
(2009) 07 DEL CK 0136

In the Delhi High Court

Case No : CS (OS) 1670 of 2007 and I.A. 3453 of 2008

Shri Dhan Prakash Gupta and Others

APPELLANT

Vs

Shri Kedar Nath Gupta and Others

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Arbitration Act, 1940 — Section 7, 7(2)
Arbitration and Conciliation Act, 1996 — Section 8

Citation : (2009) 07 DEL CK 0136

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : K. Sunil, for the Appellant; Sunil Mittal and Sonia Arora, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.

I.A.-3453/2008 (Under Section 8 of Arbitration and Conciliation Act)

1. The defendants have preferred this application contending that the Suit is not maintainable by reason of existence of an arbitration clause.

2. The plaintiffs sue the defendants, inter alia, for declaration that the action of some of them in transferring movable and immovable properties of the seventh plaintiff trust is null and void; consequently injunctive relief, both permanent and mandatory, is sought. The plaintiffs also request for appointment of receiver to take the charge of the affairs and management of the seventh plaintiff trust.

3. The defendants/applicants argue that plaintiff No. 1 and defendant No. 1 are signatories to the trust which constituted the seventh plaintiff on 3.10.1985. Apparently, the settlement deed dated 27.8.1997 altered the scope of the Trust. It is contended that the disputes that are the subject matter of the present case have a direct bearing on the day to day functioning and management of the affairs of the seventh plaintiff trust. The applicants rely upon Clause 13 of such

document which is in the following terms:

Clause 13 The trustees shall have full power to compromise or compound all actions, suits and other proceedings and all differences and disputes touching the trust and, or the trust property or trust affairs and to refer any such differences or disputes to Arbitration and to adjust and settle all accounts relating to the Trust and/or the Trust properties and to do all other acts and things as fully and effectively, as if they were absolutely entitled to do the same without being liable or answerable for any loss occasioned thereby.

4. It is contended that though not happily worded, the stipulation fulfills all the requirements of an arbitration agreement that binds the parties to have the disputes resolved through arbitration.

5. Learned Counsel for the applicant relied upon judgment of the Supreme Court reported as Nandan Biomatrix Limited Vs. D-1 Oils Limited, to state that the essentials of what constitute an arbitration agreement are present in Clause 13. It is submitted that in these circumstances, the Suit is not maintainable and should be rejected as barred by virtue of Section 8 of the Arbitration and Conciliation Act.

6. The plaintiffs position vis--vis the application is that the Clause 13 is not a binding arbitration agreement. It is submitted that at best, arbitration is enabled, but is not compulsive since there is no obligation cast on the parties to necessarily have the disputes resolved through arbitration. Learned Counsel further contended that there is no indication that the parties affected by any decision of the Trust or aggrieved by any dispute relating to the Management of the Trust, are barred from approaching the Civil Court and that in any event, the Clause does not advert to the Arbitration and Conciliation Act, 1996.

7. As is evident, Clause 13 is in two parts; the first spells out the power of the Trustees to compromise or compound all actions, Suits and other proceedings. The second part, which is vital for resolving the present controversy read as follows:

All differences and disputes touching the Trust or Trust property or Trust affairs and to refer any such differences or disputes to arbitration

8. The Court while considering application u/s 8 of the Arbitration and Conciliation Act has to see the intention of the parties. Perhaps the matter is compounded by the fact that not merely dispute resolving mechanism but other powers of the trustees are also discussed in Clause 13, such as the power to compound disputes etc. Nevertheless the expressed advertence to differences and disputes touching the trust in relation to the subject matter of the latter part of the clause i.e. arbitration, brings out with sufficient clarity the intention of the settlers that disputes of the kind which are sought to be agitated here are to be arbitrated.

9. Section 7 of the Arbitration Act clarifies for a condition to be deemed as

arbitration clause agreement, that it should be in writing and contained in a document signed by the parties. Section 7(2) further states that an arbitration agreement may be in the form of the arbitration clause for a contract or in a form of a separate agreement. In *Smt. Rukmanibai Gupta Vs. Collector Jabalpur and Others*, , the Court observed that if the parties state that disputes arising between them in respect of the subject matter of the contract would be referred to arbitration, then arrangement would spell out the arbitration agreement. Taking a cue from this, Supreme Court later in *M. Dayanand Reddy Vs. A.P. Industrial Infrastructure Corporation Limited and others*, stated that an arbitration clause need not be in a specified form and that what is important is intention of the parties to refer the disputes if inferable with clarity. All these were considered and applied in *Nandan Bio Matrix (supra)*.

10. In the present case, although the condition concerned i.e. Clause 13 talks of more than one idea, yet the intention to have the disputes or differences touching upon the Trust or trust property or its affairs settled through arbitration is clearly borne out.

11. In the circumstances, the Court is of opinion that application deserves to be allowed.

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12. In view of the above finding, the Suit is rejected as not maintainable, leading the parties to seek their remedies for appointment of Arbitrator in accordance with law.