

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 672 OF 2013**

Radhe Mohan Seth, HUF & Ors

..Petitioners

Vs.

Savita Gupta & Ors.

..Respondents

**Mr. P. M.Shah with Mr. M. K. Tanna and Ms Sharmishta Gandhi for the
Petitioners**

Mr. Surel Shah for the Respondent No.1

**CORAM : R. M. SAVANT, J.
DATE : 29th JANUARY, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 14-11-2014 passed by the Learned 6th Joint Civil Judge Senior Division, Thane, by which order, the application Exhibit 18 filed by the Petitioner i.e. the Defendant No.12 for referring parties to the Arbitration, came to be rejected.

2 The Respondent No.1 herein is the original Plaintiff and claims to be the partner of the Respondent No.2 herein one M/s. Shruti Builders who is the Defendant No.13 to the Suit . The Suit in question being Regular Civil Suit No.486 of 2012 has been filed inter alia for the relief of declaration to the effect that by virtue of the Agreements dated 27-6-1994 and 28-11-1997 which are annexures A and B to the plaint, the Plaintiff is entitled to get the said property conveyed from the Defendant Nos.1 to 12 in favour Defendant No.13- of M/s. Shruti Builders. The second relief sought is to restrain the Defendant

Nos.1 to 12 by a permanent order and injunction from in any manner dealing with, disposing off, parting with possession, encumbering or creating any third party rights in respect of the suit properties as set out in the schedule to the agreements dated 27-6-1994 and 28-11-1997. The third relief sought is to pass a decree against the Defendant No.14 and the owners i.e. Defendant Nos.1 to 12 for payment to the Plaintiff of a sum of Rs.10 crores in terms of annexure F to the plaint. There are other reliefs also claimed however having regard to the challenge raised in the above Petition, the said reliefs are not material for adjudication of the above Petition.

3 In so far as the averments in the plaint are concerned, in paragraph 6 of the plaint, the factum of the execution of the development agreement dated 27-6-1994 and its salient features have been referred to. Thereafter in paragraph 7 the supplementary agreement dated 28-11-1997 has been referred to. In so far as the issue which arises in the above Petition is concerned, it is paragraph 9 of the plaint which is the defining paragraph. In the said paragraph 9, it has been averred by the Plaintiff that the owners have in collusion with the other parties and other partners of Shruti Builders, then conspired together to specifically dislodge the plaintiff from her rightful share arising under the said Twin Agreements. It has further been averred that they have acted in collusion and have committed acts which are criminal in nature. It has further been averred in paragraph 9 that acts which are criminal in

nature are the execution of the two deeds which have been executed without any intimation and without obtaining her signature. The two deeds are supplemental agreement dated 12-6-2002 and a registered Deed executed by all the Defendants and one M/s. Mahadeo Construction Private Limited on 15-1-2005. The Plaintiff has further averred that the unkindest cut took place when it was specifically set out in this deed that the Plaintiff had retired from Shruti Builders. It has lastly been averred in paragraph 9(b) that since all the partners namely the Plaintiff has not executed the said other agreements, both the deeds are illegal, unlawful and void in nature. It is averred in paragraph 10 that after the new builder namely said Mahadeo Construction entered, the over all right of the Plaintiff stood drastically diluted and reduced and that on account of the execution of the said two agreements there is an unlawful loss caused to the Plaintiff and an unlawful gain to the Defendants and others. In paragraph 15 the Plaintiff has averred that because the owners have executed the other agreements with partners of Shruti Builders and since the said Mahadeo Construction had constructed and developed the suit property, the Plaintiff has been put to a personal loss of a sum of Rs.13.31 crores as more specifically set out in schedule set out in annexure F to the Plaint. It is averred that the Plaintiff restricts her claim to a sum of Rs.10 crores as set out in her legal notice dated 13-7-2012 to the Defendants. In paragraph 30, it has been averred by the Plaintiff that in the Suit the Plaintiff has prayed for relief which are against the owners as also against the partners of Shruti Builders and

hence the said claim of the Plaintiff is beyond the Arbitration clause in the suit agreement.

4 In the Suit, the instant application Exhibit 18 came to be filed by the Defendant No.12 i.e. one of the owners. The said application was founded on clause (21) of the first agreement dated 27-6-1994 which has been reiterated by clause (6) in the second agreement dated 28-11-1997. It was therefore the case of the Defendant No.12 that in view of the said clause (21), the Trial Court be pleased to stay the hearing of the Suit and refer the parties to Arbitration. The said application Exhibit 18 came to be replied to on behalf of the Plaintiff. The sum and substance of the said reply was that the reliefs sought in the Suit were not restricted to only reliefs under the two agreements dated 27-6-1994 and 28-11-1997, but beyond the said two agreements also. It was therefore contended on behalf of the Plaintiff that clause (21) would not be attracted in the said circumstances. The Trial Court considered the said application and as indicated above has by the impugned order dated 14-11-2014 rejected the same. The Trial Court noted that the Plaintiff has not disputed the execution of the agreement dated 27-6-1994 and the supplementary agreement dated 28-11-1997, but observed that the Plaintiff has also challenged the legality of the agreement dated 12-6-2002 and 25-1-2005 in the present Suit. The Trial Court has adverted to the fact that the Plaintiff is claiming her rights against all the Defendants and that the dispute

does not lie strictly between the Defendant No.12 and the Defendant No.13 as the Plaintiff is claiming reliefs against all the Defendants. The Trial Court therefore came to a conclusion that the parties could not be referred to arbitration having regard to clause (21) of the agreement dated 27-6-1994.

5 It is the contention of the Learned Counsel for the Petitioners that the reliefs sought by the Plaintiff in the Suit in question are revolving around the two agreements dated 27-6-1994 and 28-11-1997. The Learned Counsel would contend that if that be so, the Suit as filed cannot be proceeded with and the parties be referred to arbitration. This is the principal contention urged by the Learned Counsel appearing for the Petitioners.

6 Per contra the Learned Counsel appearing for the Respondent No.1/Plaintiff has drawn my attention to the averments in the plaint as well as the reliefs which have been sought in the Suit. It is based on the said averments and the reliefs sought in the Suit that the Learned Counsel would contend that the claim of the Plaintiff does not lie strictly within the said two agreements as reliefs have been sought by the Plaintiff against all the Defendants. The Learned Counsel would contend that the Plaintiff has also referred to the supplementary agreement executed in the year 2002 and thereafter the deed executed in the year 2005 wherein the new developer Mahadeo Constructions was roped in to carry out the development. The

Learned Counsel would contend that it is on account of the said fact that the Plaintiff has claimed an amount of Rs.10 crores from all the Defendants.

7 The question that is posed therefore is whether the parties are required to be referred to arbitration in view of clause (21) of the agreement dated 27-6-1994. The said agreement as indicated above is a development agreement between Defendant Nos.1 to 12 and the Defendant No.13 partnership firm, Shruti Builders of which the Plaintiff is a partner. The averments in the plaint and the prayer clauses which have been referred to hereinabove ex facie disclose that apart from basing her reliefs on the two agreements dated 27-6-1994 and 28-11-1997, the Plaintiff has also claimed damages to the tune of Rs.10 crores from all the Defendants. This is on the basis of the loss or prejudice which is caused to the Plaintiff on account of the execution of the supplemental agreement in the year 2002 and thereafter the deed in the year 2005. The claim of the Plaintiff is therefore not strictly within the frame work of the two agreements but is also on account of the acts of the Defendants which include the partners of the said Shruti Builders of executing the subsequent two agreements in view of which the Plaintiff has claimed Rs. 10 crores from all the Defendants. The Trial Court was therefore right in coming to a conclusion that having regard to the nature of the reliefs sought by the Plaintiff, clause (21) would not be attracted and therefore the parties cannot be referred to arbitration.

8 In my view, having regard to the reasons mentioned in the impugned order as also having regard to the averments made in the plaint as also the reliefs sought in the plaint, the order passed by the Trial Court cannot be said to suffer from any error of jurisdiction or any other illegality or infirmity for this Court to interdict in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]