

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 855 OF 2014

MR. SIDHARTH BHANDARI
AND ORS.

...Applicants

Versus

M/S IMPERIAL GLAZING PVT. LTD.
(THROUGH ITS DIRECTOR MR. YOGESH
SADASHIVAN PILLAI)

...Respondent

....

Mr. Varad Deore, Advocate for the Applicant.

Mr. Tejesh Dande i/b. Tejesh Dande & Asso. for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 10th MARCH, 2016

P.C.

1. Heard Mr. Varad Deore and Mr. Tejesh Dande, learned Counsel for the respondent, at length.

2. Rule. Learned Counsel for the respondent waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the application is taken up for final hearing.

3. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC'), the applicants have

challenged the judgment and order dated 24.3.2014 passed by learned 5th Joint Civil Judge, Senior Division, Pune below Exh.17 in Special Summary Suit No.77/2012. By that order, learned trial Judge partly allowed the application made by defendant Nos.2 and 3 under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, 'Act') and referred the dispute between the plaintiff and defendant No.3 to the Arbitrator Mr.Sachin Mantri as per para-13A of the plaint. The suit to that extent is dismissed. Learned trial Judge further directed that the suit against the remaining defendants shall proceed further before the Court.

4. Mr. Deore submitted that learned trial Judge committed serious error in partly allowing the application. In fact, in para-5 of the impugned order, learned trial Judge categorically recorded that suit is admittedly not based on the work order No.M7/WO-GL-01 dated 21.7.2010. That work order is between the plaintiff and defendant No.3. The defendants have also produced other work orders which do not contain arbitration agreement. Mr. Deore relied upon the decision of the Apex Court in the case of **Sukanya Holdings (P) Ltd. vs.**

Jayesh H. Pandya and another, (2003) 5 SCC 531. In said decision, the Apex Court has held that there is no provision in the Act when the subject matter of the suit includes the subject matter of the arbitration 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 the arbitration agreement. He, therefore, submitted that the impugned order is liable to be set aside.

5. On the other hand, Mr. Dande has tendered affidavit-in-reply filed on behalf of the respondent. Along with the affidavit, application below Exh.31 for amending the plaint and also order dated 24.3.2014 passed by learned trial Judge below Exh.31 is annexed. By that order, learned trial Judge allowed the application and permitted deletion of defendant No.3. He, therefore, submitted that order below Exh.31 as also order Exh.17 is passed on the same date and, therefore, the impugned order need not be interfered with as defendant No.3 stands deleted.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record.

7. As noted earlier, by the impugned order, learned trial Judge partly allowed the application Exh.17 and referred the dispute between the plaintiff and the defendant No.3 to the Arbitrator Mr. Sachin Mantri as per paragraph-13A. In view of the decision of the Apex Court in the case of **Sukanya Holdings** (supra), the impugned order cannot be sustained. The order below Exh.17 was passed on the application made by defendant Nos.2 and 3. In other words, defendant No.3 wanted reference of dispute between the plaintiff and defendant No.3 to the arbitrator. At the same time, the plaintiff made application Exh.31 for amending the plaint so as to delete respondent No.3. If defendant No.3 is deleted, obviously the learned trial Judge would not be justified in referring the dispute between the plaintiff and defendant No.3 to arbitration as defendant No.3 stands deleted from the proceedings. If however defendant No.3 is continued as a party defendant in the suit even otherwise in view of the decision of the Apex Court in **Sukanya Holdings**

(supra), the impugned order cannot be sustained. Looking from any angle, the impugned order cannot be sustained. Hence the following order :

- (i) The impugned order is quashed and set aside. Application Exh.17 stands dismissed.
- (ii) Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

Deshmane (PS)