
(2010) 04 KAR CK 0154
In the Karnataka High Court
Case No : CMP No. 295 of 2009

Rajesh Exports Limited

APPELLANT

Vs

Valley View Trading Pvt. Ltd. and Mr. Bhaskar Prakash and
Mrs. Renu Prasad

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 8

Citation : (2010) 04 KAR CK 0154

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : Girish Kodgi, for the Appellant; Sanjeev Kumar Mishra, for Mahesh and Co. for R1 to R3, for the Respondent

Final Decision : Allowed

Judgement

Ajit J. Gunjal, J.—Petitioner is a company registered under the Companies Act. The claim of the petitioner-Company is that it is the largest manufacturer of gold jewellery and gold products in the world. The company sells guaranteed and exclusive gold jewellery through its retail show rooms under the brand name "M/s. Laabh Jewellers" and "M/s. Shubh Jewellers". The petitioner has established several retail jewellery showrooms across the country, under franchisee arrangement and the respondents are such franchisees. The said franchise agreement is reduced in writing on 1.2.2008. It appears certain dispute has arisen between the petitioner as well as the respondents in respect of the transaction relating to the franchise agreement. Hence the petitioner has invoked the arbitral clause in the franchise agreement and accordingly issued a notice to the respondents. The notice issued to the respondents has been returned with postal endorsement indicating that either the "Respondents were not available" or "The premises locked". Hence the present petition u/s 11 of the Arbitration and Conciliation Act, 1996. (hereinafter referred to as "the Act") seeking appointment of an arbitrator to resolve the dispute between the petitioner and

the respondents.

2. On notice, the respondents have entered appearance and have filed statement of objections to the petition.

3. Mr. Girish Kodgi, learned Counsel appearing for the petitioner submits that nearly 20 Kgs of gold is in the custody of the respondents, the value of which is about Three Crores. According to him, if the franchise agreement is not workable the franchisee is required to return the gold jewellery.

4. Mr. Sanjeev Kumar, learned Counsel appearing for the respondents, questions the maintainability of the petition itself, inasmuch as notice as contemplated under the Act is not served on the respondents. He further submits that a suit has already been filed by the respondents before the Civil Court at Patna, claiming certain reliefs. He further submits that the petitioner has entered appearance in that suit and has filed written statement. But however, it has not taken up a contention regarding the maintainability of the suit having regard to the arbitral clause.

5. I have perused the papers. The franchisee agreement is not disputed either by the petitioner or the respondents. A perusal of the agreement certainly discloses that there is an arbitral clause. Clause 55 of the franchisee agreement would deal with the arbitral clause, wherein it is said that in the event of any dispute or difference between the parties arising under the agreement or in connection with the same shall be dealt with the rules in terms of the provisions of Arbitration and Conciliation Act 1996. It is also stated that, a retired judge is to be appointed by consensus to resolve the dispute. The clause further reads that the proceedings of the arbitration shall be in English and will be in Bangalore and hence on that score, I am of the view, that an arbitral clause exists and dispute having arisen between the petitioner and the respondents, the same is required to be resolved by appointing an arbitrator.

6. Insofar as the two preliminary objections raised by the learned Counsel for the respondents are concerned, it is to be stated that a notice u/s 11 of the Act, is no doubt contemplated, but the question is as to whether it is mandatory or directory, inasmuch as the Apex Court in the decision of Rashtriya Ispat Nigam Limited and Another Vs. Verma Transport Company, , has observed that service of notice under arbitration agreement is not mandatory. Insofar as the respondents submission relating to the jurisdiction of the Court at Patna is concerned, it is no doubt true the written statement is filed. But however, thereafter no serious progress is made. Even at this point of time, it is open for the petitioner to make an application u/s 8 of the Act and contend that since there is an arbitral clause, the question of adjudicating the dispute inter se between the petitioner and the respondents in the suit does not arise.

7. Be that as it may. The fact remains that the petitioner has filed the present petition seeking appointment of an arbitrator. Another contention raised before me is that several proceedings are pending inter se between the petitioner and

the respondents on the criminal side also, that would be in respect of dishonouring of cheques and relate to proceedings u/s 138 of Negotiable Instruments Act. That would be of no relevance here. Hence the following:

ORDER

Petition is allowed. Hon"ble Justice R. Gururajan, Former Judge of this Court (Address: "Sree Harikripa"" No. 504, 5th Floor, Sri. Chitrapur Housing Co operative Society Ltd., 15th Cross, Malleswaram, Bangalore - 560 003) is appointed as the sole arbitrator to resolve the dispute between the petitioner and the respondents. The sole Arbitrator shall enter reference and cause notice to the parties. All contentions are left open.

Registry to communicate this order to the sole arbitrator.