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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.235 OF 2015

Padmashree Dr. Vitthalrao Vikhe Patil Foundation Ahmednagar Having its registered office at Vadgaon Gupta (Vilad Ghat) Post MIDC, Ahmednagar 414 111 Through its Director (Medical) Shri. Dr. Abhijit Diwate	PETITIONER
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VERSUS

M/s Rushi Khambata & Associates Chartered Architect, Engineers, Chartered Town Planners, Having its registered office B/19, Creative Industrial Estate N. M. Joshi Marg, Mumbai 400 011	RESPONDENT
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Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, for petitioner	Mr. V. J. Dixit, Sr. Advocate i/b Mr. S. V. Dixit for respondent
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 11th SEPTEMBER, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned senior advocates appearing for the parties.
2. Factual aspects of the matter need not be referred to here

extensively, for, those form substantial part of the order passed by district judge as well as by the tribunal of arbitrators.

3. A suit had been filed by the petitioner for declaration of ownership in copyright and injunction against the respondent in respect of architectural work and advice. In said suit, the respondent had filed written statement, contesting, *inter alia*, raising a claim of Rs.71,59,501/- against the petitioner with an assurance that proper proceedings in respect of the same would be initiated in the shape of a suit.

4. The matter had travelled further and an objection has been raised to the jurisdiction of the civil court, having regard to arbitration clause in the agreement entered into between the parties.

5. Initially, the civil court had rejected the resistance of the respondent to the civil suit, however in writ petition No.3331 of 2007, under order dated, 11th April, 2011, the order of the civil court came to be set aside by hon'ble single judge of this court. Operative part of the order reads thus,

“a. The impugned order below Ex. 24 in Copy Right Suit No.1/2005 passed on 16/02/2007 by District Judge-1, Ahmednagar is set aside.

b. The application Ex.24 is allowed.

c. The District Judge shall take further steps as per the provisions of arbitration clause.”

6. Aforesaid order was taken to division bench, under Letters Patent Appeal Stamp No.14300 of 2011. The Letters Patent Appeal came to be dismissed by the division bench with observations in paragraphs No.6 and 9, as under:-

“6. The clause expressly encompasses all difference and disputes. Thus, not only use of word “all” must be taken note of, but the later phreasography therein, which speak of “any matter” and “connected with the agreement” as also words, “in relation to interpretation of the content thereof” show a very wide field, which parties wanted that clause to occupy. Hence, every difference and dispute between the parties arising out of the agreement and on any matter connected with it, is to be subjected to arbitration.

9. We find that the learned Single Judge has correctly elaborated the scope of Clause No.9 mentioned (supra). LPA is, therefore, without merit. In this situation, there is no need to issue any notice on prayer for condonation of delay. Civil application NO. 9617 of 2014 as also LPA Stamp Number 14300 of 2011, are disposed of. Pending civil application, if any, are also disposed of.”

7. Accordingly, the district judge subsequently passed

following order -

1. *The R.C.S. No.01/2005 is referred for disposal as per the Cl.9-A in the arbitration agreement entered between the parties dt.11.11.03.*
 2. *The record and papers be sent before the Arbitrator Madhav Deobhakta, Parijat, Plot No.60, Mumbai 400 089*
 3. *It is hereby informed that the sole arbitrator may decide the RCS No.01/2005 and pass arbitration awards in case the plaintiff continued to ignore arbitration agreement and appoint his arbitrator to dispose of the present suit.*
 4. *Copy of order be issued to the parties in the suit.*
 5. *Proceeding stand disposed of.*
 6. *The Arbitrator is requested to send the copy of award for information of the Court, after the disposal of the present suit”*
8. It would be worthwhile to refer to Arbitration clause 9 of the agreement, text of which is as under:-

“ 9 Arbitration

All differences and disputes arising between the client and the Architect on any matter connected with the agreement or in regard to the interpretation of the content thereof shall be referred to arbitrators.

9.01 Two arbitrators will be nominated one arbitrator is to be nominated by the Management and other arbitrator to be nominated by the Architect with consultation of Management.

9.02 The meetings of the arbitrators are held in the premises of the Ahmednagar Medical College.

9.03 The provisions of Arbitration and Conciliation Act, 1996 are applicable for the decision of arbitration proceedings. ”

9. Before the tribunal of three arbitrators constituted, the respondent appears to have raised certain claims, to which objection had been taken by present petitioner purportedly referring to section 16 of the Arbitration and Conciliation Act, 1996 (herein after will be referred to as “Arbitration Act”).

10. The arbitral tribunal, consisting of three arbitrators, referring to various facets involved, factual as well as legal, has ruled that the contention of the petitioner that the jurisdiction of the tribunal is confined to adjudication of dispute only in respect of the suit, is untenable as their appointment as arbitral tribunal is pursuant to the clause of arbitration under the agreement entered into between the parties, with specific emphasis on arbitration clause “9” of the agreement. It is further been considered that the district judge has not set any domain of jurisdiction on the arbitration.

11. Against the order passed by the arbitral tribunal dated 14th October, 2013, an arbitration application had been moved before district judge purporting the same to be pursuant to under section 34 of the Arbitration and Conciliation Act. The district

judge has rejected the application finding that composition of the arbitral tribunal is pursuant to clause under the agreement and relevant provisions under the Arbitration Act, about which there cannot be any dispute. He has then referred to arbitration clause as had been referred to earlier on by the hon'ble single judge of this court as well as by the division bench under the letters patent appeal and considering that once the arbitration tribunal is formed, it would not be necessary for the respondent to file a separate suit for recovery of dues and then refer it to the arbitrators. When forum is available, party can very well present all its claims in relation to the agreement. The district judge, as such, did not find any substance in the arbitration application. It has further been considered that it is one of the points of disputes. The arbitral tribunal's jurisdiction is not confined to the dispute referred to it by the civil court. Section 16 of the Act confers powers on the arbitral tribunal to rule on its own jurisdiction and the arbitral tribunal has considered that it derives jurisdiction from arbitration clause in the agreement and not from the court's order. The district judge thus went on to reject the application. It is this order, which is impugned in the present writ petition.

12. Learned senior advocate Mr. V. D. Hon, contends that in

respect of the claim, referred to herein above, hitherto, there had been no dispute raised at all however, it has been raised for the first time before the arbitral tribunal. Under the circumstances, such a dispute is outside the scope of jurisdiction and power of the arbitral tribunal, having regard to its constitution being pursuant to the order by the district judge and as such, the application under section 16 of the Arbitration Act, ought to have been considered in favour of the petitioner.

13. It is contended by Mr. Hon that, in the suit, written statement though had been filed, no counter claim had been raised. Since the tribunal having been constituted pursuant to orders of the district court, the respondent is precluded from raising any claim beyond the scope of Regular Civil Suit No. 1 of 2005 by the principle of estoppel, especially when there is a specific direction by the district court to decide on the dispute, as referred to herein above in its order. It would be outside the scope of arbitration proceedings to take into account claims being sought to be made by the respondent and that would be outside the jurisdiction of the arbitral tribunal and it would be more so, to adjudicate upon money claim made by the respondent in the present proceedings.

14. It is contended *inter alia* that statement of claim by the respondent claiming amount of Rs.1,83,57,834.90 towards unpaid service charges along with interest on unpaid fees, costs of arbitration and legal costs, but the same does not refer to or rather it is conspicuously silent on ownership of architectural firm, which is a basic issue of controversy involved in Regular Civil Suit No.1 of 2005.

15. Sum and substance of the submissions of learned senior advocate Mr. Hon, appearing for the petitioner is that a claim is sought to be made by the respondent against the petitioner before arbitral tribunal, without raising a dispute and without filing a counter claim, which is beyond the confines of the order passed by civil court, whereunder the dispute raised by the present petitioner has been referred to resolution by arbitration.

16. Mr. V. J. Dixit, learned senior advocate for the respondent refers to arbitration clause under the agreement between the parties, which is not in dispute. Mr. Dixit, further contends that the claim being raised by the respondent is not an extraneous matter to the agreement. It arises from the agreement and a dispute has arisen between the parties in respect of the agreement and the arbitration clause provides for resolution of

"all" disputes by arbitral tribunal when the arbitral tribunal has been constituted by the parties. The arbitral tribunal derives its powers from the clause under the agreement between the parties. The claim is made against a party by another party to the agreement. Learned senior advocate further refers to observations of the division bench while deciding the letters patent appeal in paragraph 6 of the order, which has been reproduced hereinbefore, to draw attention to that the word "all" has been given specific emphasis by the division bench and has further expounded on the same that "*which speaks of 'any matter' connected with the agreement as also words, 'in relation to the interpretation of the content thereof' show a very wide field, which parties intended that clause to occupy*". Mr. Dixit, points out, the court has further observed that "*every difference and dispute between the parties arising out of the agreement and on any matter connected with it, is to be subjected to arbitration.*"

17. Having regard to aforesaid, and that there is no dispute regarding existence of arbitration clause in the agreement and the clause embraces 'all differences and disputes' arising between the parties to be referred to arbitral tribunal, the procedure as contended by the petitioner of separately raising a

dispute and then referring it to tribunal is uncalled for, especially in the background that the respondent has pointed out that the respondent has certain claims against the plaintiff in the suit. In the present case there is already an arbitration tribunal constituted. It does not appear to be a position, procedural or otherwise, that the dispute is to be raised and then it is to be referred to the arbitral tribunal. A dispute between the parties referable to clause of arbitration under the agreement can be placed before the arbitral tribunal. In my estimate, the contentions on behalf of the petitioner do not bear any substance. As such, the writ petition fails and stands dismissed. Rule stands discharged. Interim relief stands vacated.

18. Nothing in this order shall be deemed to have any reflection on the claims made by the parties against each other, before the arbitral tribunal. This is not a decision on the claims on merits. Observations in this order shall not influence the arbitration while deciding claim on merits.

[SUNIL P. DESHMUKH, J.]