from carrying out any construction or work in the suit shops or from carrying on any business activities and further sought mandatory injunction to remedy the damage caused to the suit property. Ex-parte injunction

in terms of the prayers for permanent injunction was granted on 8th October, 2010.

3. Defendant No. 1 filed an application dated 12th October, 2010 alleging that there was an arbitration agreement and as such, the parties to the suit be directed to act upon the arbitration clause No. 19 in the agreement dated 18th September, 2009 entered into between defendant No. 1 and defendant No. 3 on behalf of the co-owners.

4. The application was resisted by the plaintiff. By the impugned order dated 15th December, 2010, the trial Court has allowed the application and directed the parties to act upon the arbitration clause.

5. Mr. Lotlikar, learned Senior Counsel appearing for the petitioner submitted that the trial Court has relied upon the judgment in the case of Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums, , which has been overruled by Constitution Bench judgment of the Apex Court in the case of S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, and, therefore, the impugned order is liable to be set aside. He further submitted that the agreement dated 18th September, 2009 was itself challenged by the plaintiff and as such, it was necessary for the trial Court to consider whether the agreement was legal or not and give finding thereon. He, therefore, submitted that the impugned order is liable to be set aside.

6. Mr. Lotlikar further submitted that till the passing of the impugned order, ex-parte injunction was operating against defendant nos.1 to 3 and 5 and, therefore, it is just and proper that till the disposal of the writ petition, the said order is continued.

7. Mr. Nadkarni, learned Senior Counsel appearing for respondent No. 1 supported the impugned order and submitted that the trial Court has correctly appreciated the legal position. According to Mr. Nadkarni, the ratio laid down in Hindustan Petroleum Corporation Ltd."s case (supra) has been followed later by the Apex Court in Agri Gold Exims Ltd. Vs. Sri Lakshmi Knits and Wovens and Others, . He further submitted that the judgment in the case of Patel Engineering Co. Ltd. (supra) is not applicable and once there is a dispute covered by the arbitration agreement, the Civil Court is bound to refer the parties to the suit in terms of Sections 8 and 16 of the Act. He further submitted that serious prejudice would be caused to respondent No. 1 if interim relief is granted since respondent No. 1 has spent huge amount for repairs etc. of the suit shop. He further submitted that respondent No. 1 is ready and willing to comply with the terms and conditions that may be imposed by this Court so as to enable respondent No. 1 to carry out further repairs and to start the business in the suit shops. He further submitted that the conduct of the petitioner clearly disentitles him from seeking any interim relief from this Court.

8. Mr. Godinho, learned Counsel for respondent nos. 2, 3 and 5 supported the submissions made by Mr. Lotlikar, learned Senior Counsel for the petitioner. Mr.

Bhobe, learned Counsel for respondent No. 4 submitted that the trial Court has correctly appreciated the legal position and, therefore, no fault can be found with the impugned order.

9. I have carefully considered the submissions made by learned Counsel for the parties and perused the record and the judgments relied upon.

10. In so far as applicability of Section 8 of the Act is concerned, I am of the considered opinion that the matter requires consideration. Whether the trial Court, upon application u/s 8 of the Act which is filed by the defendant No. 1, has to simply rely upon the arbitration agreement and refer the parties to the arbitration or whether the trial Court has to decide the validity of the agreement containing the arbitration clause is the issue which requires to be decided. Since Mr. Nadkarni, learned Senior Counsel appearing for respondent No. 1 has submitted that serious prejudice would be caused if the interim relief is granted against respondent No. 1 and considering the facts and circumstances of the case, I deem it appropriate to fix the matter for final disposal at an early date. Accordingly, the matter is fixed for final disposal on 7th January, 2011. In the meantime, the parties to maintain status-quo. Replies, if any, on behalf of the respondents, to be filed by 5th January, 2011.