

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7872 of 2013**

M/s Eagle Agro-Farm Private Limited)
a Private Limited Company having its)
registered office at Eagle Estate, Village)
Talegaon Dabhade, Pune 410 507)
Represented through its Managing Director)
Mr. Riaz Padamsee Age 61 years)
Address as above)..Petitioner

Versus

1. M/s. Eagle Soraj Townships Private Ltd.)
A private Limited Company having its)
registered office at 5th floor, 5th Avenue Building)
Dhole Patil Road, Pune 411 001, represented)
through its Managing Director Mr. Lakshman)
Kariyaa, Age 43 years address as above)

2. Mr. Lakshman Gopichand Kariyaa)
age about 43 years, occupation Business)
Residing at Z-803, Le Mirage, 16, Boat Club)
Road, Pune 411 001)

3 M/s. Shirdi Estates, a partnership firm)
Having its office at 5th Floor, 5th Avenue)
Building, Dhole Patil Road, Pune 411 001)..Respondents

**Ms Chandana Salgaonkar for the Petitioner
Mr. S. G. Aney Senior Advocate with Mr. A. S. Daver i/b Mr. Sayeed
Mulani for the Respondent Nos.1 to 3**

CORAM :- R.M.SAVANT, J .

**JUDGMENT RESERVED ON: 10th DECEMBER, 2013
JUDGMENT PRONOUNCED ON: 24th DECEMBER 2013**

JUDGMENT:

1 Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order dated 1-8-2013 passed by the Learned Civil Judge Junior Division, Vadgaon, Maval, by which order, the Suit in question being Regular Civil Suit No.12 of 2011 was stayed pending the arbitration proceedings between the Petitioner herein and the Respondent No.2.

3 The facts necessary to be cited for adjudication of the above Petition can be stated thus:

The Petitioner herein is the owner of the properties comprised of Survey No.77/1, 78/1, 75/2/1 in Village Warale Tal-Maval, Dist-Pune. The Petitioner decided to develop the said properties by causing construction thereon. The Petitioner negotiated with the Respondent No.2 herein as regards the terms and conditions of such development and ultimately the parties entered into a Joint Venture by forming a private limited company in the name and style of M/s. Eagle Soraj Township Pvt Ltd., which is the Respondent No.1 herein. A Joint Venture Agreement

dated 9-5-2006 was entered into between the Petitioner and the Respondent No.2 towards formation of the Joint Venture company. In the context of the present Petition, it is required to be noted that the said agreement contains an arbitration clause which is clause (28). The Joint Venture Company i.e. the Respondent No.1 herein was incorporated on 18-5-2006 and the Petitioner and the Respondent No.2 are having 50% holding each in the Respondent No.1. Thereafter Development Agreement dated 23-5-2006 was entered into between the Petitioner and the Respondent No.1 and was duly registered with the Sub-Registrar concerned together with a Power of Attorney of the same date.

4 The Petitioner terminated the said Development Agreement and revoked the Power of Attorney by its letter dated 18-12-2009 as according to the Petitioner there were several terms and conditions of the Development Agreement which were not fulfilled by the Respondent No.2. The said Development Agreement has not been challenged by the Respondent No.2 in any court. Since the Respondent Nos.1 and 2 had failed to comply with the Development Agreement and the Development Agreement being terminated, the Respondents resultantly had no right, title and interest in the suit property. The Petitioner therefore filed the Suit

in question being Regular Civil Suit No.12 of 2011 for injunction simplicitor against the Respondents restraining them from acting in terms of the Development Agreement or the Power of Attorney dated 23-5-2006. For the sake of convenience, the main substantive prayer sought in the Suit is reproduced herein under:

Defendants and/or the persons claiming through the defendants including the family members of the defendant no.2 i.e. his brothers etc., and/or any other persons including staff, security servants, agencies, contractors, affiliates, architects, etc., of the defendants may please be permanently restrained from entering into the suit property and/or disturbing vacant, peaceful and physical possession of the plaintiff and/or carrying out any activities on the suit property and/or in respect of the FSI/TDR/flats units, tenements, etc., in pursuance thereof and/or otherwise acting as the representative/s of the plaintiff etc and/or doing any acts, matters, deed, things as the case may be in respect of the suit property and/or any part thereof and/or in pursuance of the said development agreement/or of attorney dated 23rd of May 2006 and/or any other document/s as the case may be.

The Respondents appeared in the Suit and also filed their Written Statement sometime in February 2011. Pertinently, in the said Written Statement, the Respondent No.2 has not objected to the Suit being filed nor did he file an application for referring the Suit to arbitration. The Petitioner in the said Suit filed an application for temporary injunction

which is numbered as Exhibit 5. The Respondents filed an application under Section 9A of the Civil Procedure Code on 8-2-2011 challenging the pecuniary jurisdiction of the Trial Court. The said application came to be rejected by the Trial Court. Against the said order, the Respondents filed Civil Revision Application No.122 of 2012 in this Court which came to be dismissed by this Court by order dated 2-11-2012. The Respondents thereafter filed an application questioning the valuation of the Suit and seeking a direction that inquiry under Section 8 of the Bombay Court Fees Act, 1959 be conducted. The Respondents thereafter filed an application under Order 26 Rule 9 of the Civil Procedure Code for appointment of the Court Commissioner to visit the suit property and report to the Trial Court. The Petitioner objected to the said application being filed under Order 26 Rule 9 of Civil Procedure Code on the ground that the said application has been filed merely to prolong the hearing of the application for interim injunction filed by the Petitioner and therefore prayed that the said application be rejected.

5 The Respondent No.2 addressed a notice on 24-5-2012 to the Petitioner invoking the arbitration clause in the Joint Venture agreement dated 3-5-2006. The said notice was replied to by the Petitioner by letter

dated 21-6-2012 and it was denied that there was any ground for invoking the arbitration clause. The Respondent No.2 thereafter filed Arbitration Application No.28 of 2012 invoking Section 11 of the Arbitration and Conciliation Act 1996 (for brevity's sake "the said Act") The said application was considered by a Learned Single Judge of this Court and by order dated 20-10-2012 the Hon'ble Justice J.N.Patel former Chief Justice of the Calcutta High Court was appointed as an Arbitrator to decide the disputes between the Respondent No.2 and the Petitioner arising under the said Joint Venture Agreement. Before the Arbitrator, the Respondent No.2 has filed a statement of claim and in the said statement of claim sought to also raise disputes relating to the Development Agreement.

6 The Respondent No.2 thereafter filed an application in the instant Suit invoking Section 8 and 21 of the Arbitration and Conciliation Act, 1996. The said application was founded on the fact that the disputes between the Petitioner and the Respondent No.2 were pending in arbitration before Justice J. N. Patel who had been appointed as an Arbitrator. It was further stated that the arbitral proceedings have commenced and since the present Suit is a dispute between the Petitioner who is one of the parties to the Joint Venture agreement and the

Respondent No.2, the Suit therefore be stayed.

The Petitioner filed its reply to the said application filed by the Respondent No.2. The Petitioner inter alia took a stand that the application was misconceived and misfounded and therefore was liable to be rejected with exemplary and compensatory costs. The Petitioner averred that the Joint Venture Agreement dated 9-5-2006 was between the Petitioner and the Respondent No.2 whereby a new company i.e. Respondent No.1 had been formed. It was further averred that the Joint Venture Agreement was only for the purpose of forming a new company and that the cause of action for filing the Suit was the breach of the Development Agreement which was an independent agreement entered into between the Petitioner and the Respondent No.1 on 23-5-2006. The Petitioner further averred that there was no arbitration clause in the said Development Agreement dated 23-5-2006. The Petitioner further averred that there was no mention of any arbitration agreement or otherwise in the Written Statement which was filed by the Respondents in the said Regular Civil Suit No.12 of 2011. Therefore arbitration notice dated 24-5-2012 was an after thought with a view to delay the proceedings in so far as the hearing of the application Exhibit 5 for injunction is concerned. It was also averred that there was no

power to stay the Suit in a proceeding filed under Section 8 of the said Act. The Trial Court considered the said application filed by the Respondent No.2 invoking Section 8 and 21 of the said Act and by the impugned order has allowed the same in as much as it has stayed the Suit in question. The gist of the reasoning of the Trial Court as can be found from the impugned order is that the Joint Venture Agreement is still in existence and therefore the arbitration clause is invokable by the parties. The contention of the Petitioner that the Joint Venture Agreement has been superseded by the Development Agreement was rejected by the Trial Court. The Trial Court however observed that both the agreements cannot be separated. This observation was made on the basis that such an observation was made by the learned Single Judge of this Court in the order dated 28-10-2012 passed in the Section 11 application. As indicated above, it is the said order which is taken exception to by way of the above Petition.

7 Heard the Learned Counsel for the parties i.e. Ms Chandana Salgaonkar for the Petitioner and the Learned Senior Counsel Shri S.G.Aney for the Respondents

Submissions of the Learned Counsel Ms Chandana Salgaonkar for the Petitioner.

8 The principal contention of the Learned Counsel for the Petitioner is that the prerequisites for invoking Section 8 of the said Act have not been satisfied in the present case.

(i) It is the contention of the Learned Counsel for the Petitioner that there is no arbitration clause in so far as the Development Agreement is concerned.

(ii) That the Defendant Nos.1 and 3 are not parties to the Joint Venture Agreement and therefore the Trial Court had erred in entertaining the application. Reliance was placed on the Judgment of the Apex Court reported in (2003) 5 SCC 531 in the matter of Sukanya Holdings (P) Ltd. Vs. Jayesh. H. Pandya & Anr.

(iii) That the Trial Court has misread and misinterpreted the order dated 28-10-2012 passed by the Learned Single Judge of this Court in the application under Section 11 filed by the Respondent No.2. Nowhere the Learned Single Judge has observed that both the Agreements i.e. the Joint Venture Agreement and the Development Agreement cannot be separated. The observations reproduced by the Trial Court in paragraph 5 of the impugned order are with regard to the submissions made by the Learned

Counsel for the Petitioner that the Joint Venture Agreement was superseded by the Development Agreement, which submission the Learned Single Judge has rejected.

(iv) That the Trial Court had erred in staying the Suit when no such powers can be exercised under Section 8 of the said Act wherein the parties can only be referred to arbitration.

(v) That the Respondents had submitted to the jurisdiction of the Civil Court by submitting their Written Statement on merits of the claim in the Suit and in fact had claimed a right to file counter claim and had never questioned the maintainability of the Suit on the ground of their being an arbitration agreement between the parties.

9 **Submissions of the Learned Senior Counsel Mr. Aney**
appearing for on behalf of the Respondent Nos.1 to 3

(i) That though the Respondent Nos.1 and 3 to the above Petition are not parties to the Development Agreement if the veil is lifted it would show that the Joint Venture Agreement which contains the arbitration

clause involves the same parties i.e the Respondent No.1 is the Joint Venture Company of the Petitioner and the Respondent No.2. The Respondent No.2 is the Managing Director of the Respondent No.1 and the Petitioner of the Respondent No.3, the Respondents are therefore entitled to invoke Section 8 of the said Act.

(ii) That even if the relief of stay of the Suit could not be granted in a proceeding under Section 8 of the said Act nevertheless the Civil Court was within its powers to grant the said relief by having recourse to Section 151 of the Civil Procedure Code considering the fact that the parties were before the Arbitrator in so far as the disputes under the Joint Venture Agreement is concerned. In support of the said contention, the Learned Senior Counsel placed reliance on the following Judgments :

(a) *AIR 1962 Supreme Court 527* in the matter of *Manohar Lal Chopra Vs. Raibahadur Rao Raja Seth Hiralal*

(b) Judgment of the Apex Court reported *2011(11) SC 275* in the matter of *K.K. Velusamy Vs. N. Palanisamy*

(c) Judgment of the Division Bench of Calcutta High Court reported in *AIR 1960 Calcutta 47* in the matter of *Serajuddin and Co. Vs. Michael Golodetz & Ors.*

(iii) That the relief of stay of the Suit could have also been granted by having recourse to Section 10 of the Civil Procedure Code read with Section 151 as the parties were already before the Arbitrator in so far as the disputes under the Joint Venture Agreement are concerned. In support of the said contention the Learned Senior Counsel relied upon the following Judgments :

(a) *AIR 1954 Bombay 176 Rambahadur Thakur & Co. Vs. Devidayal (Sales) Ltd.*

(b) *AIR (35) 1948 Nagpur 297 The Laxmi Bank Ltd Akola & Ors. Vs. Harikisan & Ors.*

(c) Judgment of a Learned Single Judge Calcutta High Court reported in *AIR 1941 Calcutta 670* in the matter of *Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney*

(iv) That merely a mention of a wrong provision in the application would not vitiate the order if otherwise the Civil Court was within its powers to stay the Suit under Section 151 of the Civil Procedure Code. In support of the said contention the Learned Senior Counsel relied upon the following Judgments

(a) *AIR 2008 Supreme Court 2010, T. Nagappa Vs. Y. R. Muralidhar*

(b) *1973 Mh. L.J. 925, Kashiprasad Vs. Usman Khan*

(v) That this Court would not exercise its Writ Jurisdiction merely because the Trial Court has committed an error of law or fact. In support of the said contention reliance was placed on the Judgment of the Apex Court reported in *1969(3) Supreme Court Cases 675* in the matter of *Bhutnath Chatterjee Vs. State of West Bengal & Ors.*

CONSIDERATION

10 Having heard the Learned Counsel for the parties, I have bestowed my anxious consideration to the rival contentions. In the context of the fact that the application filed by the Respondents was one invoking

Sections 8 and 21 of the said Act. It would therefore be relevant to consider whether the prerequisites for the invocation of Section 8 of the said Act were present in the instant case. For the said purpose it would apposite to reproduce Section 8 of the said Act.

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 so applied not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.
(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.
(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

The application in question does not mention that the subject matter of the Suit and the subject matter of the arbitration is the same. The application also does not mention that the parties to the arbitration and the parties to the Suit are the same. As indicated above, the Suit in question has been filed by the Plaintiff for a permanent injunction against the Respondent Nos.1 to 3. The Respondent No.1 is the Joint Venture Company. The Respondent No.2 is the Managing Director of the

Respondent No.1 and the Respondent firm comprises of Respondent No.2 and his brother. The cause of action for filing the Suit was that though possession of the suit property is with the Plaintiff, the Respondents and persons claiming through them including their family members may obstruct or create hindrance to the Petitioner and therefore the Suit for injunction. It is required to be noted that the Respondent Nos.1 to 3 filed a common Written Statement. Pertinently in the said Written Statement there is no mention of the Joint Venture Agreement dated 9-5-2006 or the arbitration clause contained therein. Thereafter various applications were filed by the Respondents namely (i) application challenging the pecuniary jurisdiction, (ii) application challenging the valuation of the Suit and (iii) application under Section 9A of the Civil Procedure Code. In none of the applications the factum of the Joint Venture Agreement was pleaded. In terms of Section 8 of the said Act an application for referring the matter to arbitration has to be made not later than when submitting the first statement on the substance of the dispute. In the instant case, the application in question has been filed much after the Written Statement was filed by the Defendants as also the various applications were filed by them in the Suit and after a period of about 1 year and 10 months of the filing of the Suit. Hence the very essential jurisdictional fact was absent in

the present case and therefore the application could not have been entertained.

11 At this stage, it would be apposite to refer to the Judgment in *Sukanya Holdings (P) Ltd. (supra)* the relevant paragraphs of the said Judgment are paragraphs 15, 16 and 17 which are reproduced herein under:

15. The relevant language used in Section 8 is "in a matter which is the subject matter of an arbitration agreement", Court is required to refer the parties to arbitration. Therefore, the suit should be in respect of 'a matter' which the parties have agreed to refer and which comes within the ambit of arbitration agreement. Where, however, a suit is commenced - "as to a matter" which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The words 'a matter' indicates entire subject matter of the suit should be subject to arbitration agreement.

16. The next question which requires consideration is even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act? In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action that is to say the subject matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not con-

templated under the Act. If bifurcation of the subject matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject matter of an action brought before a judicial authority is not allowed.

17. Secondly, such bifurcation of suit in two parts, one to be decided by the arbitral tribunal and 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. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums.

12 The Apex Court in **Sukanya Holdings (P) Ltd** has therefore laid down the prerequisites for invocation of Section 8 o the said Act. In the instant case, admittedly the Respondent Nos.1 and 3 are not parties to the Joint Venture Agreement. The Respondent No.3 cannot be said to be a party who has been deliberately arrayed so as to frustrate any arbitration agreement as in fact in the present case the Development Agreement does not contain any arbitration clause. The subject matter of the Suit is also different than the subject matter of the proceeding before the Arbitrator which involves the breaches of the Joint Venture Agreement. The word

“matter” in Section 8 indicates that the entire subject matter of the Suit should be the subject matter of the agreement. However, in the instant case, the Suit in question is founded on the Development Agreement and the breaches thereof have no connection with the Joint Venture Agreement. It is required to be noted that there is no provision for splitting the cause or the parties for referring the subject matter of the Suit to the Arbitrator. The Trial Court has totally glossed over the aforesaid aspects and entertained the application under Sections 8 and 21. The jurisdiction under Section 8 cannot be invoked by a long drawn out process. The Trial Court therefore has in a way exercised jurisdiction not vested in it under Section 8 by staying the Suit. If the provisions of Section 8 are applicable, the only jurisdiction the Trial Court can exercise is to refer the parties to arbitration but cannot stay the Suit.

13 Confronted with a situation where the very maintainability of the Section 8 application was in question. The Learned Senior Counsel appearing for the Respondents sought to extricate the Respondents from the said situation and sought to take a different path and contended that though the application was filed invoking Section 8, the Trial Court was well within its powers to grant the relief which it has granted by having

recourse to Section 151 of the Civil Procedure Code. In so far as the said contention is concerned, the application exfacie does not contain even a hint or suggestion that the Respondent No.3 was seeking to invoke the inherent powers of the Civil Court under Section 151 of the CPC. The application was proceeded on the basis that it is one under Section 8 of the said Act and submissions were advanced on the said basis. In fact reliance was sought to be placed on the observations made by a Learned Single Judge of this Court in the order passed on the Section 11 application. Though reliance was also sought to be placed by the Respondents on the pursis dated 18-7-2013 as also the pursis dated 25-7-2013 the same do not take the case of the Respondents any further, in so far as the said aspect is concerned. In fact the said pursis in a way militates against the case of the Respondents that the application is referable to the invocation of the inherent powers of the Court under Section 151 of the CPC. It is pertinent to note that by the said pursis, the Respondents applied to the Court to refer the Suit to arbitration and there is nothing in both the pursis to indicate that the inherent powers of the Court are sought to be invoked. The Trial Court as can be seen from the impugned order has also proceeded on the basis that the said application was under Section 8 of the said Act. The Trial Court also treated the said application under Section 8

and did not treat it as an application seeking to invoke its inherent powers.

14 Now coming to the judgments cited on behalf of the Respondents to support the theory of invocation of the inherent powers, in the case of *Manoharlal (supra)*, it has been held by the Apex Court that the inherent powers of the court under Section 151 are in addition to the powers specifically conferred on the Court by the Code and that they are complementary to those powers and therefore it must be held that the court is free to exercise them for the purposes mentioned in Section 151 of the Code. However the Apex Court has also issued a note of caution by observing that the said powers are to be exercised in a manner so that they are in no way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature.

15 In so far as the Judgment in *Serajuddin's case (Supra)* is concerned, the Division bench had justified the exercise of powers under Section 151 to stay the Suit as Section 34 in the Arbitration and Conciliation Act 1940, did not apply to Foreign Arbitration. It is in the said context that the Division bench upheld the exercise of the inherent powers.

In *K.K.Velusamy's case (supra)* the Apex Court was concerned with a case wherein one of the parties had applied for reopening of evidence or recalling witness. It is in the said context that the Apex Court held that exercise of powers under Code was not warranted as the power under Section 151 could not be used in a routine manner and merely for the asking. In the context of Section 151 and its invocation, it would also be apposite to refer to the Judgment of the Apex Court cited by the Learned Counsel for the Petitioner reported in 2008(2) SCC 488 in the matter of *State of U.P. Vs. Roshan Singh* wherein the Apex Court has held that the object of Section 151 of the CPC is to supplement the provisions of the Code and not to override or evade other express provisions of the Code or other statutes. The Apex Court further held that where the Civil Procedure Code deals expressly with a particular matter, the said provisions should be normally recorded as exhaustive and Section 151 cannot be called in aid for nullification of the provisions of the Code. The Apex Court in the said Judgment found that Section 8 having not been found applicable, it was open to the High Court to by pass the same and invoke section 151 of the CPC. Hence the proposition laid down by the Apex Court is that powers under Section 151 of the CPC cannot be exercised in a routine manner so as to override the other provisions of the

Code wherein the provision is made for particular matters. In the instant case as can be seen the Respondents had invoked the specific provisions of the said Act and the parties were litigating on the said basis. The Respondents therefore cannot now be allowed to contend that the impugned order can be justified on the touch stone of Section 151 of the CPC. The contention of the Learned Senior Counsel cannot be accepted for another reason, as it is well settled by the judgment of the Apex Court that if there is a specific provision in the CPC then the inherent powers cannot be invoked. The instant case is a case where a specific provision in another statute i.e. the Arbitration and Conciliation Act 1996 was invoked and the order therefore cannot be justified on the basis of the exercise of the inherent powers of the court under the CPC.

16 Now coming to the judgment cited on behalf of the Respondents based on Section 10 of the CPC, the Division Bench in *Rambahadur Thakur's case (supra)* held that to avoid an abuse of process of the court the recourse may have to be taken to Section 151 of the CPC instead of Section 10 to stay the Suit, by an injunction preventing the Defendants from proceeding with the earlier Suit on the ground that to allow that Suit to go on would constitute an abuse of the process of the

Court. In so far as the Judgment in ***Laxmi Bank Ltd. (Supra)*** is concerned, the same principle has been laid down by a Learned Single Judge of this Court wherein he has held that even if Section 10 of the CPC does not as such apply in the circumstances of the case before the Learned Single Judge, the interest of justice and the balance of convenience justify the staying of the entire suit as against all the defendants and therefore the invocation of Section 151 i.e. inherent powers was upheld. In so far as **Bhagat Singh's case (supra)** is concerned, a Learned Single Judge of the Calcutta High Court held that the Code is not exhaustive, there are cases which are not provided for in it and in such cases Section 151 is invokable to act ex debito justitiae. In my view the aforesaid judgments would have no application mainly for the reason that the proceedings before the learned arbitrator cannot be said to be proceedings before the Court and therefore Section 10 could not be invoked. The provisions of Section 151 also cannot be invoked as the application has been specifically filed under Section 8 of the said Act wherein the power is only for referring the disputes to arbitration and no order staying the Suit can be passed.

17 Now coming to the contention that merely because of a wrong provision is referred to in the application, the same would not vitiate the

order, in support of which contention reliance is placed on Judgment of *T. Nagappa's case (supra)*. In my view the said contention has no merit in view of the fact that this is not a case where a wrong provision in the same act has been referred to. This is the case where the substantive provision of the Arbitration and Conciliation Act, was invoked and now a plea is sought to be taken that the order is referable to the inherent powers under Section 151 of the code, it would have been another matter if the impugned order was justifiable under another provision of the said Act but such is not the case. Hence the Judgment in *T. Nagappa's case (supra)* wherein a wrong provision in the evidence Act was referred to in respect of an application to call for expert opinion, would not in any way aid the Respondents.

18 As a last straw on the camel's back it was sought to be contended on behalf of the Respondents that even if there is an error of law or fact this Court would not exercise its Writ Jurisdiction. In my view, it is not possible to accept the said contention in view of the fact that the Trial Court has exercised jurisdiction under Section 8 of the said Act when the application itself was not maintainable. Moreover the Trial Court has exceeded its jurisdiction assuming it had one by granting relief of stay of the Suit which is a relief not contemplated under Section 8 of the said Act.

The Judgment of the Apex Court in *Bhutnath Chatterjee's case (supra)* therefore would have no application in the facts and circumstances of the present case. Incidentally the Apex Court in the said case was concerned with the aspect of compensation to the deprived land holders under the Land Acquisition Act and it is in the said context the Apex Court held that the High Court could not exercise Writ Jurisdiction merely because there is an error of law or fact.

19 In so far as the Trial Court is concerned, it has proceeded on the basis that the Learned Single Judge in the order passed on the application invoking Section 11 has held that the two agreements i.e. Joint Venture Agreement and Development Agreement cannot be separated, in my view, the said observation made by the Trial Court is erroneous as no such observation has been made by the Learned Single Judge of this court in the order passed on the application filed under Section 11 of the said Act. What the learned Single Judge has done is that he has rejected the contentions of the Petitioner herein that the Joint Venture Agreement has come to an end on the formation of the Respondent No.1 Joint Venture Company and therefore the said Joint Venture Agreement had exhausted itself, and that the Joint Venture Agreement being superseded by the

Development Agreement, the parties therefore could not be referred to arbitration. The Trial Court has also relied upon the Judgment reported in *P. Anand Gajapathi Raju Vs. V. G. Raju* reported in *2000 AIR Supreme Court 1886*. In my view, the reliance placed on the said Judgment by the Trial Court is totally misplaced in as much in the instant case there is no agreement between the Petitioner and the Respondents in the pending Suit to refer the matter to arbitration. In the said case the facts were that the parties had agreed to refer the disputes to arbitration, hence the Judgment in *P. Anand's case (supra)* has no application. For the reasons afore stated the impugned order of the Trial Court is unsustainable and is required to be quashed and set aside and is accordingly quashed and set aside. The result would be that the staying of the Suit would stand set aside and the Suit would proceed.

20 Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

(R M SAVANT, J)