

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL UNDER ARBITRATION ACT NO. 9 OF 2017

MR. KAILASH BHARTI.	... Appellant
Versus	
M/S K. C. CONSTRUCTION COMPANY THR. ITS PARTNERS AND 7 ORS.,	... Respondents

Mr. Joaquim Godinho, Advocate for the appellant.
Mr. Sudin Usgaonkar, Senior Advocate with Ms. T. Kamat
Ghanekar, Advocate for the respondent nos. 1, 2 and 3.

Coram:- F. M. REIS, J.

Date:- 7th July, 2017

ORAL ORDER :

Heard Mr. J. Godinho, learned counsel appearing for the appellant and Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the respondent nos. 1, 2 and 3.

2. The above appeal challenges an order dated 17.02.2017 passed in Special Civil Suit No.3/2016 whereby an application under Section 8 of the Arbitration and Conciliation Act, 1996 filed by the appellant came to be dismissed.

3. Mr. J. Godinho, learned counsel appearing for the appellant submits that an agreement was executed between the appellant and the respondent no.1, 2 and 3. The learned counsel further points out that the appellant had agreed to purchase a flat

from the respondent no.1 pursuant to the said agreement dated 11.01.2010. The learned counsel further points out that the suit filed by the respondent no.1 against the appellant and the other respondents is in respect of the subject matter of the said agreement and as such according to him as the dispute is covered by the arbitration agreement, the learned Judge was not justified to pass the impugned order. The learned counsel further submits that the appellant has nothing to do with the dispute, if any, between the respondent no.1 and the remaining respondents as according to him, the appellant has been dragged into such dispute on erroneous ground. It is further pointed out that the appellant has already paid the total consideration to the respondent no.1 and only to avoid the delivery of the flat to the appellant, the respondent no.1 has filed such suit on false and fictitious grounds. The learned counsel further pointed out that as the respondent no.1 has failed to deliver the flat in terms of the said agreement, the appellant is entitled to raise such dispute by filing an application under Section 8 of the said Act in the said suit. The learned counsel further submits that the learned Judge has rejected such application essentially on the ground that as fraud has been alleged by the respondent no.1, it is a matter which has to be minutely examined by the Civil Court, and the question of appointing an Arbitrator to adjudicate such dispute would not at all be justified. It is further pointed out that the learned Judge has erroneously included the dispute of the

appellant with the claim of the respondent no.1 against the remaining respondents, as admittedly with regard to their dispute criminal proceedings were initiated. It is further pointed out that the findings of the learned Judge in the impugned order would come in the way of the appellant in adjudicating his dispute before the competent authority. The learned counsel has taken me through the impugned order as well as the terms of the agreement to point out that the learned Judge has misconstrued the relevant provisions of law and erroneously dismissed the application filed by the appellant. The learned counsel in support of his submissions has relied upon the judgment of the Apex Court reported in (2016)10 SCC 386 in the case of A. Ayyasamy V/s A. Paramasivam and others.

4. On the other hand, Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the respondent nos.1 to 3 has submitted that in the reply filed by the respondents to the application under Section 8 of the said Act of 1996, it was clearly averred that the dispute raised in the suit did not cover any of the alleged claim sought to be raised by the appellant herein. It is further pointed out that the appellant has not even raised any dispute and as such the respondent no.1 is not at all aware about the claim of the appellant based on the agreement signed between the appellant and the respondent no.1. The learned Senior Counsel further pointed out that the learned Judge has rightly rejected the

application as complex issue of fraud and criminal intimidation etc. are involved in the proceedings which can be decided by the Civil Court. It is further pointed out that the learned Judge has rightly examined the material on record to come to the conclusion that looking into the dispute raised in the suit, the question of referring the matter for arbitration in terms of Section 8 of the said Act of 1996 would not at all be justified. The learned Senior Counsel as such points out that the appeal be accordingly rejected.

5. I have duly considered the submissions of the learned counsel and I have also gone through the records. The learned Judge while passing the impugned order has proceeded to examine the merits of the rival claim and the nature of the dispute raised by the respondent no.1 in the suit to come to the conclusion that as there are allegations of fraud raised by the respondent no.1, the question of referring such matter to the Arbitrator would not be justified. Considering the defence raised by the respondent no.1 to the application under Section 8 of the said Act of 1996, this exercise was not at all necessary for the learned Judge to dispose of the application under Section 8 of the said Act of 1996. Section 8 of the said Act clearly provides that the parties can be referred to arbitration in case the dispute raised in the suit is covered by arbitration agreement. In the present case, as rightly pointed out by Mr. Sudin Usgaonkar, learned

Senior Counsel appearing for the respondent no.1, the dispute raised by the respondent no.1 in the suit is not in respect of the alleged dispute being raised by the appellant based on the said agreement dated 11.01.2010. It is also rightly pointed out by Mr. Sudin Usgaonkar, learned Senior Counsel that the allegations of fraud which are alleged in the suit do not directly implicate the agreement executed in favour of the appellant herein. In such circumstances, the only aspect the learned Judge was expected to examine in such matter, considering the said stand is whether the dispute raised in the suit covers any plausible claim of the appellant based on the said agreement. In such circumstances, as the dispute raised in the suit is not covered by the arbitration clause in the said agreement, the question of referring the parties to arbitration under Section 8 of the said Act of 1996 would not at all arise.

6. Apart from that, some of the parties to the suit are not parties to the said agreement and consequently, the question of referring the dispute between the appellant and the respondent no.1 to arbitration as contended by Mr. Godinho, learned counsel appearing for the appellant would not at all be justified. As such, I find that there is no infirmity committed by the learned Judge while dismissing the application under Section 8 of the said Act of 1996. The appellant have to raise his dispute, if so advised based on the said agreement dated 11.01.2010 on its own merits

in accordance with law. The findings of the learned Judge in the impugned order would not come in the way of the appellant while raising such dispute based on the said agreement dated 11.01.2010 which shall be examined on its own merits in accordance with law.

7. Subject to the above, I find no reason to interfere in the impugned order. The appeal stands accordingly rejected.

F. M. REIS, J.

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