

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1102 OF 2016**

M/s Swastic Cables and Ors

..Petitioners

Vs

Jitendra Devappa Rugge and Ors

.. Respondents

Mr. P.D.Dalvi, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.

DATE : 04/02/2016

PC:

1. Heard Mr.P.D.Dalvi, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 19.10.2015 passed by the learned Civil Judge, Sr. Dn., Ichalkarnji, below Exhibits 26 and 104 in Regular Civil Suit No.165 of 2010. By that order, the learned trial Judge rejected the applications filed by defendants no. 1,2,4 to 6 and defendant no.3 under section 8 of the Arbitration and Conciliation Act, 1966 (for short, 'Act').
3. Respondents no. 1 and 2-plaintiffs instituted suit against the petitioners, hereinafter referred to as 'defendants no. 1 to 6' and respondent no.3, hereinafter referred to as 'defendant no.7', inter alia, praying for dissolution of M/s Swastic Cables

(defendant no.1), a partnership firm and for rendition of accounts; for declaration of ownership and for possession of plot no.176 from old Revision Survey No.32/34 which is now City Survey No.18355 from defendants no. 1 to 7; for declaration that the so called lease deed executed by defendant no.1 in favour of M/s Swastik Industries- defendant no.7, is illegal, unauthorised and not binding on the plaintiffs; for 1/4th share in profits of defendant no.7, among other prayers.

4. During the pendency of the suit, defendants no.1,2, 4 to 6 filed application at Exh.26 dated 3.8.2010 under section 8 of the Act. Defendant no.3 filed application at Exh.104 under section 8 of the Act on 26.2.2013. Both these applications were rejected by the learned trial Judge. It is against this decision, defendants no. 1 to 6 have instituted this petition.

5. Mr. Dalvi strenuously contended that first partnership deed was entered into on 18.10.1980. Clause 22 thereof provided for arbitration which is to the following effect:

“(22) Arbitration :- If, any dispute arises between the partners, the same shall be referred to the Arbitration according to the Indian Arbitration Act for the time being in force, the decision of the Arbitration shall be final and binding on all the partners.”

Subsequently, on 1.4.1988 new deed of partnership was

executed by the partners. Clauses 10 and 11 thereof read as under:

(10) "in respect of all other matters not specifically provided for this partnership shall be governed in accordance with the provisions of Indian Partnership Act, 1932".

(11) "if any dispute or differences which may arise between the partners, same shall be referred to an Arbitration in accordance with the provisions of Indian Arbitration Act, 1940 or any statutory modifications thereof for the time being in force."

6. He submitted that any dispute or differences which may arise between partners are required to be referred to an arbitration. Clause 10 thereof provided that the dispute or differences in respect of other matters not specifically provided in the partnership deed shall be governed in accordance with provisions of the Indian Partnership Act, 1932. He submitted that reading of the plaint in its entirety shows that the plaintiffs have attacked on partnership firm and their partners. The plaintiffs have sought dissolution of partnership firm and rendition of accounts as also possession of the suit property. Considering the totality of the plaint, the dispute or differences are required to be adjudicated by Arbitrator as provided in the arbitration clause. He submitted that the learned trial Judge, therefore committed

error in rejecting the application.

7. I have considered the submissions advanced by Mr Dalvi. I have also perused the material on record. During the course of hearing, Mr Dalvi fairly stated that defendant no.1 executed lease deed in favour of defendant no.7 on 4.2.1997. He further stated that defendant no.7 is not party to the first partnership deed dated 18.10.1980 and second partnership deed dated 1.4.1988. Perusal of the impugned order shows that while rejecting the applications, the learned trial Judge referred to provisions of the Act as also various decisions including the decision of the Apex court in the case of Sukanya Holdings and Pvt Ltd Vs. Pandya, AIR 2003 SC 2252 and reproduced paragraphs 13 to 16 thereof.

8. The Apex Court has held 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 arbitrators. 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 arbitration agreement. Having regard to the language employed in Section 8, namely, "in a matter which is a subject matter of the 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 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. The Apex Court further observed that 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 case bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. 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.

9. As noted earlier, defendant no.1 had executed lease deed in favour of defendant no.7 on 4.2.1997 and obviously is not part of the arbitration agreement in first partnership deed dated 18.10.1980 or the second partnership deed dated 1.4.1988. That apart, defendant no.7 is not a party in either of these

partnership deeds. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)