
(2014) 02 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 3184 of 2013

Mukesh Chandrashekhar Kumaran

APPELLANT

Vs

Smt. Suman Vitthalrao Ikhankar and Others

RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 24 8

Citation : (2014) 4 ALLMR 530 : (2014) 2 MhLj 845

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : Rohit Joshi, for the Appellant; D.V. Chauhan, for R-1 and 2, for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J.

Rule made returnable forthwith.

1. Heard the matter finally by consent of the learned counsels appearing for the parties. The challenge in this petition is to the order dated 2nd May, 2013, passed below Exh. 17 in Regular Civil Suit No. 451/2013 by the learned 4th Joint Civil Judge, Junior Division, Nagpur. The learned Judge of the trial Court has allowed the application u/s 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the said Act"), and has directed the plaintiff to take steps to refer the present matter to the arbitrator as per the provision of the said Act. The court has held that in view of the arbitration clause contained in the agreement dated 16.11.2007, the civil court has no jurisdiction to entertain, try and decide the suit.

2. There is no dispute that a deed of partnership was entered into between the plaintiff and the defendant No. 1 on 09.09.2005, which was subsequently amended on 16.11.2007 by executing separate agreement containing clause of arbitration. Undisputedly, the defendant Nos. 2 to 5 are not parties to any of the

two deeds. In the Regular Civil Suit No. 451/2013 filed by the plaintiff, the reliefs are claimed as under;

[i] Declaration that the document dated 16/11/2007 titled as Amendment in Deed of Partnership dated 09/09/2005 is a false and bogus document not binding on the plaintiff

[ii] Declare that the gift deed executed by the defendant No. 1 in favour of the defendant No. 3 to 5 dated 17/09/2011 is null and void and does not confer any legal right to the defendant No. 3 to 5;

[iii] pass a decree of perpetual injunction restraining the defendant no. 1 and 2 from relying or making use of the document dated 16/11/2007 titled as Amendment in Deed of Partnership dated 09/09/2005 in any manner whatsoever;

[iv] Declare that the First PROSPER REAL ESTATE MANAGEMENT GROUP stands dissolved w.e.f. 21/09/2010;

[v] pass a decree for settlement of accounts of the firm PROSPER REAL ESTATE MANAGEMENT GROUP;

[vi] pass a decree of permanent injunction restraining the defendant No. 3 to 5 from creating any third party interest so also restrain the defendant no. 1 & 2 from creating third party interest or transferring their rights on the property which is in their name mentioned in para 5 and 7.

[vii] saddled cost of the suit on the defendant no. 1 & 2

[viii] grant any other appropriate relief which this Hon''ble court deems fit and proper in the facts and circumstances of this case.

3. It is urged by Shri Chauhan, the learned counsel appearing for original defendant nos. 1 and 2 that it is a case of mis-joinder of causes of action and there is no cause of action for the present against the defendant nos. 3 to 5. It is his submission that the defendant nos. 2 to 5 have been deliberately joined as defendants in the suit and the reliefs are claimed against them so as to defeat the arbitration clause contained in the agreement dated 16.11.2007.

4. The objection as is raised is squarely covered by the decision of the Apex Court in case of Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and Another, . Paras 13 to 16 of the said judgment are reproduced below.

13. Secondly, there is no provision in the Act that when the subject matter of the suit includes subject matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject matter of the suit to the arbitrators.

14. Thirdly, there is no provision as to what is required to be done in a case where some parties to the suit are not parties to the arbitration agreement. As against this, u/s 24 of the Arbitration Act, 1940, some of the parties to a suit

could apply that the matters in difference between them be referred to arbitration and the Court may refer the same to arbitration provided that the same can be separated from the rest of the subject matter of the suit. Section also provided that the suit would continue so far as it related to parties who have not joined in such application.

15. The relevant language used in Section 8 is "in a matter which is the subject matter of an arbitration agreement", Court is required to refer the parties to arbitration. Therefore, the suit should be in respect of "a matter" which the parties have agreed to refer and which comes within the ambit of arbitration agreement. Where, however, a suit is commenced-"as to a matter" which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The words "a matter" indicates entire subject matter of the suit should be subject to arbitration agreement.

16. The next question which requires consideration is even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible u/s 8 of the Act? In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action that is to say the subject matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject matter of an action brought before a judicial authority is not allowed.

5. Shri Chauhan, the learned counsel for the respondents does not dispute that the cause of action to claim the relief in terms of prayer clause (ii) regarding declaration that the gift deed executed by the defendant no. 1 in favour of defendant nos. 3 to 5 on 19.09.2011 is null and void would arise only upon grant of declaration in terms of prayer clause (i). Hence, according to him, unless the declaration is granted in terms of prayer clause (i), the cause of action would not arise to claim the relief in terms of prayer clause (ii). It is also not disputed that if the relief is granted in terms of prayer clause (i) in the plaint, the reliefs in other clauses would automatically follow. Thus, the reliefs claimed in prayer clause (i) and other clauses of the plaint are integrally connected and the same cannot be split up. The defendant nos. 2 to 5 are not the parties to the arbitration agreement. In view of this, the learned Judge of the trial Court has committed an error in allowing the application u/s 8 of the said Act. The order, therefore, cannot be sustained. In the result, writ petition is allowed. The order dated 2nd May, 2013, passed by the learned 4th Joint Civil Judge, Junior Division, Nagpur below Exh. 17 in Regular Civil Suit No. 451/2013, is hereby quashed and set aside. The application at Exh. 17 filed u/s 8 of the said Act is hereby dismissed. The trial Court to proceed further in accordance with law. The

parties to appear before the trial Court on 26th February, 2014. No orders as to costs.