
(2010) 03 KAR CK 0253

In the Karnataka High Court

Case No : Misc. CVL. No. 20730 of 2009 in CMP No. 15 of 2009

Nitesh Estates Projects (P) Ltd.

APPELLANT

Vs

Karishma Paradise and Hill Country Resorts (P) Ltd.

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11 (5)
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2010) 03 KAR CK 0253

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : K. Shashikiran Shetty, for the Appellant; C.G. Shashivardhan, for the Respondent

Final Decision : Allowed

Judgement

K. Bhakthavatsala, J.—Heard on Misc.Cvl. No. 20730/2009.

2. This is an application filed by the Petitioner u/s 151 of CPC praying to appoint a retired High Court Judge as Arbitrator in lieu of Sri. v. Chandrashakar, who was appointed by order dated 7.7.2009 by this Court on behalf of the Respondent with drew from the office of Arbitral Tribunal.

3. Learned Counsel for the Respondent has filed objections contending that the Arbitral Tribunal by proceedings dated 5.11.2009 permitted the Respondent to appoint another Arbitrator within a week. It is further stated that Sri. N.S. Sanjay Gowda, Advocate, No. 12, 2nd floor, Sarpabushana Mutt Building, Tank Bund Road, Bangalore-560 009, is appointed as arbitrator.

4. Learned Counsel for the Petitioner submits that the Petitioner having approached this Court in CMP No. 15/2009 u/s 11[5] of the Arbitration and Conciliation Act 1996, Sri. v. Chandrashekar was appointed as Arbitrator on behalf of the Respodnent. Since Sri. v. Chandrashekar has resigned from the case, the Respondent will not get right to appoint arbitrator in place of Sri. v.

Chandrashekar.

5. Learned Counsel for the Respondent submits that filing an application for appointment of arbitrator in a disposed off matter does not arise and the Petitioner has no right to approach this Court for appointment of an arbitrator in place of Sri. v. Chandrashekar, without issuing notice and following the procedure laid down in the Arbitration and Conciliation Act 1996 and prays for rejection of the same.

6. Learned Counsel for the Petitioner opposes the name of Sri. N.S. Sanjay Gowda as Arbitrator of the Respondent.

7. The matter was adjourned from time to time on the ground an offer was made by the counsel for Respondent for amicable settlement. Today it is reported that there is no amicable settlement. Therefore, the application was taken up for hearing on merits.

8. The contention of the Respondent that Arbitral Tribunal has permitted the Respondent to appoint his arbitrator and he has nominated Sri. N.S. Sanjay Gowda as an arbitrator cannot be accepted for the simple reason that the party who loses his right to appoint an arbitrator would not get back since the arbitrator appointed by the Court has resigned. By order dated 7.7.2009 this Court appointed Sri. v. Chandrashekar, advocate, as arbitrator on behalf of the Respondent. Merely because the name was sponsored by the Respondent and agreed by the counsel for Petitioner, it cannot be said that Sri. v. Chandrashekar, arbitrator, was appointed by the Respondent. The arbitrator was appointed by the Court as per powers conferred u/s 11 of the Arbitration and Conciliation Act. Whenever the arbitrator appointed u/s 11 of the Act resigns or otherwise vacancy occurs, it is for the High Court to appoint another arbitrator. The Arbitral Tribunal has no right to direct the party for appointment of arbitrator. There is no need to file another petition u/s 11[5] of the Act for appointment of substitute arbitrator. There is no merit in the objections filed by the Respondent.

9. In the result,

(i) Misc.Cvl. No. 20730/2009 is allowed and Sri. Justice R. Gururajan, former Judge of High Court of Karnataka residing at "Sri Harikrupa", No. 504, 5th Floor, Sri. Chitrapur Housing Cooperative Society Ltd., 15th Cross, Malleshwaram, Bangalore-560 003, is appointed as an Arbitrator in place of Sri. v. Chandrashekar on behalf of the Respondent herein.

(ii) The Registry is directed to send necessary papers along with copy of earlier order dated 07.07.2009 made in CMP No. 15/2009 and copy of this order to the learned Arbitrator for needful action.