

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 28 OF 2016

MR. FERUZ SHEIKH, DULY REP. BY HIS
POA MRS. NAFISA BI SHAIKH.

... Appellant

Versus

MR. NISSAR AHMED SHEIKH.

... Respondent

Adv. Galileo Francisco Teles for the Appellant.

Coram:- C. V. BHADANG, J.

Date:- 15th January 2018

Oral Order:

Heard Shri Teles, the learned counsel for the appellant for some time.

2. By this appeal, the appellant/plaintiff is challenging the judgment and order dated 6/2/2016 passed by the learned trial court. By the impugned judgment, the learned trial court has allowed an application under section 8 of the Arbitration and Conciliation Act, 1996 (Act, for short) filed by the respondent/defendant and the parties are directed to act in terms of Clause 22 of the Partnership Deed.

3. Shri Teles, the learned counsel for the appellant in all fairness does not dispute that although the partnership has been

dissolved as it was a partnership at will, the Arbitration Agreement as contained in Clause 22 of the Partnership Deed would survive. It is now well settled that the provisions of section 8 of the Act are peremptory in nature and cases where there is an arbitration clause in the agreement it is obligatory for the Court to refer the parties to arbitration in terms of the arbitration agreement. The Hon'ble Supreme Court in the case of P. ANAND GAJAPATHI RAJU VS. P. V. G. RAJU (DEAD) 2000 (4) SCC 539 has inter alia held that in such a case nothing remains to be decided in the original action except to refer the dispute to an arbitrator. In that view of the matter no exception can be taken to the impugned order passed by the learned trial court.

4. The only contention raised on behalf of the appellant is that the plaint cannot be rejected in such a case and the Court has to refer the parties to arbitration.

5. A bare perusal of the impugned judgment and order shows that while allowing an application under section 8 of the Act, the trial court has directed the parties to act in terms of Clause 22 of the Partnership Deed which in fact means that the parties have been directed to abide by the said clause. Once it is found that nothing survives in the suit, no exception can be taken to the order rejecting the plaint. The impugned order in my considered

view does not suffer from any infirmity so as to require interference. The appeal is accordingly dismissed.

C. V. BHADANG, J.

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