

(2008) 04 BOM CK 0105

In the Bombay High Court

Case No : Civil Revision Application No. 5 of 2007

Suresh Manoharlal Suri and Others

APPELLANT

Vs

Gold Touch Real Estate Private Ltd. and Another

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Citation : (2008) 6 BomCR 169

Hon'ble Judges : Joshi A.H., J

Bench : Single Bench

Advocate : M. Anilkumar, for the Appellant; H. Dangre and R.B. Medhadia, for the Respondent

Judgement

Joshi A.H., J.—On 23rd August, 2007, this Court had issued rule and granted interim relief. The revision application is accordingly listed for final disposal.

2. Heard.

3. The case proceeds on certain admitted facts, namely:

(a) Defendant Nos. 1 to 5, on one hand, and the defendant No. 6, on the other hand, have entered into Agreement for Development dated 26th June, 2000 which is at Annex.I.

(b) Agreement dated 26th June, 2000 contains an Arbitration Clause.

(c) The defendant No. 6 was not in a position to fulfill its promise.

(f) There were negotiations, apparently tripartite, with plaintiff on one hand, defendant Nos. 1 to 5 on the other hand and defendant No. 6 on the third. These tripartite negotiations resulted into Agreement dated 9th August, 2002 (Annex.II).

(g) In the Agreement dated 9th August, 2002, the plaintiff undertook to abide by the commitments made by defendant No. 6, and agreed independent terms with defendant Nos. 1 to 5.

(h) The defendant Nos. 1 to 5 have issued notice dated 4th July, 2005 to the plaintiff and attempted to terminate the contract.

(i) Admittedly, it is a contract for development, undertaking building work and interests of large number of strangers are involved.

(j) Plaintiff has filed the suit for specific performance containing various prayers.

4. Learned Advocate Mr. Anilkumar, on the basis of aforesaid admitted facts, urges that it is not necessary that all further developments should have a separate arbitration agreement. According to him, all disputes even arising out of subsequent agreement would be encompassed within the arbitration agreement in existence in the form of foremost agreement. He relies upon reported judgments and says that when complexity of issues is involved, it would not derogate the arbitration agreement and it would be imperative for the Court to direct the parties to proceed with the arbitration agreement and hence objection to seek a direction to parties to act on the agreement is without substance.

5. In support of his above contentions, learned Advocate Mr. Anilkumar relied upon following reported judgments:

(a) Shin Satellite Public Co. Ltd. Vs. Jain Studios Limited, , and

(b) Groupe Chimique Tunisien SA Vs. Southern Petrochemicals Industries Corpn. Ltd., .

6. Learned Advocate Mr. Anilkumar made an alternate submission that in the event the petitioners fail, the petitioners be granted further time to file written statement.

7. Learned Advocate Mr. Dangre for respondent No. 1, on the other hand, urged as follows:

(i) The agreement between defendant Nos. 1 to 5 one hand and defendant No. 6 on the other hand had resulted into failure.

(ii) There is no dispute, whatsoever, inter se these defendants.

(iii) Plaintiff is not bound by the covenant of arbitration agreed between the defendants, and any such stipulation is not incorporated in the agreement between plaintiff and defendant Nos. 1 to 5.

(iv) The agreement dated 9th August, 2002 entered into by the plaintiff and defendant Nos. 1 to 5 and consented to by defendant No. 6 incorporates the protection and reciprocal obligation on the plaintiff to honour agreements done by the defendant No. 6 with prospective buyers. Barring this, there is no other obligation on the plaintiff against the defendant No. 6 under the agreement dated 9th August, 2002.

(v) On the other hand, the plaintiff has right of enforcement by agreement entered by it with defendant Nos. 1 to 5.

(vi) The plaintiff has, thus, prayed for a decree of declaration that both these agreements subsist and has sought a decree for specific performance of agreement (Annex.2).

8. Learned Advocate Mr. Dangre for respondent No. 1 placed reliance on following judgments:

(a) (Pamui Consultancy Services Ltd. v. Global Syntex (Bhilwara) Ltd.) 2003(1) Bom.C.R. 779 : 2002 (4) M.L.J. 748,

(b) Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and Another, .

(c) Karam Chand Thapar and Bros. (CS) Ltd. and Others Vs. Akaljot Singh Sekhon, .

(d) Bombay Isle Developers Pvt. Ltd. Vs. Kamladevi Jagdish Diwan and Another, , and

(e) Mahesh Kumar Vs. Rajasthan State Road Transport Corporation, .

9. On perusal of both the agreements, and pleadings, it is clear that the agreement entered by defendant Nos. 1 to 5 with the plaintiff is independent agreement and it does not stand on the foundation of agreement between defendants inter se.

10. On perusal of the application raising an objection about arbitration, it is seen that the application is blissfully vague. All that is, stated in the application reads as follows:

1) That the defendants submit that the suit is not maintainable as the plaintiff is having alternate relief under Arbitration and Conciliation Act which is admitted by the plaintiff in Clause (x) of the Agreement and also in para 5 (x) of Page 11 of the plaint.

(quoted from page 65 of the paper of Revision Application)

11. On perusal of Clause (x) of para 5, it is seen that the plaintiff is certainly not guilty of suppression. On the other hand, plaintiff has discreetly averred subsistence of arbitration agreement between the defendants inter se.

12. On the other hand, failure of the defendant No. 6 to undertake assured performance letting the defendant No. 6 free of any liability is seen to be real foundation, on which the plaintiff and defendants went ahead to tripartite in negotiations. It is not shown as to how and what is exact controversy or dispute that has arisen as against the agreement dated 26th June, 2000.

13. Had it been a case of defendants-petitioners that the plaintiff was an assignee or successor-in-interest of defendant No. 6 in respect of rights derived by the defendant No. 6 through agreement dated 26th June, 2000, in that eventuality, by virtue of recitals contained in the description clause of the Agreement (Annex.I), the plaintiff could have been a successor-in-title stepping

into the shoes of defendant No. 6 and would have been bound by the agreement entered between the defendants inter se.

14. Admittedly, to the petitioners-defendant Nos. 1 to 5, the plaintiff is claiming under independent agreement, and defendant No. 6 has gone out of the transaction and obligations emerging from agreement dated 26th June, 2000.

15. In these premises, the finding recorded by the trial Court in paragraph Nos. 5 and 10 of the order cannot be faulted as erroneous. On what is shown by the plaintiff, it is conclusive that there is no binding arbitration agreement between plaintiff and defendant Nos. 1 to 5, express or implied, prior to litigation, after or during pendency of litigation.

16. In the background of above noted obvious facts, it is not necessary to discuss the case law relied upon by both sides. Civil revision application, therefore, does not deserve interference. Rule is discharged with costs.