

A.No.2903 of 2013
in
C.S.No.171 of 2013
M.M.SUNDRESH, J.

This application has been filed by the applicants, who are defendants 2 and 3 in the suit filed for dissolution of the partnership firm along with other consequential reliefs. Along with the suit, the plaintiff has filed two original applications. O.A.No.217 of 2013 has been filed seeking interim injunction against the first respondent therein from operating the bank account with ICICI Bank, Egmore Branch. O.A.No.218 of 2013 has been filed seeking interim injunction restraining the respondents therein from in any manner alienating, encumbering or creating any third party rights over the suit properties.

2. The existence of the partnership deed containing the clause for arbitration in the event of the disputes between the parties under the Arbitration and Conciliation Act, 1996 is not in dispute.

3. In this case, both the learned counsel for the applicants in A.No.2903 of 2013 and the learned counsel for the plaintiff do not have any objection to have the recourse to the arbitral proceedings as per clause 14 of the partnership deed dated 18.04.2007. Strangely, an objection has come from defendants 1 and 4 on the premise that

until and unless Section 8(2) of the Arbitration and Conciliation Act, 1996 is satisfied qua the production of the original arbitration agreement or a duly certified copy thereof, the request made in A.No.2903 of 2013 cannot be maintained. Incidentally, one more plea is sought to be raised that in as much as more reliefs have been sought for in the plaint and thus, the same cannot be permitted to be raised before the arbitral proceedings. Therefore, even on that account, A.No.2903 of 2013 has to be rejected.

4. The learned counsel for the plaintiff, while having no objection to have the recourse to arbitral proceedings has submitted that even as per the averments in paragraph 37 of the plaint, the plaintiff does not have the original partnership deed or the certified copy of the same. Despite the request made before the Registrar of Firm, he is unable to get the copy of the partnership deed, as is seen from the document produced in page 1 of the typed set of papers dated 14.03.2016 filed before the Court.

5. The learned counsel for the applicants in A.No.2903 of 2013 has submitted that allowing of the application has to be seen from the point of view of the applicants in A.No.2903 of 2013 as well as the

plaintiff. When the plaintiff does not have any objection to have the recourse to arbitration, the technical objection of defendants 1 and 4 cannot be sustained.

6. The learned counsel for the defendants 1 and 4 has reiterated the objection as recorded above. His submission is A.No.2903 of 2013 has to be dismissed and the suit will have to be proceeded with.

7. This Court is of the view that the objection raised for allowing A.No.2903 of 2013 is only technical. In any suit, the plaintiff is the *dominus litus*. In this case the plaintiff does not want to proceed with the suit and he wants to seek the remedy under the Arbitration and Conciliation Act, 1996. In other words, but for the suit, there cannot be a bar for the plaintiff to invoke the jurisdiction of this Court under Section 11 of the Arbitration and Conciliation Act, 1996. Similarly, the question of severability cannot be gone into, as it is for the learned Arbitrator to decide the claim on merits as well as on maintainability.

8. Now coming to the objection raised by the learned counsel appearing for defendants 1 and 4 on the application filed under Section 8 of the Arbitration and Conciliation Act, 1996 is concerned, the said

provision has its own intention. The intention is to refer the parties to arbitration where there is an arbitral agreement. That is the reason Section 8 is couched even to get over the rigour of any judgment, decree or the order of the Apex Court or any other Court. The only exception is the *prima facie* view of no valid arbitral agreement qua its existence. In the case on hand, the existence is not in dispute. While it is the case of the plaintiff that defendant No.1 is having the original document, it is denied by the said defendant. Similarly, it is the specific case of the defendants 2 and 3 that they do not have the copy or the certified copy of the same. In any case, the proviso to Section 8 of the Arbitration and Conciliation Act, 1996 would apply, as it is the specific case of the plaintiff that he does not have the copy and hence there is no question of calling the party to produce the same. Therefore, looking from any angle, this Court is the view that the application filed in A.No.2903 of 2013 has to be allowed to the extent of permitting the parties to invoke the provisions of Arbitration and Conciliation Act, 1996.

9. Further more, Section 8(2) of the Arbitration and Conciliation Act, 1996 has to be seen in its own context on a conjoint reading of Section 8(1) and the proviso attached to it. This is only for the

purpose of entertaining the application. Therefore, considering the facts of this case, I am of the view that the technical objection sought to be raised on behalf of the defendants 1 and 4 has to be rejected, particularly, in view of the stand of the plaintiff that he is ready and willing to go before the Arbitrator by invoking the provisions of the Arbitration and Conciliation Act, 1996. In this context, the judgment viz., **(2003) 5 SCC 531 (Sukanya Holdings (P) Ltd. v. Jayesh H.Pandya and another)** relied upon by the learned counsel for the defendants 1 and 4 has got no bearing.

10. In the result, A.No.2903 of 2013 is allowed.

09.06.2016

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