

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.948 OF 2014

Madhavi Shriram Kulkarni and others ... Applicants

Vs.

M/s. Vikrant Happy Home Pvt. Ltd. through
Proprietor Ms Sushma G. Jadhav and others ... Respondents

Mr. R. B. Paranjape a/w. Mr. Ajit Mahadik i/b. Mr. Mahendra Agavekar for
Applicants.

Mr. Sanjiv A. Sawant for Respondents.

CORAM : R. G. KETKAR, J.
DATE : 10TH AUGUST, 2015

P.C. :

Heard Mr. Paranjape, learned Counsel for applicants and
Mr. Sawant, learned Counsel for respondents.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No.1 to 3 have challenged the judgment and order dated 13.02.2014 passed by the learned Joint Civil Judge, Senior Division, Panvel below exhibit-13 in Special Civil Suit No.269 of 2012. By that order, the learned trial Judge rejected the application exhibit-13 filed by defendants No.1 and 2 for dismissing the Suit.

3. In support of this Application, Mr. Paranjape strenuously contended that plaintiffs have instituted Suit based on the agreement of sale dated 24.01.2002. Clause 14 thereof specifically provides that in the event of any dispute between the parties, the parties to the agreement will nominate one Arbitrator each and their decision shall be binding on the parties. He submitted that though by application exhibit-13, defendants No.1 and 2 prayed for dismissal of the Suit, in substance, the

application is referable to Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'Act'). He, therefore, submitted that the dispute may be referred to the arbitration.

4. On the other hand, Mr. Sawant supported the impugned order. He submitted that the learned trial Judge noted in the impugned order that application filed under Section 8 provides for referring the dispute to arbitration where there is arbitration clause in the agreement. It is further noted therein that the agreement is in possession of the plaintiffs and therefore, they (defendants) cannot produce original agreement for sale so also they cannot produce certified copy. The learned trial Judge held that there is no provision for dismissal of the Suit on this ground. Moreover, original or certified copy of the agreement is also not produced on record.

5. Section 8 of the Act reads as under:

“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 applies 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.”

6. Perusal of Section 8 extracted hereinabove shows that in the first place, the parties to an agreement can apply for referring the parties to arbitration provided there is arbitration clause in the agreement. Secondly, application under Section 8 cannot be entertained unless it is accompanied by original arbitration agreement or a duly certified copy thereof. In the present case, defendants No.1 and 2 have not produced

either original arbitration agreement or duly certified copy thereof. In view thereof, no fault can be found with the order passed by the learned trial Judge. It will however, be open to defendants No.1 and 2 to take out appropriate application under Section 8 of the Act. If such application is taken out, the learned trial Judge will decide the same in accordance with law and uninfluenced by the observations made in the impugned order as also in this order. If such application is made, all the contentions of the parties in that application are expressly kept open. Order accordingly. Application disposed of.

(R. G. KETKAR, J.)

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