

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI

CIVIL MISCELLANEOUS APPEAL No.692 of 2023

JUDGMENT: *(per the Hon'ble Sri Justice P.Sam Koshy)*

The instant is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (briefly the 'A&C Act' hereinafter). The challenge is to the order dated 06.11.2023, in I.A.No.134 of 2022 in O.S.No.603 of 2022, passed by the IX Additional District Judge, R.R. District at L.B. Nagar.

2. Heard Mr. S.Vivek Reddy, learned Senior Counsel, representing Mr. Kailash Nath P S S, learned counsel for the appellants, and Mr. B.Chandrasen Reddy, learned Senior Counsel, representing M/s. Chandrasen Law Offices for the respondents.

3. *Vide* the impugned order, the Trial Court dismissed a petition filed by the appellants herein under Section 8 of the A&C Act read with Order VII Rule 11 of Civil Procedure Code, 1908 (for short, 'CPC') seeking to refer the parties to resolve the dispute by resorting to arbitration clause.

4. The brief facts which led to filing of the instant appeal are that the respondents herein preferred a suit in O.S.No.603 of 2022

for specific performance seeking relief of a direction to the appellants to execute and register sale deed in favour of the respondents in respect of the suit schedule 'B' property after receiving balance sale consideration of Rs.1,12,00,000/-.

5. The contention of the respondents in the suit was that the appellants had offered to sell the suit schedule property which was accepted by the respondents and on negotiations the sale consideration was arrived at Rs.1,85,00,000/- inclusive of stamp duty, registration charges, amenities, corpus funds and advance maintenance charges for two years. In terms of the agreement, the respondents paid some amount in advance and the balance was to be paid at the time of registration of the sale deed. However, since the appellants, the owners, were not showing keen interest in executing the sale deed, the respondents have filed the suit for specific performance which was registered as O.S.No.603 of 2022. Notices were issued and the appellants entered appearance and filed a petition under Section 8 of the A&C Act read with Order VII Rule 11 of CPC seeking to refer the dispute to be resolved by way of arbitration.

6. The Trial Court was of the view that whether there was a valid draft sale deed executed between the parties with an

arbitration clause, is a matter which needs to be decided after recording of the evidence and after framing of issues and, until and unless the same is not decided, the question of referring the matter to arbitration does not arise.

7. It is this order passed by the Trial Court which is under challenge in the instant appeal.

8. According to the learned Senior Counsel for the appellants, the very basis for insistence on the part of the respondents seeking for specific performance was based on various draft agreements that were sent on e-mail between the appellants and respondents and invariably these draft agreements had a dispute resolution clause to settle the disputes by way of arbitration. Therefore, it has to be construed that there was a valid agreement between the parties and the agreement also had an arbitration clause as a means to settle the disputes between the parties. Thus, the Section 8 petition ought to have been allowed by the Trial Court.

9. Learned Senior Counsel for the appellants in support of his contentions relied upon the following decisions:

- a) **Trimex International FZE Limited, Dubai vs. Vedanta Aluminium Limited, India¹**
- b) **Enercon (India) Limited and Others vs. Enercon GMBH and Another²**
- c) **Cox and Kings Limited vs. SAP India Private Limited and Another³**

10. *Per contra*, the learned Senior Counsel for the respondents opposing the appeal contended that there was firstly no valid agreement between the parties, much less an arbitration agreement; therefore, at the threshold itself the Section 8 petition has rightly been dismissed. It was also contended that until and unless there is a written agreement entered into between the two sides and both of them having accepted the agreement and the conditions referred thereto and having signed the said document, any agreement, in the absence of these aforementioned essential ingredients cannot be said to be an enforceable agreement under the A&C Act.

¹ (2010) 3 Supreme Court Cases 1

² (2014) 5 Supreme Court Cases 1

³ (2024) 4 Supreme Court Cases 1

11. According to the learned Senior Counsel for the respondents, the Section 8 petition filed by the appellants does not meet the requirement as is envisaged under Section 7 of the A&C Act.

12. Learned Senior Counsel for the respondents, in support of his contentions, relied upon the following decisions:

a) Union of India vs. Kishorilal Gupta & Bros.⁴

b) Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, IN RE⁵

13. Having heard the contentions put forth on either side and on perusal of records, the relevant factual matrix which goes to the core of the issue involved in the instant case are as follows:

a) The appellants admittedly are the owners of the suit schedule property;

b) The appellants offered to sell the suit schedule property to the respondents and the sale consideration on negotiations arrived at was Rs.1,85,00,000/-;

⁴ AIR 1959 SC 1362

⁵ Curative Petition (C) No.44 of 2023 in Review Petition (C) No.704 of 2021 in Civil Appeal No.1599 of 2020 with Arbitration Petition No.25 of 2023, decided on December 13, 2023

- c) The respondents also paid some advance money to the appellants. However, it is contended that the appellants thereafter were not showing keen interest to sell the property to the respondents and, therefore, the respondents had no other option but to file a civil suit for specific performance of contract;
- d) There was no written agreement entered into between the parties;
- e) The so-called offer and acceptance of the sale of property was oral;
- f) Though there appears to be certain draft agreements exchanged between the parties, none were signed by either of the parties and none could be termed as a final agreement between the parties; and
- g) The so-called draft agreements did not bear the signatures of either sides.

14. Now to better understand the objection raised by the appellant under Section 8 of the A&C Act, it would be necessary to under the provisions of Section 8(1) of the A&C Act, which for ready reference is being reproduced hereunder:

“8. Power to refer parties to arbitration where there is an arbitration agreement.-

[(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.]”

15. When we read the aforesaid clause pertaining to reference to arbitration, it is also necessary to understand what an arbitration agreement is. Arbitration agreement is one which is defined under Section 7 of the A&C Act. For ready reference, Section 7 is also reproduced hereunder:

“7. Arbitration agreement.-

(1) In this Part, arbitration agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in-

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

16. Plain reading of the aforesaid statutory provisions dealing with reference and also the definition of arbitration agreement makes it amply clear that, to constitute an arbitration agreement, what is required is an existence of a valid agreement between the parties and one of the parties to the arbitration agreement raising a statement of claim flowing from the said agreement. In other words, whether there is an arbitration agreement or not, can be best gathered from the terms of the agreement.

17. In the instant case, the Section 8 petition filed by the appellants was on the so-called draft agreements exchanged

between the parties in respect of the sale and purchase of the suit schedule property. Undoubtedly, the draft agreements remained at the draft stage with there being no finality to it, and unless there is a finality to the agreement, it is difficult to presume that the parties had entered into an agreement with an arbitration clause in it so as to call it an arbitration agreement.

18. To make things worse for the appellants, it is also necessary to take into consideration the averment made in the first line of paragraph No.2 of their Section 8 petition, which again for ready reference is reproduced hereunder:

“We state that the draft agreements filed by the Plaintiffs are not valid, null and void.”

19. The very reading of the aforesaid averment in the affidavit filed in support of Section 8 petition would reveal that the appellants themselves have in very categorical terms denied of an agreement entered into between the parties. The appellants themselves have stated on oath that the draft agreements filed along with the plaint are not valid and are rather null and void. This by itself clearly indicates that the stand of the appellants is that they have not entered into any agreement at all with the

respondents. Therefore, there cannot be an arbitration agreement at all for allowing of Section 8 petition.

20. It is also necessary to take note of the fact that even otherwise the requirement for a valid arbitration agreement as is envisaged under Section 7 of the A&C Act is also missing in the instant case, more particularly with the averments that the appellants have raised in their affidavit in Section 8 petition where there is a categorical denial. In the said circumstances, we are of the considered opinion that the impugned order passed by the Trial Court does not warrant any interference.

21. The judgments referred to by the learned Senior Counsel for the appellants would not be applicable in the instant case for the reason that those judgments have been decided under entirely different contextual backdrop where the facts and the documents and correspondences exchanged between the parties does reveal of an accepted contract between the parties, unlike in the instant case. Therefore, those judgments are distinguishable on facts itself.

22. Accordingly, the instant appeal being devoid of merit, deserves to be and is accordingly dismissed.

23. As a sequel, miscellaneous applications pending if any, shall stand closed. However, there shall be no order as to costs.

P.SAM KOSHY, J

N.TUKARAMJI, J

Date: 21.05.2025
GSD