

Reserved On : 01/10/2024
Pronounced On : 10/12/2024

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CIVIL REVISION APPLICATION NO. 123 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI Sd/-

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Approved for Reporting	Yes	No
		No

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DEVSHIBHAI GOVINDBHAI LIMBANI & ORS.
Versus
DHAVALBHAI BHOGILAL VYAS & ORS.

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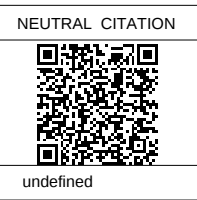
Appearance:
MR NV GANDHI(1693) for the Applicant(s) No. 1,2,3,8,9
VASIM MANSURI(8824) for the Applicant(s) No. 1,2,3,4,5,6,7,8,9
AKASH A SINGH(8713) for the Opponent(s) No.
10,11,12,13,14,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,30,31,32,3
3,34,35,36,37,38,39,4,40,41,42,43,44,45,5,6,7,8,9
MR BHARAT JANI(352) for the Opponent(s) No. 47
MR VISHAL C MEHTA(6152) for the Opponent(s) No. 1
NOTICE SERVED BY DS for the Opponent(s) No. 46

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CORAM:**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

CAV JUDGMENT

1. Rule. Learned advocate, Mr. Vishal Mehta waives service of notice of rule for and on behalf of the respondent Nos.1, learned advocate Mr. Akash A. Singh waives service of notice of rule for and on behalf of the respondent Nos.2 to 45 and learned advocate Mr. Bharat Jani waives service of notice of rule for and on behalf of the respondent No.47. Although

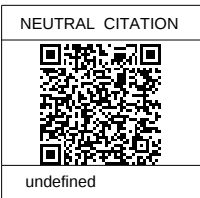


served with the notice issued by this Court, none appears on behalf of the respondent No.46.

2. This Civil Revision Application filed under Section 115 of the Code of Civil Procedure, 1908 is arising out of the order 05.02.2019 passed by the learned 4th Additional Sr. Civil Judge, Ahmedabad (Rural) at Mirzapur, Ahmedabad whereby the application submitted by original defendant No.1 under Section 8 of the Arbitration & Conciliation Act, 1996 in the suit filed by the respondent No.1-original plaintiff came to be rejected.

3. The facts emanating from the captioned Civil Revision Application are that the applicants herein are the original defendant Nos.1 to 9 in the suit filed by the respondent No.1-original plaintiff being Special Regular Civil Suit No.69 of 2015 for cancellation of the sale deed. The applicant Nos.1 to 7 entered into a partnership deed by executing a partnership deed dated 29.10.2009 in the name and style as M/s. Satkar Corporation for the purpose of carrying out various business including dealing in land and development. Later, vide supplementary deed dated 21.10.2011, the aforesaid partnership deed came to be supplemented and two other partners, i.e, respondent No.1-Dhavalbhai Bhogilal Vyas and Vandemataram Project Pvt. Ltd. were added in the aforesaid firm M/s. Satkar Corporation. Thereafter, some disputes arose between the respondent No.1 on one hand and the applicants on other hand.

4. On 11.01.2014, the respondent No.2 lodged a criminal complaint against the applicants herein with the Naranpura Police Station for the offence punishable under Sections 406

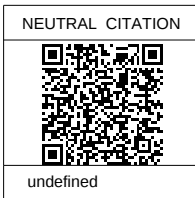


and 420 of the IPC, inter alia, alleging therein that despite demand being made by the respondent No.2, the applicants herein had not given any accounts of the partnership firm and had refused to give amount for which he is entitled for and had sold the flats without having any authorities.

5. Then the partnership firm had requested the respondent No.1 to deposit Rs.1,32,63,031/- due and payable by him. However, the respondent No.1 had declined his liability to pay the said amount. Therefore, the applicants had instituted Regular Civil Suit No.84 of 2014 before the Principal Civil Judge, Ahmedabad (Rural) against the respondent No.1, seeking decree of permanent injunction restraining the respondents from disturbing or interfering with the management, affairs or business of the Partnership Firm.

6. Thereafter, the applicants vide notice dated 20.06.2014, invoked Arbitration clause and requested the respondent No.1 to appoint an Arbitrator to resolve the disputes between the partners regarding accounts and other issues. However, the respondent No.1 declined to accept the said request vide its reply dated 01.07.2014, which compelled the applicants to prefer a petition before the Hon'ble High Court under Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of Arbitrator, wherein reply also came to be filed by the respondent No.1 on 29.01.2015. The respondent No.1 also filed Special Civil Suit No.69 of 2015 against the applicants herein as well as the other partners on 31.01.2015.

7. Pursuant to the filing of the aforesaid petition, this Court,

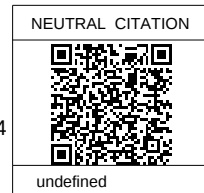


vide order dated 10.04.2015, appointed Mr. Justice M.S. Parikh (Retired), Former Judge of the High Court of Gujarat as the sole Arbitrator for resolution of the disputes amongst the partners, on the basis of which, the applicants herein filed an application under Section 8 of the Arbitration Act on 23.06.2015 for rejection of the suit filed by the respondent No.1 wherein the respondent No.1 had filed its reply on 28.07.2015. At the same time, the applicants herein also filed statement of claim on 30.07.2015 before the Arbitral Tribunal in the Arbitration Proceedings, in response to which, the respondent No.1 also filed statement of defense to the statement of claim on 05.01.2016, to which, the applicants also filed rejoinder affidavit on 22.02.2016.

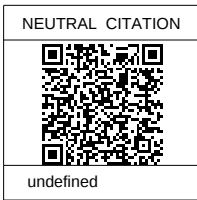
8. That apart, the respondent No.1 also filed an application under Section 16 of the Arbitration & Conciliation Act, 1996 on 23.04.2016 in the arbitration proceedings raising objections as to the jurisdiction which is pending for adjudication.

9. The trial court, after hearing the parties, passed the impugned order dated 05.02.2019 whereby the application filed by the applicants herein, seeking rejection of the plaint, came to be dismissed, being aggrieved by which, the applicants are here before this Court with the present application.

10. Learned advocate Mr. N.V. Gandhi appearing for the applicants would submit that the dispute involved in the present case is inter se amongst the partners. The applicants herein and the respondent No.1-original plaintiff as well as the

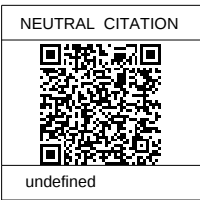


other defendants entered into the Partnership Deed whereby they created a firm namely M/s. Satkar Corporation and started doing business activities together including the dealing in land business and construction/ development. Learned advocate Mr. Gandhi would further submit that at the time of execution of the aforesaid partnership deed, a specific clause being Clause No.18 was incorporated that 'in case any dispute arises amongst the partners, they shall not resort to any court of law, but shall settle the dispute among themselves through arbitration in accordance with the subject to the provisions of the Indian Arbitration Act, 1940 as modified and amended from time to time'. Thus, it was agreed between the partners that the dispute shall be resolved through the arbitration. Learned advocate Mr. Gandhi would submit that the suit filed by the respondent No.1 herein before the trial court is not maintainable in view of the specific clause incorporated in the partnership deed that if any dispute arises between the parties, they shall resolve the same through arbitrator. However, the respondent No.1 herein instituted a suit against them before the trial court, seeking cancellation of the sale deed for the transaction that had taken place on behalf of the partnership firm and, therefore, when there is a specific clause in the Partnership Deed for resolution of the dispute between the partners through arbitrator, which is very much in existence in the partnership deed, the suit instituted by the respondent No.1 herein is not maintainable in the eye of law, and as such, the order passed by the trial court, seeking rejection of the suit/plaint is unjust, illegal, erroneous and against the settled principle of law. Learned advocate Mr.



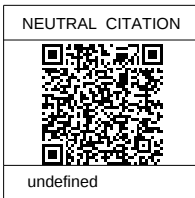
Gandhi would also submit that the trial court has exercised a jurisdiction not vested in it by law and thus has committed a grave error in rejecting the application filed by the applicants herein.

11. Learned advocate Mr. Gandhi would further submit that criminal complaint had also been filed by the respondent No.1 herein against the applicants alleging forgery by the applicants. He would also submit that in the reply filed by the respondent No.1 to the application seeking appointment of arbitrator by the applicants, the respondent No.1 has raised a ground that since the offence of fraud has been committed, the arbitrator cannot decide the issue on hand. Learned advocate Mr. Gandhi would submit that then the applicants herein preferred an application under Section 11 of the Arbitration & Conciliation Act before this Court, wherein the respondent No.1 also filed its reply, and after considering and appreciating the materials available on record as well as the contents of the application filed by the applicants and the objections raised by the respondent No.1 in its reply, this Court appointed an Arbitrator Mr. Justice M.S. Parikh (Retired) vide order dated 10.04.2015 and, therefore, the contention with regard to criminal offence or fraud could not be a ground for non-dismissal of the suit. Learned advocate Mr. Gandhi would submit that not only that, the police authority has also filed summary report, giving clean chit to the applicants in the alleged offence of fraud, which has also been accepted by the Magistrate, and the said order of the Magistrate was then challenged by the respondent No.1 before this Court by way of

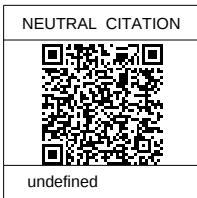


filing revision application, which is pending as on date without any stay being in operation. Learned advocate Mr. Gandhi would also submit that during the pendency of the petition before this Court, seeking appointment of Arbitrator, and after filing reply therein, the respondent No.1 despite the fact that petition seeking appointment of arbitrator is pending, instituted a suit being Civil Suit No.69 of 2015 solely with a view to stall the Arbitration Proceedings. He would further submit that the said suit became infructuous with the passing of the order by this Court dated 15.04.2015, appointing the sole Arbitrator. Moreover, the decision taken by the High Court under Section 11 application is final and binding to the parties as well as the courts below. Learned advocate Mr. Gandhi would also submit that while passing the impugned order, the trial court has not dealt with the main contention raised by the applicants herein that since the arbitrator is appointed by the High Court of Gujarat, suit is required to be dismissed, and without taking into consideration the said assertion, the trial court has dismissed the application seeking dismissal of the suit, which is unjust, improper, perverse and contrary to law. The respondent No.1 herein is participating in both the proceedings simultaneously, which is impermissible in law and, therefore, one proceeding should go, wherein also the proceedings ordered to be initiated by the higher authority would prevail over the proceedings before the lower authority.

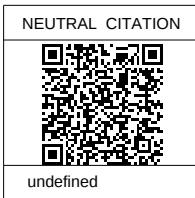
12. In such circumstances, learned advocate Mr. Gandhi prays that there being merit in this application, the same be allowed and the impugned order be quashed and set aside.



13. On the other hand, this application has been vehemently opposed by learned senior advocate Mr. Mehul S. Shah assisted by learned advocate Mr. Vishal Mehta appearing for the respondents and has raised preliminary issue about the maintainability of the present application. He would submit that the applicants herein have preferred an application under Section 8 of the Arbitration Act before the court concerned which has been rejected by the trial court by the impugned order. Learned senior advocate Mr. Shah would further submit that as per the provisions of the Arbitration Act, if Section 8 application is not considered by the trial court, then the remedy provided in law is to file an appeal, and the applicants, instead of preferring the appeal, have filed the present revision application and, therefore, the same is not maintainable in the eye of law and is required to be rejected at the threshold. Learned senior advocate Mr. Shah would submit that it is an admitted position of fact, as averred in the memo of the application, that the respondent Nos.2 to 47 are not the partners of the partnership firm and the partnership deed came to be executed between the applicant Nos.1 to 7 in the year 2009 in the name and style as M/s. Satkar Corporation. The said partnership firm had been executed between the partners for the purpose of carrying out various business activities including dealing with the land and development of the property, and subsequently, somewhere in the year 2011, a supplementary deed also came to be executed, whereby the respondent No.1 was also joined as one of the partners. Learned advocate Mr. Shah would submit that in the year



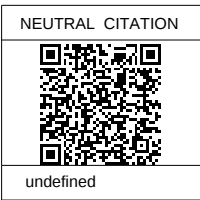
2015, the respondent No.1 came to know about some malpractice at the end of the applicants herein and, therefore, the respondent No.1 issued notice to the applicants by which certain clarification was sought for, however, there was no satisfactory reply from the applicants herein. It came to the notice of the respondent No.1 that on the basis of false and fabricated letter of authority, all the applicants herein, in collusion with each other, executed one registered sale deed in favour of some other person and their relatives, thereby third party rights have been created by keeping the respondent No.1 herein in dark, and by doing so, they have illegally pocketed a huge volume of amount. Therefore, the respondent No.1 demanded the books of accounts of the firm, however, the same was not provided by the applicants to the respondent No.1, for which, disputes arose between them, which compelled the respondent No.1 herein to file a suit against in all 55 persons, against which, the applicants herein filed an application under Section 8 of the Arbitration Act for rejection of the said suit, and if the Hon'ble Court would go through the contents of that application, the same is quite contrary to what has been prayed for in the suit, and as such, the trial court has rightly rejected the said application vide impugned order. Learned senior advocate Mr. Shah would submit that the the prayer as sought for in the suit is to cancel the sale deed as being null and void executed on false and fabricated documents, which is totally different than the issue involved in the Arbitration Proceedings pending before the Arbitrator. Learned senior advocate Mr. Shah after referring to the decision in the case of Marwadi Shares & Finance Pvt. Ltd.



Company vs. Kishorkumar Nagjibhai Mavani, reported in 2009(2) GLR 938 submit that it is a settled proposition of law that merely because there is an arbitration clause and/or bye laws provides for referring the dispute and the claim to the arbitration, the civil court's jurisdiction is not barred, but the same is subject to Section 8 of the Arbitration Act. Normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance is either expressly or by necessary implication excluded.

14. Learned senior advocate Mr. Shah has also relied upon the decision in the case of Sukanya Holding Pvt. Ltd. vs. Jayesh H. Pandya, reported in (2003) 5 SCC 531 and submit that it is held in the said decision that there is no provision as to what is required to be done in a case where some parties to the suit are not parties to the arbitration. It has been further held that such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure.

15. Learned senior advocate Mr. Shah then draw the attention of this Court to the decision in the case of Sundaram Finance Ltd. vs. T. Thankam, reported in 2015 (14) SCC 444 and submit that in the aforesaid decision after making a reference to the decision of the Hon'ble Supreme Court in the case of P. Anand Ganpathi Raju & Ors. vs. P.V.G Raju (Dead) & Ors., reported in (2000) 4 SCC 539, it has been held that once there is an agreement between the parties to refer the



disputes or differences arising out of the agreement to arbitration, and in case either party, ignoring the terms of the agreement approaches the civil court and the other party, in terms of the Section 8 of the Arbitration Act, moves the court for referring the parties to arbitration before the first statement on the substance of the dispute is filed, in view of the peremptory language of Section 8 of the Arbitration Act, it is obligatory for the court to refer the parties to arbitration in terms of the agreement.

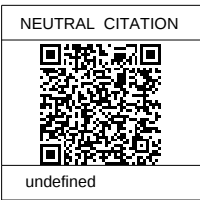
16. In such circumstances, referred to above, learned senior advocate Mr. Shah prays that there being no merit in this application, the same be rejected.

17. Heard the learned advocates appearing on behalf of the respective parties at length.

18. The short but an interesting question of law posed for consideration of this Court as stated hereinabove is whether in view of the arbitration clause in the partnership deed providing for resolving the dispute by arbitration and considering the provisions of the Arbitration Act, 1996, whether the jurisdiction of the civil court is ousted?

19. Learned advocate appearing on behalf of the applicant has also relied upon Section 8 of the Act of 1996 in support of his submission that the civil court would not have any jurisdiction and the civil court has to refer the dispute for arbitration.

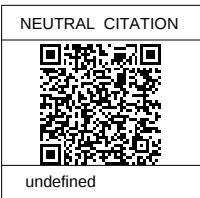
20. A bare perusal of the terms and conditions as mentioned



in the deed of partnership, it is true and it provides all claims, differences or disputes between the plaintiff and the defendant is to be submitted to arbitration, however, the question is whether in view of arbitration agreement can it be said that the civil court would not have any jurisdiction at all?

21. As observed by the Hon'ble Supreme Court in the case of S.Vanathan Muthuraja vs. Ramalingam @ Krishnamurthy Gurukkal & Ors., (1997) 6 SCC 143, considering Section 9 of the CPC and the question of exclusion of civil court's jurisdiction, the Hon'ble Supreme Court has observed and held that when a legal right is infringed, a suit would lie unless there is a bar against entertainment of such civil suit and the civil courts would take cognizance of it. It is further observed by the Hon'ble Supreme Court in the said decision that the normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance is either expressly or by necessary implication excluded. The rule of construction being that every presumption would be made in favour of the existence of a right and remedy in a democratic set up governed by rule of law and jurisdiction of the civil courts is assumed. The exclusion would, therefore, normally be an exception. Courts generally construe the provisions strictly when jurisdiction of the civil courts is claimed to be excluded.

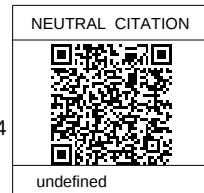
22. In ITI Ltd. vs. Siemens Public Communications Network Ltd., reported in (2002) 5 SCC 510, considering the relevant provisions of the Arbitration Act, 1996, the Hon'ble Supreme Court has observed that there is no express prohibition



against the application of the Code to a proceeding arising out of the Act before a civil court, and therefore that being so, by inference it cannot be held that the Code is not applicable. In para 11 of the said decision the Hon'ble Supreme Court has further observed and held that the jurisdiction of the civil court to which a right to decide a lis between the parties has been conferred can only be taken by a statute in specific terms and such exclusion of right cannot be easily inferred because there is always a strong presumption that the civil courts have the jurisdiction to decide all questions of civil nature. It is also further observed by the Hon'ble Supreme Court in the said decision that therefore if at all there has to be an inference the same should be in favour of the jurisdiction of the court rather than the exclusion of such jurisdiction.

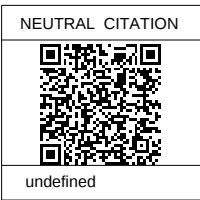
23. In an identically situated matter, the Rajasthan High Court in the case of Mahesh Kumar vs. RSRTC, reported in AIR 2006 Rajasthan 56, the Rajasthan High Court has specifically held that mere existence of arbitration clause in the agreement does not bar jurisdiction of the civil court automatically. It is held that it cannot be presumed that the civil court would not have any jurisdiction to entertain the suit only because that there is contract for referring the dispute to arbitrator. It is not a case of total ouster of jurisdiction of the Court in the cases where the arbitration clause is there in the contract between the parties to the suit, but it depends upon compliance of the conditions by the persons seeking for referring the matter to the arbitration.

24. In view of the principles enunciated by the Hon'ble



Supreme Court as well as the Rajasthan High Court in the above referred decisions, the contention on behalf of the original defendant Nos.1 to 9 that in view of agreement providing for resolving the dispute inter se between the partners only by arbitration, the jurisdiction of the civil court would be barred and/or ousted cannot be accepted more particularly when there is no specific provision in the Arbitration Act excluding the jurisdiction of the civil court in a case where the dispute is to be referred to the arbitration.

25. Moreover, as held by the Hon'ble Supreme Court in Sukanya Holdings (supra), there is no provision in the Act that when the subject matter of the suit includes subject matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is no provision for splitting the cause or parties and referring the subject-matter of the suit to the arbitrators. There is no clause as to what is required to be done in a case where some parties to the suit are not parties to the arbitration agreement. It has been further held that such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings. Here in the case on hand, there are in all total 55 defendants against whom the suit has been filed by the respondent No.1 who are directly or indirectly involved in committing the irregularities in the affairs of the firm, whereas in the arbitration proceedings initiated by the applicants herein, the other alleged defaulters are not the parties against whom also there is a strong grievance raised by the



respondent No.1, and as such, I do not find any perversity in the impugned order passed by the trial court, dismissing the application filed by the applicants herein under Section 8 of the Arbitration Act, when some of the parties to the suit are not the parties in the arbitration proceedings.

26. In the backdrop of the aforesaid discussion, I am of the view that merely because there is an arbitration clause provides for referring the dispute and the claim to the arbitration, the civil court's jurisdiction is not barred but the same is subject to Section 8 of the Arbitration Act, 1996. Under the circumstances, it cannot be said that the court below has committed any error and/or acted illegally in dismissing the application filed by the applicants herein under Section 8 of the Arbitration Act, by which, it was prayed to reject the plaint. No illegality has been committed by the trial court in dismissing the said application, which warrants any interference at the end of this Court.

27. In the result, the present application fails and is hereby rejected. Rule is discharged. No order as to costs.

VAHID

(DIVYESH A. JOSHI,J)