
(2011) 09 KAR CK 0084

In the Karnataka High Court

Case No : Writ Petition No"s. 35897-98 of 2011

Sri A.R. Shambulinga and Sri A.R. Prabhudev

APPELLANT

Vs

Smt. A.C. Lalitha and Others

RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Citation : (2011) 09 KAR CK 0084

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : R. Bhadrinath, for Southern Law Assts, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Patil, J.—These writ petitions are filed challenging the order passed by the sole Arbitrator - Respondent No. 18 on the application tiled by the Petitioners herein seeking to implead Respondents 4 to 17 herein as Respondents before the Arbitrator in case bearing CMP No. 57/2010.

2. Respondent No. 18 is appointed as a sole Arbitrator by the order passed by this Court on 29.11.2010 in CMP No. 57/2010 to resolve the dispute between the parties i.e. the Petitioners 1 & 2 herein and Respondents 1 to 3 herein. The grievance is with regard to the Partnership Firm that they allegedly constituted and with regard to the assets of the Partnership Firm consisting of immovable properties.

3. When the matter was pending before the Arbitrator, Petitioners made an application seeking to implead Respondents 4 to 17 herein. Notice was ordered on the said application by the Arbitrator to the proposed Respondents. The proposed Respondents filed objections contending that they cannot be impleaded as party Respondents in the arbitral proceedings. After hearing both the parties, the Arbitrator has passed the impugned order holding that as the proposed Respondents were not parties to the suit or to the arbitration ease and that as the Partnership Deed containing the arbitration clause had no application to the

proposed Respondents, they cannot be impleaded as party Respondents to the arbitral proceedings. In this regard, the Arbitrator has placed reliance on the judgment of the Apex Court in the case of S.N. Prasad Vs. Monnet Finance Ltd. and Others, .

4. Learned Counsel for the Petitioners fairly submits that to the agreement wherein the arbitration clause is incorporated, the proposed Respondents are not parties. However, his contention is that since Respondents 1 to 3 who are parties to the agreement containing arbitration clause have indulged in alienating the property in favour of the proposed Respondents and that there is consistent effort made by the proposed Respondents to further alienate the property, Petitioners have no other go, except to implead them as party Respondents in the pending arbitral proceedings so as to secure their right and interest.

5. Upon consideration of the contentions urged by the Petitioners and on careful perusal of the pleadings and the impugned order, I find that the proposed Respondents are admittedly not parties to the arbitration clause contained in the Partnership Deed and as such they cannot be impleaded as parties before the Arbitrator. The dispute referred to in arbitration pertains to the Petitioners and Respondents 1 to 3. The Arbitrator cannot exercise jurisdiction over the transaction or parties that do not come within the ambit and scope of arbitration clause contained in the agreement. In fact, the decision of the Apex Court referred to herein above throws sufficient light on this aspect as it is held therein that the second guarantor who was not a party to the loan agreement containing arbitration clause between the lender and the borrower was held to be not amenable to be impleaded as a party to a reference in regard to dispute relating to repayment of such loan subjecting him to arbitration award.

6. In the light of the above, I do not find any illegality in the order passed by the Arbitrator. Writ Petition being devoid of merits is dismissed.