

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.243 OF 2015

Mahindra and Mahindra Financial Services Limited ... Applicant
Vs.
M/s. Rajanadini Tours & Travels through Proprietor
Nilesh Dutta Kadam and others ... Respondents

Mr. Vivek Salunke a/w. Mr. Padmakar G. i/b. SG Legal & Associates for
Applicant.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 7, 2015

P.C. :

Heard Mr. Salunke, learned Counsel for applicant.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short C.P.C.), original defendant No.6 has challenged the judgment and order dated 13.03.2015 passed by the learned Joint Civil Judge, Senior Division, Pune below exhibit-16 in Special Civil Suit No.251 of 2015. By that order, the learned trial Judge rejected the application made by the applicant, hereinafter referred to as defendant No.6, under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'Act') read with Order VII, Rule 11 C.P.C.

3. Mr. Salunke reiterated the submissions that were advanced before the trial Court. He has taken me through the agreement dated 01.11.2014 entered into by and between respondent No.1 – M/s. Rajanadini Tours & Travels, hereinafter referred to as plaintiff and the defendant No.6, and in particular clause 15 thereof pertaining to arbitration. Clause 15 reads as under,

“15) Arbitration: All disputes, differences and / or claim arising out of these presents or in any way touching or concerning the

same or as to constructions, meaning or effect hereof or as to the rights and liabilities of the parties hereinunder shall be settled by arbitration to be held in accordance with the provision of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the sole arbitrator to be nominated by the Lender. In the event of death, refusal, neglect, inability or incapability of a person so appointed to act as an arbitrator, the Lender may appoint a new arbitrator. The arbitrator shall not be required to give any reasons for the award and the award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceeding shall be held in Mumbai.”

4. Mr. Salunke submitted that once there is agreement between the parties for referring the disputes or differences arising out of the agreement to arbitration, the learned trial Judge ought to have referred the matter for arbitration as provisions of Section 8 of the Act are mandatory.

5. By the impugned order, the learned trial Judge rejected the application mainly relying upon the decision of the Apex Court in the case of ***Sukanya Holdings (P) Ltd. Vs. Jayesh H. Pandya***, (2003) 5 SCC 531. The learned trial Judge observed that the dispute is not between the defendant No.6 and the plaintiff only. The plaintiff has alleged playing fraud on him by defendants No.2 to 6. The alleged dispute is arising out of transaction of purchase of a car. Defendant No.2 is alleged vendor of the car and defendants No.3 to 5 are alleged agents of defendant No.2 and defendant No.6 is financier. The dispute of defendant No.6 cannot be split up and referred for arbitration to be decided by the arbitrator for deciding the remaining dispute between plaintiff and defendants No.2 to 5 by the Civil Court.

6. In the case of ***Sukanya Holdings (P) Ltd.*** (*supra*), the Apex Court observed in paragraph 13 that 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 also no provision for splitting the

cause or parties and referring the subject matter of the Suit to the arbitrators. In paragraph 14, it was further observed that there is also 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 agreement.

7. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab