

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO. 15 OF 2017

MACHARAM SOLANKI., ... Appellant

Versus

**K. C. CONSTRUCTION COMPANY, THR.
ITS PARTNERS AND 7 ORS.,** ... Respondents

Ms. Puspinder Kaur, Advocate for the Appellant.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Tanvi Kamat
Ghanekar, Advocate for the Respondent Nos. 1, 2 and 3.

Mr. Vibhav R. Amonkar, Advocate for the Respondent No. 5.

Mr. Ashwin D. Bhole, Advocate for the Respondent No. 7.

Coram:- C. V. BHADANG, J.

Date:- 1st February 2018

ORAL ORDER:

Heard Ms. Kaur, the learned Counsel for the appellant,
Shri Usgaonkar, the learned Senior Counsel for the respondent
nos. 1, 2 and 3, Shri Amonkar, the learned Counsel for the
respondent no. 5 and Shri Bhole, the learned Counsel for the
respondent no. 7.

2. The challenge in this appeal is to the order dated
17.02.2017, passed by the learned Trial Court, thereby
dismissing the application under Section 8 of the Arbitration and
Conciliation Act, 1996 (Act, for short), filed by the appellant
(defendant no. 5), for referring the dispute to the Arbitrator.

3. It appears that the appellant along with co-defendants, filed similar applications being Exhibit Nos. 11, 12, 13 and 14, for referring the dispute to the Arbitrator.

4. The learned Trial Court, by a common order, dismissed all these applications. It is further a matter of record that original defendant no. 6, challenged the said order before this Court in Appeal Under Arbitration No. 9/2017, which was dismissed by this Court on 07.07.2017, inter alia, on the ground that the dispute raised in the suit is not covered by the arbitration clause, in the agreement between the parties. Secondly, it was also found that some of the parties to the suit are not parties to the said agreement. It was not disputed during the course of the arguments at bar that the said order passed in Appeal Under Arbitration No. 9/2017, has not been carried any further and as such, has attained finality.

5. The learned Counsel for the appellant submitted that there is another agreement between the original plaintiff and the respondent nos. 1, 2 and 3, who are the owners, which also contains a similar arbitration clause. It is submitted that the provisions of Section 8 of the Act, as amended in the year 2015 have enlarged the scope of the powers of the Civil Court in referring the parties to arbitration, in the context of the valid

arbitration clause. It is thus submitted that the Trial Court was in error in not referring the dispute to the Arbitrator.

6. On the contrary, Shri Usgaonkar, the learned Senior Counsel for the respondent nos. 1, 2 and 3 has supported the impugned order. It is submitted that this Court had already come to a conclusion that the dispute in the suit is not covered by an arbitration clause, between the parties and as such, there was no question of the Trial Court referring the dispute to an Arbitrator.

7. The learned Counsel for the respondent no. 5 although, has no objection for referring the dispute to an Arbitrator, it is not in dispute that a similar application was not filed by the respondent no. 5 before the Trial Court.

8. The learned Counsel for the respondent no. 7 has pointed out that the respondent no. 7 has moved for appointment of an Arbitrator under Section 11 of the Act.

9. I have carefully considered the circumstances and the submissions made and I do not find that any case for interference is made out. The suit filed by the respondent nos. 1, 2 and 3 is a comprehensive suit, seeking several reliefs, all of which are not covered by the agreement, containing the arbitration clause. The learned Counsel for the appellant did not dispute that the entire

reliefs claimed are not covered by the arbitration clause. Furthermore, some of the defendants to the suit are also not parties to the agreement, which contains the arbitration clause.

10. A co-ordinate Bench of this Court has already come to the conclusion that the dispute involved in the suit, is not covered by the arbitration clause. In that view of the matter, no exception can be taken to the impugned order, refusing to refer the dispute for arbitration. The amendment to Section 8 of the Act in the year 2015, cannot come to the aid of the appellant, particularly, when the dispute in the suit is not covered by an arbitration clause.

For this reason, no case for interference is made out. The appeal is without any merit and is accordingly dismissed, with no order as to costs. Needless to mention that this shall not come in the way of the appellant in moving under Section 11 of the Act, if so advised.

C. V. BHADANG, J.

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