
(1992) 05 KAR CK 0002
In the Karnataka High Court
Case No : C.R.P. No's. 4528/91 and 340/92

M/s. R.K. Associates

APPELLANT

Vs

V. Channapa and Others

RESPONDENT

Date of Decision : 26-05-1992

Acts Referred:

Arbitration Act, 1940 — Section 20, 41, 41 (i)

Citation : AIR 1993 Kar 247 : (1992) 2 KarLJ 437

Hon'ble Judges : Kedambady Jagannatha Shetty, J

Bench : Single Bench

Advocate : Mr. S.G. Sundaraswamy for Mr. S. Ramaswamy Iyengar, for the Appellant; Mr. M.R. Janardhana, for the Respondent

Judgement

1. The Revision Petition No. 4528 of 1991 is directed against the order, dated 10-10-1991 made on I. A. No. I in A. S. No. 1 of 1991 by the learned Civil Judge and J.M.F.C., Ramanagaram, in so far as it imposes a condition that the petitioner should deposit a sum of Rs. 31,14,685/- in court within seven days from the date of the order failing which temporary injunction granted should automatically cease. The Revision petition No. 340 of 1992 is filed by the the defendants against the same order passed on I. A. No. I in A. S. No. 1 of 1991, dated 10-10-1991 by the learned Civil Judge, Ramanagaram.

2. Since both the revision petitions arising out of common order, they are disposed of by common order.

3. Facts in brief are that the petitioner in C. R. P. No. 4528 of 1991 is the plaintiff and the respondents are the defendants in the lower court and vice-versa in C. R. P. No. 340 of 1992. The material facts as stated in the lower court are that the petitioner-plaintiff filed an arbitration suit u/s 20 of the Arbitration Act against the respondents-defendants (hereinafter the parties will be referred to as plaintiff and defendants as their status in the lower court) praying therein to pass an order of temporary injunction pending disposal of the arbitration suit restraining the defendants-respondents from alienating in any manner including by way of

sale, mortgage, lease, parting with possession or otherwise the schedule property and interfering in any manner with the plaintiff-petitioner and its employees, agents, contractors and all other persons authorised by it from having free ingress and egress to the schedule property and carrying out all developmental activities therein in such manner as they deem fit, including using all vehicles, equipment, tools and other material as they deem fit.

4. Along with the suit, the plaintiff has filed I. A. No. I against the defendants u/s 41(i) read with Schedule II item 4 of the Arbitration Act, 1940 with a prayer to pass an order of temporary injunction pending disposal of Arbitration suit, restraining the defendants from alienating in any manner including by way of sale, mortgage, lease or parting with possession or otherwise of the schedule property and from interfering in any manner with the plaintiff, its employees, agents, contractors and all other persons authorised by it from having free ingress and egress to the schedule property and carrying out all developmental activities therein, in such manner as they deem fit including using all vehicles, equipment, tools and other materials.

5. The case of the plaintiff is that S. V. Ramaswamy and several others decided to become partners to form a partnership firm called Imperial Enclave and a partnership deed dated 5-2-1990 came into existence and the partnership business was deemed to commence from 2-2-1990 though the deed is entered into on 5-2-1990. The object of the partnership is to acquire Immovable property, obtaining permission from the Government and other authority/ authorities for conversion of the properties acquired into residential area, developing the said property, forming layouts, providing roads, getting water and electricity connections, fencing the property etc., and to act as contractor and to enable the business as can be mutually agreed upon from time to time. The plaintiff entered into an agreement with the defendants on 4-2-1990 among others, the defendants agreed to sell 35 acres 341/2 guntas including 16 guntas of kharab in S. Nos. 1, 2, 3, 4, 5 and 53/5 of Bheemanahally, Bidadi Hobli, Ramanagaram Taluk, for consideration of Rupees 44,54,685/-. To sell it on as is where is basis either to the plaintiff or its nominee as desired by the plaintiff free from all Encumbrances and the defendants received at the time of agreement a sum of Rs. 2,00,000/- under three cheques and the balance amount to be paid at various subsequent dates. The agreement further provided that possession of the properties was to be delivered after the defendants received the entire consideration. At the same time, it is also provided that the plaintiff could be permitted and allowed by the defendants to enter the lands agreed to be sold in connection with the survey, formation of the layout, development of the property by engaging agents, contractors, workers; to enclose the property with stonewall; to take up construction work to form roads, drain, laying water pipes according to the plans of the plaintiffs, to put the overhead tank for water storage, to remove, demolish for the purpose of the said acts and to apply for and obtain conversion of agricultural land for non-agricultural purpose, to do which the defendants also agreed to sign applications or deeds necessary and

also permitted the plaintiff to raise requisite funds for its activities, to enter into agreement with 3rd parties for sale of the sites to be formed and to receive advances from the intending purchasers. The agreement also provided that the plaintiff had to bear the cost and expenses of conversion, developmental activities, stamp duty and registration charges. The further case of the plaintiff is that it has performed its part of the contract because up to 24-1 -1991 it has paid to the defendants as per the agreement an amount of Rs. 13,40,000/-, as per the receipts and cheques produced and a statement is given showing that the payments are made well in advance and there is no default on the part of the plaintiff in performing its part of the contract. Simultaneously while making payments as and when the instalments became due, in accordance with the agreement, it provided to have the lands converted in approaching the revenue authorities and a sum of Rs. 47,418-20 ps. is spent for getting the land converted. It is also stated that considerable amount has been spent by the plaintiff for getting the land surveyed, plan being prepared, printed, published and advertised in and outside India for securing the intending purchasers. It is also stated that the defendants were involved in suit O. S. No. 327 of 1979 on the file of the City Civil Court, Bangalore, necessary stamp duty was paid to get the final decree after spending Rs. 8,840/-, because the property was to be free from encumbrance. Similarly, the plaintiff took up developmental works and those works are stated to be at various stages of execution and completion. As per the agreement, the balance of sale consideration was to be paid on or before 28-2-1991 or within the grace period provided on 6-3-1991 a cheque for Rs. 2,00,000/- was sent by registered post to the first defendant promising to pay the entire balance within the period. But the first defendant did not receive it, the cheque came back. This act of the first defendant is stated to be a mala fide one with the intention to make an illegal and unlawful gain to withdraw from the agreement. Thereafter in spite of several approaches, the defendants did not abide by the agreement and the plaintiff came to know that the defendants were trying to coerce it to part with more money. As such, the defendants were adamant and were not ready and willing to perform their part of the contract as the plaintiff was ready and willing to perform his part of the obligations. The plaintiff has left with no option, but to issue a notice, dated 7-6-1991 in which the defendants were informed about the readiness and willingness of the plaintiff and its having carried out various activities pursuant to the agreement and its offer to pay the balance and called upon them to complete the sale. At the same time, it offered to invoke the arbitration clause and referred the dispute to Sriyuths Kumar and Krishnegowda. In spite of registered notice, the defendants did not comply with it. As such, the plaintiff has filed an application u/s 20(4) of the Arbitration Act for filing arbitration agreement as contained in the agreement and for consequential orders. It is also stated that when the defendants entered into an agreement with it the name of the firm could not be registered and as such, the name was changed to M/s. B. K. Associates and partnership deed dated 2-5-1990 came into existence.

6. The defendants have filed their objections. They have specifically stated that there is no privity of contract as between them and the plaintiff. In other words, their contention is that they entered into a contract with M/s. Imperial Enclave and not with R. K. Associates. It is further stated by the defendants that the suit as brought is not at all maintainable u/s 20 of the Arbitration Act. They further stated that there are two clauses viz., 13 and 14 and clause 13 gave an option to the vendees to sue for specific performance or for damages or for any other reliefs that may be available to them in the event of any wilful default in the completion of the sale and execution of the sale deed by the vendors after receipt of the full sale consideration and clause 14 did not contemplate of a proceeding to be started u/s 20 of the Act. As such, it is stated that the application as brought is not maintainable. In an additional objection statement, the defendants contended that section 41 of the Act read with schedule II clause 4 did not apply to a case as the present case apply to the case (sic). As such, the application is not maintainable. The relief sought for cannot be granted. On the question of balance of convenience, it is contended that it is in favour of the defendants and it will not be in favour of the plaintiff. It is stated that the defendants also filed a writ petition challenging the order of the Divisional Commissioner and if any action is taken it would act in a great prejudicial manner and the defendants may even stand to suffer dismissal of the writ petition.

7. The lower court on the basis of the pleadings and the material placed by the parties formulated the following points for consideration:--

- 1) Whether the plaintiff has got a prima facie case?
- 2) In whose favour the balance of convenience lies?
- 3) Who will suffer more in the event of either granting or not granting temporary injunction?

8. The lower court after considering the respective contention of the parties and materials placed before it has held that the plaintiff has made out a prima facie case, the balance of convenience is in favour of the plaintiff, irreparable injury is also found to be more to the plaintiff than to the defendants". The ultimate result is the plaintiff succeeds in making out a ground for the grant of reliefs under I.A. No. I.

9. However, the lower court has allowed I.A. No. I and granted the injunction as sought for by the plaintiff subject to the condition that the plaintiff shall deposit Rs. 31,14,685/- in court, to be invested in a nationalised bank within seven days from the date of the order, failing which the temporary injunction granted shall automatically cease. Hence the revision petition is filed by the plaintiff-petitioner in so far as the imposition of the condition that the plaintiff shall deposit a sum of Rs. 31,14,685/- in court within seven days from the date of the order, for such a condition is far in excess in exercise of jurisdiction vested in the lower court. The respondents-defendants filed the revision petition (CRP No. 340 of 1992) against

the entire order on the ground that the court could not have granted the main relief. It cannot grant interim relief and also raised other contentions.

10. Mr. S. G. Sundaraswamy, learned senior counsel appearing for the petitioner-plaintiff has submitted that the impugned order in so far as imposition of condition that the plaintiff shall deposit Rs. 31,14,685/- in court within seven days from the date of the order failing which the temporary injunction granted shall automatically cease, is an order in terrorem and the trial court has exceeded in its jurisdiction by imposing such scarce condition. It is further argued that if the condition is allowed to stand it will occasion failure of justice and cause irreparable harm and injury to the petitioner. In support of his submission, he has relied on the decision reported in Province of Bombay Vs. Kusaldas S. Advani and Others, .

11. Mr. M. R. Janardhana, learned senior counsel appearing for the petitioners-defendants in C. R. P. No. 340 of 1992 has submitted that having regard to the homogeneous reading of clauses 13 and 14, of the agreement of sale, the irresistible conclusion necessarily would follow for filing a suit for specific performance for enforcement of an agreement of sale and not an arbitration as provided under clause 14. He has further argued [hat section 20 of the Arbitration Act itself was not applicable as there was no dispute formulated, even if there being any dispute with regard to the vendor not performing his part of the contract then the course open was to file a suit for specific performance and not arbitration proceedings. He further argued that the trial Judge has failed to notice that there is no agreement entered into between the petitioner and the respondent and the agreement dated 4-2-1990 was executed in favour of M/s. Imperial Enclave and not with M/s. R. K. Associates. Finally, he has argued that the application by the plaintiff for grant of interim injunction u/s 41(b) of the Arbitration Act is not maintainable for the grant of injunction is not in the aid of the relief sought, but going beyond the scope of section 41 of the Act. In support of his submission, he relied on the decision reported in Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others, and H.M. Kamaluddin Ansari and Co. Vs. Union of India (UOI) and Others, .

12. From the respective contentions of the parties, the following points arise for consideration :--

1) Whether the impugned order imposing condition for grant of temporary injunction in favour of the plaintiff is palpably in excess of jurisdiction and is in terrarium resulting in miscarriage of justice and irreparable injury to plaintiff.

2) Whether as contended by the defendant that suit u/s 20 of the Arbitration Act is not maintainable in view of the exclusive clause 13 in the agreement; even if there was dispute by virtue of clause 13 which excludes clause 14, the suit for specific performance only course open to the plaintiff and not arbitration?

3) Whether there was privity of contract between the plaintiff and defendants, if not whether the suit u/s 20 of the Arbitration Act is maintainable?

4) Whether the application filed by the plaintiff u/s 41(1)(b) read with Schedule II of Arbitration Act is maintainable?

13. Facts are few and simple. It is an undisputed fact that an agreement was entered into with the defendants on 4-2-1990 as per which the defendants agreed to sell the land to the plaintiff for consideration of Rs. 44,54,685/-. As per the terms of the agreement a sum of Rs. 13,40,000/- was paid to the defendants. The balance amount of Rs. 31,14,685/- was due to the defendants which was to be paid on the stipulated date and get the sale deed registered on or before 28-2-1991. The plaintiff said to have offered to pay the balance amount within the time and requested the defendants to execute the sale deed which they did not do and they raised certain dispute as to the performance of the contract. As per the agreement, the absolute possession was to be given to the plaintiff on completion of the sale deed as per the terms of agreement of sale. However, as per the agreement of sale, the plaintiff was allowed by the defendants to enter on land in connection with the survey, formation of the layout development of the property and take up construction work, form roads and to do all acts necessary to convert the land into non-agricultural purpose and the defendants have also agreed to sign any applications or deeds for conversion of land. The relevant clauses in the agreement read as follows:--

"13. In the event of any wilful default in the completion of the sale and execution of the sale deed by the Vendors after receipt of the full sale consideration, the purchaser is at liberty to sue for specific performance or for damages or for any other reliefs that may be available to them.

14. Any disputes or differences, between the parties arising out of the meaning of this agreement or their respective covenants hereinbefore mentioned shall be referred to the arbitration of Sri C. Krishna Gowda and Sri T. Kumar who are well wishers of both the parties and the award of these two arbitrators shall be conclusive and final on the subject between the parties."

14. The agreement of sale of land was, in fact, entered by the defendants with the plaintiff-firm on 4-2-1990 with M/s. Imperial Enclave, a firm, which later came to be changed as M/s. R. K. Associates, as the firm, in the name M/ s. Imperial Enclave, could not be registered as there was objection by the Registering Authority for the use of the word "Imperial". It is also an undisputed fact that the sale consideration was first paid as per the agreement to the defendants under the firm name of Imperial Enclave, and later in the changed name of M/s. R. K. Associates. The sale consideration paid both in the name of M/ s. Imperial Enclave and M/s. R. K. Associates were received by the defendants without any demur. Since the defendants did not perform their part of the contract the plaintiff on 7-6-1991 issued notice invoking the arbitration clause to refer the dispute to the names of Arbitrator in the agreement. The defendants did not respond to it. The plaintiff has filed the suit u/s 20 of the Act to have the arbitration agreement and for consequential order. Along with the arbitration case, filed an application as step in aid for_ grant of temporary injunction in

favour of plaintiff to restrain the defendants from interfering with the possession of the land and to restrain the defendants from alienating, mortgaging, leasing or parting with the possession of the suit property to third party.

15. Both the counsel have taken me through the pleadings, the material documents placed on record and the order passed by the lower court.

16. Let me first deal with point No. 4 along with point No. 2 -- Whether the application filed by the plaintiff under sections 20 and 40(1)(b) read with Schedule II is not maintainable as contended by Mr. M. R. Janardhan, learned counsel appearing for the defendants. It is contended by the learned counsel for the defendants that the injunction is sought as sequel to the legal notice, which clearly spells out that calling upon the defendants to perform their part of the contract such as to accept the balance sale consideration and execute the sale deed, which clearly means the plaintiff sue for specific performance of the contract in case the defendants fail to execute the sale deed. He has further contended that referring to clause 13 the word "sue" occurring therein, postulates that the plaintiff for breach of contract could seek relief by filing a suit for specific performance of the contract not an arbitration case. Elaborating his arguments he has submitted that no application u/s 20(4) of the Arbitration Act is maintainable, much less an application for temporary injunction u/s 41(1)(b) read with Schedule II is maintainable. It is his further submission by referring to section 2 of the Evidence Act the "court" means all forum except arbitrator. The word "sue" in its true meaning, appearing in clause 13, the suit or proceeding in court and not before Arbitrator. Controverting this submission, Mr. S. G. Sundaraswamy, learned senior counsel, submitted that the word "sue" occurring in clause 13 cannot be restricted to mean the proceedings should only be in court and not before any other forum as well as the Arbitrator. Referring to the "Blacks Law Dictionary" "sue" means to commence and carry out legal action against another, to gain by legal process". It is also pointed out that as per the notice Annexure-J issued by the plaintiff, it has been specifically stated therein that in case the defendants fail to perform their obligation within the time stipulated, the plaintiff would resort to adjudication by the Arbitrator named in the agreement. The plaintiffs have taken arbitration proceedings by filing an application u/s 20(4) of the Arbitration Act. When the arbitration proceedings pending before the court the temporary injunction was granted on an application filed u/s 41(1)(b) read with Schedule II. Section 41(1)(b) states that the court shall have, for the purpose of and in relation to arbitration proceedings, the same power of making orders in respect of any of the matters set out in Schedule II as it has for the purpose of and in relation to any proceedings before the court and" one of the matter set out in the Schedule II is interim injunction. Thus, it is abundantly clear, the court has, therefore, power u/s 41(1)(b) read with Schedule II to issue interim injunction, but such injunction can be for the purpose of and in relation to the Arbitration Proceedings either before the court or before the Arbitrator. In the present case, the arbitration proceedings was before the court u/s 20 of the Arbitration Act as to the determination by the Arbitrator of the material claim

arising out of the contract, dated 4-2-1990 between the plaintiff and the defendants. Since the arbitration proceedings had already been instituted u/s 20 of the Act, provisions of section 41(1)(b) read with Schedule II applied and the court noted rightly in granting temporary injunction in aid of pending arbitration proceedings.

17. The contention of the learned counsel appearing for the defendants that the order of the court granting temporary injunction virtually amounts to an order directing the defendants for specific performance of the contract which was and cannot be the subject matter of arbitration proceedings has no merit which deserves to be rejected. Here the order of interim injunction is merely a step in aid and in relation to the arbitration proceedings. In substance, the order of temporary injunction is merely to prevent the defendants from alienating the property and interfering with the possession of the plaintiff for carrying out the developmental work as per the terms of the agreement. The order is negative in nature. There was no positive order directing the defendants to perform their part of the obligation arising under the agreement, viz., to execute the sale deed in favour of the plaintiff. The decision in H.M. Kamaluddin Ansari and Co. Vs. Union of India (UOI) and Others, relied on by Mr. M. R. Janardhan, learned counsel appearing for the defendants, in support of his contention is of no help to him for the obvious reason that it is distinguishable on facts of the present case. The plaintiff's counsel has however drawn my attention to certain observation in the said decision and pointed out that it does support his contention that when arbitration proceedings pending in the court, application for temporary injunction u/s 41(1)(b) is maintainable. In the said decision of the Supreme Court, it is observed as follows at page 32 :--

"In view of clause (b) of section 41 the Court has been given power of passing orders in respect of any of the matters set out in Second Schedule for the purpose of and in relation of any proceedings before the Court. The Second Schedule of Arbitration Act inter alia includes interim injunction and the appointment of Receiver. But the Court has got the power to pass an order for the purpose of and in relation to arbitration proceedings before the Court."

18. Yet another decision has been relied on by Mr. S. G. Sundaraswamy, learned senior counsel appearing for the plaintiff, reported in Indian Oil Corporation Ltd. and Another Vs. Sanjai Agarwal and Another, . In the said case, the temporary injunction granted by the trial court in an application u/s 20 of the Arbitration Act, was challenged in revision. The trial court held to have acted rightly in granting temporary injunction on a prima facie case, without finally deciding whether it had territorial jurisdiction to entertain the application under S. 20 of the Act. As temporary injunction have to be granted it is not always possible to decide disputed question of fact before granting or refusing such an injunction. Since the arbitration proceedings had been already instituted by the person who had made the application under S. 20 of the Act, the provision of S. 41(1)(b) read with Schedule II to the Arbitration Act applied. It is observed that the Court

(trial Court) acted "for the purpose of and in relation to arbitration proceedings."

19. I am of the view that the order of injunction granted by the trial Court cannot be said to be outside the scope of its power under S. 41(b) read with Second Schedule. The application under S. 41(b) for grant of temporary injunction in a pending arbitration proceedings is maintainable. The point No. 4 is answered accordingly.

20. With regard to point No. 2, it is no doubt true a vexed question involving certain intricacies as to the interpretation of Cls. 13 and 14 of the agreement. It was argued by Mr. M. R. Janardhana, learned senior counsel for the defendants that homogeneous reading of Cls. 13 and 14 would lead to an irresistible conclusion that Cl. 13 would prevail; as such, for breach of contract the suit for specific performance has got to be filed and not arbitration proceedings as provided under Cl. 14. It was further argued by him that there was no dispute formulated and raised, even if there is dispute with regard to the vendor not performing his part of the contract, then the course open to the party was to approach the Court for specific performance. In support of his contention that Cl. 13 would prevail over Cl. 14, as there is conflict between these clauses, relied on the decision of the Supreme Court reported in Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others, .

21. Mr. S. G. Sundaraswamy, learned senior counsel, controverting the submission of the counsel appearing for the defendants, has by referring to the various clauses viz., Cls. 8, 9, 13 and 14, argued that the words "to sue for specific performance or for damages or for any other reliefs that may be available occurring in Cl. 13, if read with Cl. 14 would go to show that the party to the agreement could, incase of dispute or differences arising out of the meaning of the agreement or their respective covenants, take recourse by taking arbitration proceedings.

22. It is well laid principle of law when the question is entirely one of construction on a particular agreement, it can only be properly answered after consideration of all the surrounding circumstances, the position of the parties to the agreement, its subject-matter and the apparent purpose and object thereof, and in particular of the provisions to be construed. On proper reading, the Cls. 13 and 14 of the agreement along with other clauses and the parties to the agreement, there is no conflict between two clauses and Cl. 13 does not render Cl. 14 arbitration clause redundant or nugatory. The words occurring in Cl. 13 that any other relief that may be available, if read with Cl. 14 makes it abundantly clear that plaintiff could take action for arbitration. In Radha Sundar's case, cited above, the Supreme Court has observed as follows (at page 30):--

"If, in fact, there is a conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and

not vice versa."

In the present case, as already noticed, there is no conflict between the Cls. 13 and 14 of the agreement much less an ambiguity as to the right of the parties to invoke arbitration Cl. 14 in case of disputes or differences arising out of the agreement. The Cls. 13 and 14 in the agreement is complementary and not conflicting. The decision relied upon by Mr. M. R. Janardhan is of no assistance to him, for it is distinguishable on facts of the present case. Accordingly, point No. 2 is answered that there is no conflict between the Cls. 13 and 14 of the agreement and Cl. 13 does not exclude Cl. 14, as such, the proceedings initiated by the plaintiff under S. 20 of the Arbitration Act is maintainable.

23. POINT NO. 3 :- The learned counsel for the defendants has strenuously argued that there was no privity of contract between the plaintiff and the defendants, as such, the arbitration clause cannot be enforced. Further, he argued that assignment of lands by M/s. Imperial Enclave in favour of M/s. R. K. Associates does not bind the defendants. The learned counsel appearing for the plaintiff has submitted that the contention of the defendants counsel is a gallant attempt to get the case out of the purview of arbitration clause. He has pointed out that the agreement, dated 4-2-1990, to which the defendants are parties; and the contract is assignable as per the terms contained in the agreement. The purchaser of the land as per Partnership Deed, dated 5-2-1990 was M/s. Imperial Enclave which later constituted as M/s. R. K. Associates by deed dated 2-5-1990, as the Registering Authorities refused to register since the name was not acceptable and renamed as M/s. R. K. Associates. Several receipts issued by the defendants for having received the consideration amount of the sale of land under the agreement, viz., the Annexures D-7 to D-11 which go to show that the defendants have acted upon the contract and on change of the name of the firm as R. K. Associates, the defendants have issued receipts in favour of plaintiff viz., Annexure D-14, D-15, D-16 and D-17 in which it is stated that the defendants have received the respective part consideration amount from M/s. R. K. Associates formerly Imperial Enclave. The payments to the tune of Rupees 13,47,000/- was received by the defendants from the plaintiff M/s. R. K. Associates (formerly Imperial Enclave) without any demur and the receipts have been passed evidencing the receipt of the amount by the defendants from the plaintiff M/s. R. K. Associates. The contention of the defendants' counsel that there was no privity of contract is a feeble attempt to wriggle out of the binding effect of the agreement of sale.

24. Mr. S. G. Sundaraswamy, learned senior counsel appearing for the plaintiff, has pointed out that as per the true construction of the contract, it was the intention of the parties that it should be assignable. The clause in the agreement of sale specifically mention the assignability of the contract and as such, when the contract is assignable, an arbitration clause is also equally assignable for the assignment is the entire subject-matter of contract. In support of this submission, he has relied on the decision reported in 1946 54 All ER Shyler v.

Woolf. In the said decision, it is observed as follows:--

"on the true construction of the contract, it was the intention of the parties that it should be assignable. Moreover, since the contract did not relate to personal services and there would be no increase in the burden of the contract if it was assigned, no objection to assignability arose."

"If a contract were otherwise assignable, an arbitration clause did not prevent it from being assignable, the clause followed the assignment of the subject-matter of contract."

The agreement in this case, in my opinion, is quite clearly assignable. The surrounding circumstances and on true construction of the agreement and intention of the parties gathered from the documents when read in the light of its subject-matter, it is an assignable contract. The clause in the agreement is so worded which binds the original parties. In fact, the assignees of the main contract can enforce it only by arbitration. It is well laid principle of law that an arbitration clause is assignable, if the main contract is assignable. Russel on Arbitration Nineteenth Edition, at page 69 has stated that "an arbitration agreement will bind not only the actual parties to it, but also an assignee of the contract containing it."

25. I am of the opinion that the contract in the present case is assignable which was assigned to the plaintiff and the benefit of the contract is vested in it and the plaintiff is entitled to sue upon it. The contention of the defendants' counsel that there was no privity of contract and does not assignable and the plaintiff cannot sue upon it, is devoid of any merit.

26. POINT NO. I :-- In revision Petition No. 4528 of 1991 filed by the plaintiff, the learned senior counsel appearing for the plaintiff has contended that the impugned order to the extent of imposing condition of depositing the amount viz., the entire balance consideration of sale price, into the Court, for grant of an order of injunction in favour of the plaintiff is an order in terrorism, opposed to law, equity and in the facts and circumstances of the case, there was no justification for imposing such stringent condition. He has further argued that the plaintiff's suit is under S. 20 of the Arbitration Act to have the agreement filed into Court and refer the matter for arbitration since there was dispute arisen between the parties and in aid of it filed an application and sought: an order of temporary injunction restraining the defendants from interfering with the possession of the suit lands in which the development work is being carried out as per the agreement. Further, he submitted the arbitration case filed by the plaintiff in the Court was not one for passing a decree for specific performance, as such the question of depositing the balance sale price in the Court does not arise. He has strongly contended that by imposing such condition which is on the face of it not only an order in terrorem, but also is in excess of power vested in the lower Court, In support of his submission, he has relied on the decision reported in Province of Bombay Vs. Kusaldas S. Advani and Others, . It is

observed thus :--

"Wherever any body of persons having legal authority to determine questions affecting rights of subjects and having the duty to act judicially act in excess of their legal authority a writ of certiorari may issue."

The Court below on consideration of material on record, has, in fact, rightly held the plaintiff has made out a prima facie case. With regard to balance of convenience, it appears that a sum of Rs. 13,40,000/- has been paid by the plaintiff to the defendants. Several steps have been taken by the plaintiff to get conversion of land as per Annexures-F1 to F3. Boucher have been got printed as per G-1, advertisement has been made through news papers as can be seen from Annexure G-2 to G-7. Payment has been made in a suit for the defendants. At the instance of the defendants payments is made one V. Ethiraj as per Annexure D-18, when defendants 1 and 2 have asked. S. V. Ramaswamy describing him as M/s. R. K. Associates (formerly Imperial Enclave) calling upon him to issue a bankers pay order for Rs. 2,25,000/ - to meet the decretal amount of Mr. Ethiraj to adjust the amount so paid towards instalments due on 31-5-1990 and 31-8-1990. One of the conditions in the agreement is that although the properties agreed to be sold remain in possession of the defendants, they agreed to permit the purchaser, its agents, representatives, contractors, workers employed in connection with their survey. Formation of lay-out, develop the schedule property into the lay-out to enter upon, to undertake developmental work at their cost such as providing stones wall around the schedule and to dig up construction work in that behalf, formation of road, drains, laying water pipes etc. Several works have been carried out as per the agreement by the defendants. It is seen from the agreement that the plaintiffs have been permitted to enter into an agreement of sale in respect of sites so formed on the schedule property and to receive advances from the intending purchasers subject to certain conditions. As per the written statement of the defendants they deny that any developmental work has been undertaken by the plaintiff. It is prima facie shown by the plaintiff that they have carried out certain work including roads, foot-paths and formation of the sites in pursuance of the agreement, dated 4-2-1990. The lower Court has come to the conclusion on the basis of the material available on record that the plaintiff has established the balance of convenience in their favour and if the defendants are not restrained from committing the breach of contract or other injury of any kind, the plaintiff will be put io greater injury than the defendants. Further, on the question of hardship, the lower Court has held that the plaintiff have already spent Rs. 13,40,000/-and also got the land converted for non-agricultural purposes and such other activities as making publication, inviting persons to purchase sites to be formed which all would go a waste. In my opinion, the lower Court has rightly held that the balance of convenience is in favour of the plaintiff and hardship would also be greater to the plaintiff than that of defendants.

27. The contention of the learned senior counsel Mr. S. G. Sundaraswamy that

the condition imposed for grant of temporary injunction is in terrorism and in excess of legal authority of lower Court and opposed to law and equity is well founded, The conditions imposed by the lower Court, directing the plaintiff to deposit the entire balance sale price of Rs. 31,14,685/- in Court within seven days from the date of the order, otherwise, the temporary injunction granted will stand automatically cease, tantamount to render the order of temporary injunction nugatory. The jurisdiction of the Court is founded on the equity of relieving a man from the necessity of bringing an action after, action. The party approaches the Court for grant of injunction seeking its aid to prevent the future injury. This, while the Court granting temporary injunction to prevent the future injury to the party, it cannot impose unreasonable condition to put him to peril. The lower Court having held that the balance of convenience is in favour of the plaintiff and the defendants will not be put to any hardship if the injunction order is granted in favour of the plaintiff, the order imposing condition is unreasonable and in excess of legal authority. The task of this Court is to see whether the condition imposed by the lower Court, in exercise of judicial discretion, could have decided to impose. The reason given by the lower Court for imposing the condition while granting the temporary injunction in favour of the plaintiff, in my opinion, is neither fair nor reasonably related to equitable order.

28. For the reasons stated above, the revision-petition No. 4528 of 1991 filed by the plaintiff is allowed, and the revision-petition No. 340 of 1992 filed by the defendants is dismissed. This Court doth order, that the condition imposed by the lower Court directing the plaintiff to deposit a sum of Rs. 31,14,685/- in Court to be invested in a Nationalised Bank within seven days is illegal, and is hereby set aside. The order in other respect granting temporary injunction by the lower Court in favour of the plaintiff remains undisturbed.

In view of the peculiar circumstances of the case, no order as to costs.

29. Order accordingly.