
(2015) 01 KAR CK 0187

In the Karnataka High Court

Case No : Writ Petition No. 107115 of 2014 (GM-CPC)

Sidramayya and Others

APPELLANT

Vs

Shri Mallikarjun Seva and Shikshan Sole Trust and Others

RESPONDENT

Date of Decision : 02-01-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8
Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (2015) 1 KarLJ 384 : (2015) 4 KCCR 3036

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

Bench : Single Bench

Advocate : Rekha Patil for M.G. Naganuri, for the Appellant; M.S. Haravi and S.A. Huddar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J.—The petitioners are defendants 1 to 5 in O.S. No. 1 of 2013. The said suit is filed by the respondents herein seeking that the registration of the plaintiff 1-trust as rewritten trust deed dated 16-5-2013 be declared as illegal, void ab initio and not binding upon the plaintiffs and consequential relief thereto has also been sought in the plaint. The defendants having filed their written statement and also filed an application under Section 8 of the Arbitration and Conciliation Act, 1996, contending that the parties are governed by an Arbitration clause and therefore the suit be referred to arbitration, as it would not be maintainable before the Court. The application was opposed by the plaintiffs. The Court below after taking into consideration the rival contentions, has dismissed the application by order dated 30-6-2014. The said order is assailed herein. The learned Counsel for the petitioner while assailing the order would contend, the fact that there is an arbitration clause cannot be disputed inasmuch as the Court below has extracted the very clause in its order. In that view, it is contended that when the clause provides that in the event of there being any dispute between the trustees, the same has to be referred to arbitration and none of the parties can approach the Court or the police station, the said clause

would bind the parties and therefore, even, if the plaintiffs have any dispute, they can only raise an arbitration and not a suit. In that view, it is contended that when the said clause had been noticed by the Court below, it was incumbent upon the Court below to refer the matter to arbitration and as such, the order impugned herein is not sustainable and the same is liable to be set aside.

2. The learned Counsel for the respondents, however, seek to sustain the order passed by the Court below.

3. In the light of the rival contentions, I have perused the petition papers including the order impugned herein. It is true, as contended by the learned Counsel for the petitioners, the trust deed registered on 7-10-2002 contains an arbitration clause. The arbitration clause, no doubt indicates that the parties would have their internal matters resolved through an arbitrator. However, keeping in view, the nature of the prayer sought in the suit and the scope of consideration to be made in the suit as rightly noticed by the Court below, Section 92 of the Code of Civil Procedure, 1908 would come into play and the question relating to the rewritten trust deed itself would have to be considered by the Court below since the rewritten trust deed has been assailed in the suit. Therefore, if this aspect of the matter is kept in view, the Court below was justified in its conclusion that in the present nature of suit, the parties having agreed to the arbitration clause, would not make any difference. The application, as filed, has not rightly been accepted.

In that view, I see no error in the order passed by the Court below so as to call for interference in the present petition.

Accordingly, the petition being devoid of merits stands disposed of.