

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION NO.72 OF 2016

Anil Buddhuji Deshmukh,
Garden Home, Near Pande Lawn,
Jafar Nagar, Nagpur

... Applicant.

-vs-

Gautam Gopal Puri,
Ameya Apartment,
Shivaji Nagar Market Road,
Dharampeth, Nagpur.

... Non-applicant.

Shri Masood Shareef, Advocate for applicant.
Shri C. N. Deshpande, Advocate for non-applicant.

CORAM : A.S.CHANDURKAR, J.
DATE : March 22, 2017

P.C.

The defendant in R.C.S. No.377 of 2016 is aggrieved by the order passed by the Trial Court refusing to refer the dispute to the Arbitrator under Section 8 of the Arbitration and Conciliation Act, 1996.

2. It is the case of the applicant that on 15/08/2013 the non-applicant and the applicant as a Director of Aryansh Besara Real Heights Pvt. Ltd. entered into agreement with regard to property bearing khasra No.183/4. It was agreed that the plots in the said

property would be developed and the profits would be equally shared. The said agreement also contained a clause for referring the disputes if any to an Arbitrator. Subsequently on disputes arising between the parties, the non-applicant filed a suit for declaration, partition and separate possession in respect of nine plots of land. Khasra No.183/4 was also the subject matter of said suit. In this suit the applicant filed application below Exhibit-12 seeking appointment of an Arbitrator. By the impugned order the trial Court rejected said application.

3. Shri M. Shareef, learned counsel for the applicant submitted that as per the agreement dated 15/08/2013 it was the intention of the parties to have their disputes resolved through arbitration. He submitted that the trial Court by wrongly construing the arbitration clause refused to refer the dispute for adjudication by the Arbitrator. According to him though the trial Court found that the dispute with regard to khasra No.183/4 was the subject matter of agreement, it refused to allow the application. In support of his submission, the learned counsel placed reliance upon the decisions in *M/s Konkan Railway Corporation Ltd. And anr. vs. M/s Rani Construction P. Ltd. AIR 2002 SC 778* and *Hindustan Petroleum Corporation Ltd. vs. M/s Pinkcity Midway Petroleums AIR 2003 SC 2881*.

4. Shri C. N. Deshpande, learned counsel for the non-applicant submitted that the agreement in question was entered into by the plaintiff and a Company of which the applicant was a Director. He submitted that the suit as filed is not against the Company but it is against the applicant in his individual capacity.

5. Relying upon the decision in *Sukanya Holdings (P) Ltd. vs. Jayesh H. Pandya and anr. (2003) 5 SCC 531* he submitted that the subject matter of the suit included various other properties including khasra No.183/4 and therefore resolution of the disputes through arbitration was not possible. He therefore supported the impugned order.

6. After hearing the respective counsel for the parties, I find that the trial Court was justified in rejecting the application under Section 8 of the said Act. Perusal of the plaint indicates that the suit is filed against the present applicant alone in his individual capacity. The agreement dated 15/08/2013 is between the plaintiff and one Aryansh Besara Real Heights Pvt. Ltd. The present applicant happens to be a Director in the said Company. Further the subject matter of the suit indicates that there is dispute with regard to nine plots of land. The agreement dated 15/08/2013 is only with regard to one

such property which is khasra No.183/4. As held by the Honourable Supreme Court in *Sukanya Holdings (P) Ltd.* (supra) the subject matter of the suit and the subject matter of the arbitration agreement should be the same and only if the entire subject matter of the suit is also the subject matter of the arbitration agreement, only then the proceedings can be referred for arbitration. In view of aforesaid legal position, the order of the trial Court refusing to refer the dispute to an Arbitrator cannot be faulted. The decisions relied upon by the learned counsel for the applicant and the ratio thereof cannot be made applicable to the case in hand.

7. In view of aforesaid, I do not find any case is made out to exercise revisional jurisdiction. The civil revision application is therefore dismissed with no order as to costs.

JUDGE