

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL REVISION APPLICATION NO. 173 OF 2017

1. Mr.Rohit Ishwar Chugani,

2. Rita Patel,

Both residing at

A-52, Dakshina S. Park, Juhu Scheme,
Road No.10, Vile Parle, Mumbai – 49.

3. M/s.Aanya Realtors

At: 110, 2nd floor, Orion Business Park,

Next to Cine Wonder Mall,

Kapurbawdi, Ghodbunder Road, Thane. ... Petitioners

v/s

Mr.Vinod J. Mehta,

At: Dheeraj Dreams Society,

Bldg. No.1 C, Flat No.1302,

LBS Marg, Bhandup (West).

... Respondent

Mr.K.S.Dewal along with jayesh Joshi for the petitioners.

Mr.Jeetendra Ranawat i/by S.M.Jain for the respondent.

Coram: N.M. Jamdar, J.

Dated: 28 September 2016

ORAL ORDER:

Leave to amend. Amendment to be carried out forthwith.

2 Rule. Rule made returnable forthwith. Learned counsel for the Respondent waives service. Taken up for final disposal by consent of parties.

3 The Petitioners have challenged the order passed by the learned City Civil Court Judge, Mumbai, granting conditional leave to defend to the Petitioners on depositing the claimed amount of Rs.17,00,000/- in the Court and the amount so deposited be invested in a fixed deposit.

4 Learned counsel for the Petitioners raised several contentions as regard the credibility of the defence of the Petitioners and that a conditional leave of depositing of the entire amount was not warranted. Learned counsel for the Respondent also advanced various contentions on merits to support the impugned order.

5 Apart from the merits, learned counsel for the Petitioners submitted that there is an arbitration clause in the memorandum that was executed between the parties on 25 April 2013, which is the basis of the claim made by the Respondent/Plaintiff. He submitted that, inspite of bringing to the notice of the learned City Civil Court Judge, the existence of the arbitration clause, the learned City Civil Court Judge rejected the contention on the ground that no application has been filed by the Petitioners annexing copy of the agreement as required under Section 8 of the Arbitration and Conciliation Act. It is the contention of the learned counsel for the Respondent that separate application is required and the language of Section 8 contemplates that an application should be filed not later than a first submitting the first statement on the subject of dispute.

6 That there exists a memorandum is not in dispute. The memorandum refers to an arbitration clause. The policy of the legislature in enacting the Arbitration and Conciliation Act, 1996, is to promote speedy resolution of disputes. This policy of the legislature has been given effect to by the Courts by holding that as far as possible the interpretation of legal provisions should be in aid of resolving the dispute through alternate dispute resolution mechanism.

7 The learned Single Judge of the Delhi High court in the case of *Sharad P. Jagtiani v/s M/s.Edelweiss Securities Ltd.*¹, has emphasized the underlining legislative policy and has held that Section 8 has to be led in purposive manner and not in a restrictive manner defeating the object of the legislature. The learned Single Judge has followed the decision of the Apex Court in the case of *P. Anand Gajapati Raju v/s P.V.G. Raju*² wherein the Apex Court has stressed that the object of Section 8 is to bring to the notice of the Court that an arbitration agreement exists between the parties. Once the arbitration agreement exists which provides for expeditious disposal of a dispute, the intervention of the judicial authorities should be minimum. Section 8 has been construed by the learned Single Judge in the case of *Sharad Jagtiani* as the one which contemplates an application only for the purpose of bringing to the notice of the Court the existence of an arbitration agreement and for that purpose it is not necessary in all cases that a separate application be filed. In the case of *Sharad*

1 23014 SCC Online Del. 949

2 (2000) 4 SCC 539

Jagtiani, in the written statement, the Defendant had not used the phrase, 'refer the parties to arbitration' but that court lacks jurisdiction to decide the suit. Similar phraseology is used by the Petitioners in their reply. In the reply, the Petitioners have referred to clause 9 of the memorandum, which provides for an arbitration agreement. Therefore, the Petitioners have sought to bring to the notice of the Court that there is an arbitration agreement. The view taken by the learned Single Judge of Delhi High Court has been followed by the learned Single Judge of this Court (R.M.Savant, J.) in Revision Application No.952 of 2014. Therefore, the reason given by the learned City Civil Court Judge for rejecting the contention based on Section 8 of the Arbitration Act that no separate application was filed, and mere defence is not enough, is not correct. If it is held that the parties are to be referred to an arbitration, then, it will substantially change the complexion of the dispute between the parties at this stage and consequently direction to deposit the amount.

8 I am therefore of the opinion that the exercise undertaken by the learned City Civil Court Judge as far as the question of existence of arbitration agreement is concerned, is incorrect and needs to be corrected by quashing and setting aside the impugned order and restoring the Summons for Judgment No.169 of 2015. It is informed that the Petitioners have now filed a separate application for referring the matter to arbitration. The learned Judge, therefore, will have to address himself to the issue of the arbitration agreement before

proceeding with the suit, keeping mind the legislative policy.

9 The Civil Revision Application accordingly is allowed by quashing and setting aside the judgment and order dated 27 April 2016. The Summons for Judgment stands restored to file, to be decided by the learned City Civil Court Judge, in the light of what is discussed above.

10 As far as what is the nature of the arbitration agreement and whether the dispute needs to be referred to the arbitration by interpreting the relevant clause of the memorandum, is for the learned Judge to decide after hearing both sides and in this order I have only drawn the attention of the learned Judge to the legal position that separate application is not required to be filed, which is the only ground on which the contention based on Section 8, is negatived.

11 Rule made absolute in above terms.

12 If the learned City Civil Court Judge comes to the conclusion that the dispute does not require to be referred to the arbitration, then the contention of the parties on merits of the suit are kept open.

(N. M. Jamdar, J.)

This order is corrected and uploaded as per order dated 8th February 2017.