

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

CIVIL WRIT PETITION No. 13206 OF 2016

Vikas Madan Jagasia & Anr.	...Petitioners
Vs.	
Pankaj Shyam Chawla	...Respondent

Mr. Pradeep Thorat, for the Petitioners
Mr. Atul G. Damle, Senior Counsel a/w. Mr. Sandesh R. Shukla i/b. Mr. Rajesh
Mirchandani for Respondent

CORAM : M.S. SANKLECHA, J.
TUESDAY, 8th AUGUST, 2017

P.C.

1. This petition under Article 227 of the Constitution of India challenges the order dated 7th October, 2016 passed by the City Civil Court at Bombay. The impugned order dated 7th October, 2016 allowed the application taken out by the Respondent, seeking to refer the disputes in the pending suit to Arbitration in terms of memorandum of agreement dated 28th March, 2011 (MOU) as mandated by Section 8 of the Arbitration and Conciliation Act, 1996 (Act).

2. The impugned order dated 7th October, 2016 negated the petitioner's contention that the dispute is with regard to the Cancellation Deed dated 13th September, 2012 which does not provide for any arbitration. This by holding

that the Cancellation Deed seeks to cancel the MOU and, therefore, is a document executed in continuation and in relation to the MOU. Therefore, it is a part of the MOU. Further the impugned order holds that in view of the amendment to section 8 of the Act w.e.f. 25th October, 2015, the Court is obliged to refer the said dispute to an arbitration. Besides, the impugned order clarifies that in view of section 16 of the said Act, it is for the arbitrator to decide whether he is competent to deal with the issue of fabrication fraud etc. as are alleged to arise in this case, while deciding his jurisdiction.

1. The Petitioners' grievance to the impugned order is two fold as under:-

(a) The suit as filed is to declare an agreement for cancellation dated 13th September, 2012 as not binding on account of the same being a fabricated and forged documents. The disputes referred to arbitration, are disputes which require decision on allegations of fabricated / false documents and fraud. Consequently, the impugned order could not have referred the dispute to the arbitration; and

(b) In any event, this document of Cancellation dated 13th September, 2012 contains no arbitration clause and the arbitration clause in the MOU could not have been invoked to refer to deed of cancellation for arbitration.

4. So far as issue with regard to fabricated and forged documents is

concerned, reliance was placed by Mr. Thorat, learned counsel appearing for the Petitioners on the judgments of the Apex Court in cases of **Booz Allen And Hamilton Inc. Vs. SBI Home Finance Limited and Others [(2011) 5 Supreme Court Cases 532; A.Ayyasamy Vs. A.Paramasivam And Others [(2016) 10 Supreme Court Cases 386]** and **N. Radhakrishnan Vs. Maestro Engineers And Others [(2010) 1 Supreme Court Cases 72]**. In all above decisions, the Apex Court has made observations that where serious allegations of fraud have been made, the same could be decided only by a civil court. It is submitted that this obligation of the civil court could not be outsourced to the arbitrator by the impugned order.

5. However, all the above three decisions being relied upon by the Petitioners are in the context of section 8 of the Act prior to its amendment on 23rd October, 2015. The amendment to section 8 of the Act specifically provides that the judicial authority before whom an action is initiated, which is a subject matter of an arbitration agreement, then the same shall be referred to an Arbitrator notwithstanding any judgment, decree or order of any Court. The impugned order is passed on the basis of the amended provisions and all decisions relied upon are in the context of the pre-amended section 8 of the Act besides, Section 8 of the Act as amended itself obliges the judicial authority to

refer the dispute to the Arbitrator. Further, it is open to the Petitioners to contend before the Arbitrator under section 16 of the Act that it does not have jurisdiction to decide on the issue in view of the fraud etc. The impugned order in fact clarifies the same by leaving this issue of jurisdiction open for the Arbitrator to decide in case it is urged before him under Section 16 of the Act.

6. Mr. Thorat, learned counsel appearing for the Petitioners then contended that the suit was filed in September, 2015 i.e. prior to the amendment made to section 8 of the Act, therefore, the amendment to Section 8 will not apply. The relevant date for the application of law would be the date of the invocation of the arbitration clause under the agreement. Therefore, the view taken by the impugned order is a possible view. Therefore, it would not merit any interference in my supervisory jurisdiction under Article 227 of the Constitution of India.

7. So far as the second issue is concerned viz. that as there is no arbitration clause in the cancellation deed dated 13th September, 2012 which is the subject matter of the suit, the dispute could not have been referred to Arbitration. It is to be noted that the impugned order itself holds that the cancellation deed dated 13th September, 2012 seeks to cancel the MOU and is a document executed in the context of the MOU and, therefore, to be considered to be a part of the MOU. This is a possible view. Moreover, I find that the plaint as filed by the Petitioners

in fact seeks a permanent accommodation of Carpet area of 586 sq.ft. in terms of MOU dated 31st March, 2011 as is evident from para 17 of the plaint. Consequently, the MOU itself along with the deed of cancellation become the subject matter of consideration in the present dispute. Therefore, the impugned order finding that the valid arbitration agreement exists is again a plausible view on the basis of the documents relied upon by the Petitioner viz. the MOU and the cancellation deed. Thus, not calling for any interference under Article 227 of the Constitution of India.

8. Therefore, in view of the above, no interference with the impugned order would be justified in exercise of my supervisory jurisdiction under Article 227 of the Constitution of India.

9. Hence, the petition is dismissed. No order as to costs.

[M. S. SANKLECHA, J.]