

(2013) 04 KAR CK 0192
In the Karnataka High Court
Case No : C.M.P. No. 14/2013

Sarveshwar Roller Flour Mills Pvt. Ltd.	Vs	APPELLANT
Sobha Developers Ltd.		RESPONDENT

Date of Decision : 24-04-2013

Acts Referred:

Citation : (2013) 04 KAR CK 0192

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.S. Bopanna, J.—The petitioner is before this Court seeking that a sole arbitrator be appointed to resolve the dispute between the parties. The respondents have filed their objections to the petition.

2. The petitioner and the respondents are stated to have entered into a construction agreement as well as the sale agreement whereby the petitioner had agreed to purchase a flat constructed by the respondents. In that regard, certain disputes have arisen between the parties. The petitioner therefore relying upon clause 10 of the said agreement which provides for resolution of the dispute by arbitration, has got issued a notice dated 13.08.2010 (Annexure-P) invoking arbitration clause and seeking for appointment of the arbitrator. The respondents have not agreed to the same. It is in that circumstance the petitioner is before this Court.

3. The respondents though have filed their objection statement do not dispute the agreement entered into between the parties. However it is contended that the dispute as claimed by the petitioner does not exist. Therefore, the issue of appointing an arbitrator would not arise. In addition, it is contended that the petitioner himself had abandoned the arbitration clause and had sought to seek for the relief before the District Consumer Disputes Redressal Forum and having failed in the said attempt cannot now seek for appointment of an arbitrator.

Hence, it is contended that the petition is liable to be dismissed.

4. The learned senior counsel for the respondent while opposing the contention put forth by the learned counsel for the petitioner seeking appointment of arbitrator would at the outset refer to the order passed by the Consumer Disputes Redressal Forum in CC No. 1341/2011 to point out that the forum had referred to the rival contentions and a decision has been rendered. It is also pointed out that the forum while disposing of the claim has also indicated that the petitioner could only file a civil suit and as such the petitioner having already opted for a forum cannot now once again seek for appointment of the arbitrator. In that regard, the learned senior counsel for the respondent has relied on the decisions of the Hon"ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Mastan and Another, and in the case of Raj and Associates and Another Vs. Videsh Sanchar Nigam Limited and Others, .

5. In the light of the above, it is necessary to consider the applicability of the said decisions to the instant case at this juncture. In the decision rendered in the case of National Insurance Co. Ltd. the issue was with regard to the party opting one of the forums when two forums are available and in such circumstance, it is held that the party having opted one forum cannot resort to the other. In the instant case, the petitioner no doubt had filed a claim petition before the Consumer Disputes Redressal Forum. The respondents herein themselves had taken a contention before the Consumer Disputes Redressal Forum that the petition is not maintainable in view of the existence of an arbitration clause between the parties. The Consumer Forum though referred to the matter in detail has further arrived at the conclusion that there are serious disputes between the parties which can only be resolved in a civil suit. In such circumstance, though the petitioner had filed a petition before the forum, the said forum was not one of the forum which had been agreed upon between the parties under the agreement. Be that as it may, the Consumer forum having noticed that there are serious disputes between the parties could have only relegated the parties to the forum which had been agreed between them and could not have directed them to approach the Civil Court. Therefore the said decision cited by the learned senior counsel is not applicable to the present facts.

6. That apart, in the case of Raj and Assts, the issue was where the party despite there being arbitration clause agreed between the parties had filed a Civil suit, the defendant also did not raise any objection with regard to the maintainability of the suit nor had pressed the arbitration clause into service. Ultimately the Court below on its own had noticed that there is an arbitration clause and had dismissed the petition. In such circumstance, the Hon"ble Court was of the view that when the parties did not oppose and insist upon the arbitration clause, the suit was maintainable. In the instant case, it is not one such case inasmuch as already noticed, the defendant has raised the contention of existence of the arbitration clause and in any event, the Consumer disputes Forum has not decided the matter on merits but has arrived at the conclusion that there is a

serious dispute between the parties. Therefore when that part of the order is accepted by the respondents, wherein there is a dispute between the parties, it can only be resolved by the manner in which the parties have agreed upon under the agreement.

7. Therefore I am of the opinion that an arbitrator requires to be appointed in the instant case. Accordingly, at this juncture, the learned counsel for both the parties agree that Sri N.S. Sangolli, Retired District and Sessions Judge, 415/2, "F" Block, Sahakaranagar, (Next to Hebbal Tank), Bangalore-560 092 be appointed as arbitrator. The learned arbitrator shall now enter upon reference, issue notice to the parties, settle the terms of arbitration and proceed with the matter in accordance with law.

Registry to return the papers if sought for by the learned counsel for the parties.

The petition is allowed accordingly.