

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.2689 OF 2017
AND CMP NO.12851 OF 2017

M/s.Egret Park Home Owners Association
Represented by its Secretary
No.148, Anand Nagar, Egret Park,
Thoraipakkam,
Chennai - 600 097.

... Petitioner

Vs.

1.Bhaskar Swamy

2.S.V.Ramesh
(former President 2009-2011)
148, 9th Cross Street,
Egret Park, Phase - 2, House - 4,
Anand Nagar, Thoraipakkam,
Chennai - 600 097.

3.Lakshmanan Krishnamoorthy
Secretary (2011-2012)
148, 9th Cross Street,
Egret Park, Phase - 2, House - 4,
Anand Nagar, Thoraipakkam,
Chennai - 600 097.

4.Shankar Naganathan
 President of the Association
 (2011-2012 and 2012-2013)
 Egret Park, Phase - 2, House - 4,
 Anand Nagar, Thoraipakkam,
 Chennai - 600 097.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside and reverse the order and decretal order dated 06.04.2017 passed in I.A.No.1125 of 2017 in O.S.No.358 of 2013 on the file of the Additional District Munsif, Alandur and allow the present Civil Revision Petition and refer the parties to arbitration in terms of Clause 24.6 of the Rules, Regulations and Bye-laws of the petitioner.

For Petitioner : Mr.V.V.Sivakumar
 For Respondent-1 : Ms.Sarita Lal

ORDER

The revision petitioner is the fourth defendant in the suit. The Civil Revision petition is filed against the order dated 06.04.2017 passed in I.A.No.1125 of 2017 in O.S.No.358 of 2013, by the learned Additional District Munsif, Alandur, dismissing the interlocutory application filed under Section 8 of the Arbitration and Conciliation Act, 1996.

2. The first respondent / plaintiff is a Member of the petitioner association, having purchased a dwelling unit in Egret Park Community at Thoraipakkam. The grievance of the first respondent / plaintiff is that the maintenance fee based on UDS + plot area is null and void. The entire suit revolves around the by-laws of the petitioner association/fourth defendant. The revision petitioner / fourth defendant, on receipt of summons, has filed an application under Section 8 of the Arbitration and Conciliation Act, 1996, for referring the matter for arbitration, in view of arbitration agreement, as per clause 24.6 of the rules and regulations and by-laws of the petitioner association, which reads as under:

"Any difference or dispute arising between the Parties out of or in relation to the decision rendered by the General Body of the Association, shall first be amicably settled by mutual discussions. Failing amicable resolution within 30 (thirty) days of the commencement of negotiations, the difference or dispute shall be referred to a panel of three (3) arbitrators, (hereinafter referred to as

"Arbitral Tribunal"), with one arbitrator to be appointed by the aggrieved person and the other arbitrator to be appointed by the Association and the third arbitrator to be appointed as a presiding arbitrator by the two appointed arbitrators. The arbitration proceedings shall be conducted in English language and in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 including any repromulgation or enactment thereof. The place of arbitration shall be Chennai. The award of the Arbitrator shall be final and binding upon the Parties."

Any dispute arising between the parties shall be referred to arbitration. However, the same was vehemently opposed by the first respondent / plaintiff in the revision petition.

3. The revision petitioner would contest that there were eight options given to the members of the petitioner association and majority of them have chosen a particular option, whereas, it was opposed by the first respondent / plaintiff. Hence, he filed the suit.

4. The first respondent / plaintiff along with the plaintiff has filed agreement of construction, by-laws of the association, minutes of the meeting, list of attendees etc., under Order VII Rule 14(1) of the Civil Procedure Code. According to him, the by-laws of the petitioner association is not a registered one and that the declaration / injunction is not the subject matter of the arbitration agreement. Further, as per by-laws, proper notice was not served on the first respondent / plaintiff and the Annual General Body Meeting held on 18.08.2012 was not conducted in consonance with the by-laws, in letter and spirit. The arbitration agreement introduced in unregistered by-laws 2013 is not binding upon him and therefore, sought for dismissal of the application.

5. In support of his contention, the first respondent / plaintiff relied on a judgment of this Court in ***R. VENKATASUBBA REDDIAR VS. THE REGISTRAR, CO-OPERATIVE SOCIETIES, MADRAS AND OTHERS [AIR 1954 MAD 955]*** wherein it was categorically held that the irregularity in the passing of any rule or amendment of a by-law cannot form the subject -

matter of any complaint in a Court after the amendment has been registered and certified by the Registrar.

6. The Hon'ble Supreme Court in ***N.RADHAKRISHNAN VS. M/S.MAESTRO ENGINEERS AND OTHERS [CIVIL APPEAL NO.7019 OF 2009 DATED 22.10.2009]*** has held that if the questions of fact or law is involved and is complicated and where allegation of fraud is made, the Civil Court can refuse to refer the matter for arbitration. Therefore, it is contested that the petition filed under Section 8 of the Arbitration and Conciliation Act 1996, is liable to be dismissed. Furthermore, the revision petitioner has failed to produce the original arbitration agreement and therefore also, the petition is liable to be dismissed, as it violates Section 8(2) of the Act.

7. Per contra, the learned counsel for the revision petitioner/fourth defendant would submit that the Hon'ble Supreme Court in ***SMS TEA ESTATES PRIVATE LIMITED VS. CHANDMARI TEA COMPANY PRIVATE LIMITED [2011 (14) SCC 66]*** has clearly held that arbitration

agreement is not compulsorily registrable under Registration Act, 1908. Even if it is not registered, it can be acted as an independent agreement for the purpose of dispute resolution. Therefore, the non registration of the arbitration agreement will not in any way disqualify the matter be referred for arbitration.

8. The first respondent / plaintiff, admittedly is a member of the petitioner association. The entire dispute and irregularities pointed out by the respondents revolves around the by-laws of the Society. The said by-laws were relied on by the first respondent / plaintiff throughout the pleadings. As per the plaint, the violation of by-laws, in issuing notice, assumption of office by the respondents and fixation of excessive maintenance fee are all arising out of the said by-laws. Even prior to the filing of the petition, to refer the matter for arbitration, the by-laws are in force and it was acted upon by the parties concerned. Once there is an arbitration clause and the appointment of arbitrator is made by the Society, the first respondent / plaintiff cannot refuse to participate in the arbitration.

9. This Court in **MANKANNER JAIN SCHOOL WELFARE SOCIETY VS. ANILKUMAR J.DOSHI [2001 (2) LW 572]** has clearly held that since the Act bars judicial intervention except where provided under the Act, we must take it that the Civil Courts jurisdiction is ousted at least as far as the dispute between the parties is concerned. Therefore, rejection of reference made by the Civil Court was set aside relying on the various judgments of the Hon'ble Supreme Court.

10. In yet another judgment of the Hon'ble Supreme Court in **ZOROASTRIAN COOPERATIVE HOUSING SOCIETY LTD., AND ANOTHER VS. DISTRICT REGISTRAR, COOPERATIVE SOCIETIES (URBAN) AND OTHERS [2005 (5) SCC 632]** it has been held that the approved by-laws of the Society are not necessarily valid. But still, they have a binding effect on the parties. In this regard, it is relevant to reproduce para 27 of the said judgment, which reads as under:

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"27. Under the Indian Contract Act, a person sui juris has the freedom to enter into a contract. The bye-laws of a cooperative society setting out the terms of membership to

it, is a contract entered into by a person when he seeks to become a member of that society. Even the formation of the society is based on a contract. This freedom to contract available to a citizen cannot be curtailed or curbed relying on the fundamental rights enshrined in Part III of the Constitution of India against State action. A right to enforce a fundamental right against State action, cannot be extended to challenge a right to enter into a contract giving up an absolute right in oneself in the interests of an association to be formed or in the interests of the members in general of that association. This is also in lieu of advantages derived by that person by accepting a membership in the Society. The restriction imposed, is generally for retaining the identity of the society and to carry forward the object for which the society was originally formed. It is, therefore, a fallacy to consider, in the context of cooperative societies, that the surrendering of an absolute right by a citizen who becomes a member of that society, could be challenged by the said member by taking up the position that the restriction he had placed on himself by entering into the compact, is in violation of his fundamental right of freedom of movement, trade or right to settle in any

part of the country. He exercises his right of association when he becomes a member of a society by entering into a contract with others regulating his conduct vis-à-vis the society, the members constituting it, and submerging his rights in the common right to be enjoyed by all and he is really exercising his right of association guaranteed by Article 19(1)(c) of the Constitution of India in that process. His rights merge in the rights of the society and are controlled by the Act and the bye-laws of the society. "

Therefore, the first respondent / plaintiff cannot turn around and say that the by-laws of the Society are not binding upon him and the dispute arising in respect of by-laws shall not be referred for arbitration.

11. The pleadings as well as the catena of judgments relied on clearly go to show that when there is an arbitration clause between the parties, it is binding on them and the parties cannot disassociate themselves from the agreement and choose to file the suit. Therefore, the order passed by the Trial Court that the by-laws pertains to the previous period and not to the subsequent period, does not hold water and it is

erroneous. Further, it is found that the first respondent / plaintiff, has entered into an agreement with the Society, on his own volition. Thereafter, he was elected to be appointed as Secretary, as per the by-laws and he questioned the fixation of maintenance fee by the newly elected office bearers of the association, according to the by-laws. The entire suit revolves around the by-laws and the first respondent / plaintiff has not alleged any fraud of complicated issue, but would entrust that the issue of declaration can be decided only by way of letting in evidence. Before the arbitrator also, the first respondent / plaintiff has the option of producing all the evidences, including oral and documentary, in support of his case. Even the award was passed to have a right of appeal, against the order.

12. Section 8 of the Arbitration and Conciliation Act, 1996, reads as under:

" 8. Power to refer parties to arbitration where there is an arbitration agreement.— (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the

arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof;

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

13. The Hon'ble Supreme Court also makes it mandatory for the Courts to consider the petition filed under Section 8 and to refer the matters to alternate dispute resolution mechanism. In this case, there is a clear arbitration agreement between the parties and the dispute also

arises between themselves out of the decision taken by the association in which the first respondent / plaintiff is also a party. When there is a clear arbitration clause, the Civil Court are barred from entertaining application the matter has to be referred for arbitration.

14. In view of the above discussions, the order dated 06.04.2017 passed in I.A.No.1125 of 2017 in O.S.No.358 of 2013 by the learned Additional District Munsif, Alandur is set aside and the Civil Revision Petition is allowed. The Trial Court is directed to refer the matter for arbitration. No costs. Consequently, connected civil miscellaneous petition is closed.

13.09.2017

Index : Yes/No
Internet : Yes/No
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To

The Additional District Munsif
Alandur.

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M.GOVINDARAJ, J.
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