

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Civil Revision Petition No.6032 of 2018

ORDER: (Per the Hon'ble Sri Justice Raghvendra Singh Chauhan)

The petitioner, Mr.Achanta Kutumba Rao, is aggrieved by the order dated 19.07.2018, passed by the V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, whereby the learned Judge has allowed an interlocutory application, namely, I.A.No.306/2016 filed in the Original Suit No.1046/2014, by the respondent-defendant under Section 8 of the Arbitration and Conciliation Act, 1996 ('the Act', for short) read with Section 151 C.P.C, and has referred the matter to the Arbitrator in terms of Clause 31 of the Development Agreement-cum-General Power of Attorney dated 24.12.2018, for adjudication of dispute which has arisen between the parties.

Briefly the facts of the case are that, the petitioner-plaintiff claimed to be the owner of a land comprising of Plot Nos.1, 2, 3, 6, 7 and 8 each, admeasuring 200 square yards, totally admeasuring 1200 square yards, located in Survey No.38 situated at Kothaguda Village, Serilingampally Mnadal, R.R. District, by virtue of a gift settlement deed, *vide* document No.6925/2008, executed by his mother. Since the petitioner-plaintiff intended to develop the said property, by taking up the construction of multi-storeyed building, he got in touch with Mr.Bharath Narang, the Director of the respondent-company. The petitioner-plaintiff agreed to permit the respondent-company to develop the suit schedule property. In pursuance of the said understanding, both the parties entered into a Development Agreement-cum-General Power of Attorney on 24.12.2008. The said document was registered with the office of the District Registrar, Ranga Reddy.

The petitioner-plaintiff further claimed that the possession of the said property was handed over to the respondent-company. According to the Development Agreement, the plaintiff and the defendant were entitled to share the constructed areas and parking areas in the ratio of 50:50 along with undivided share of land of 50% out of the schedule land. Moreover, the respondent-defendant agreed to deliver a minimum constructed area of 13,200 square feet, comprising of the commercial flats to the plaintiff towards his 50% share, even though the proportionate constructed area may fall less than 13,200 square feet. It was also agreed between the parties that the construction shall be completed within the stipulated period of thirty six months, from the date of according permission and sanction of construction plan by the concerned authorities, with a grace period of three months.

The petitioner-plaintiff further claimed that after obtaining permission, the respondent-defendant agreed to allot the constructed area, by way of commercial flats and parking areas with flat numbers and block numbers, within fifteen days from the date of according permission and sanction of plan by the concerned authority. However, to the shock and surprise of the petitioner-plaintiff, no development occurred over the suit schedule property and the respondent-defendant maintained a studied silence with regard to the grant of construction permission. Despite the fact that the agreement was entered in the year 2008, till the year 2014, no concrete steps were taken by the respondent-defendant for raising the construction. Therefore, on 14.07.2014, the petitioner-plaintiff issued a legal notice calling upon the respondent-defendant to execute a cancellation deed cancelling the Registered Development Agreement-cum-General Power of Attorney, dated 24.12.2008. Despite the issuance of the said legal notice, the respondent-defendant maintained a studied silence with regard to the legal notice. Hence, the petitioner-plaintiff filed the civil suit for declaring the Agreement as cancelled.

During the pendency of the civil suit, the respondent-defendant filed an I.A under Section 8 of the Act. By the impugned order, the learned Judge allowed the interlocutory application, and directed the parties to approach a Arbitral Tribunal. Hence, this petition before this Court.

Mr.Sourabh Agarwal, the learned counsel for the petitioner, has relied on the case of **Aliens Developers (P) Ltd, Hyderabad vs. M.Janardhan Reddy and others**¹, in order to plead that the petitioner-plaintiff is justified under Section 31(2) of the Specific Relief Act, 1963 to approach a Civil Court for getting the Agreement declared as cancelled. Therefore, an application filed under Section 8 of the Act could not even be allowed by the learned Judge. Therefore, the impugned order deserves to be set aside by this Court.

On the other hand, Mr. R. Mahender Reddy, the learned counsel for the respondent-defendant, has pleaded firstly that, admittedly, an arbitration clause does exist in the agreement. Hence, for any dispute that may arise between the parties, they have to be relegated to the Arbitral Tribunal. Secondly, it is only after cancelling the instrument, that the Civil Court would send a copy of the judgment and decree to the Registrar's office under Section 31(2) of the Specific Relief Act. Therefore, the dispute between the parties can safely be referred to the Arbitral Tribunal. Thirdly, Section 16 of the Act cannot be ignored. Hence, the impugned order is legally justified.

Heard the learned counsel for the parties, and perused the impugned order.

The issue before this Court is in case an agreement contains an arbitration clause whether the Civil Court is denuded of its power under Section 31 of the Specific Relief Act, and is required to relegate the parties to an arbitral tribunal under Section 8 of the Act?

¹ 2015(6) ALD 584 (DB)

In the case of **Aliens Developers (P) Ltd, Hyderabad** (supra), the same issue was raised. According to the learned Coordinate Bench, the power to nullify an agreement is vested only in the Civil Court under Section 31 of the Specific Relief Act. Even if there were an arbitral clause in the arbitration agreement, the parties cannot be relegated to the Arbitral Tribunal, on the ground of the existence of the arbitral clause. Therefore, even the present case is squarely covered by the judgment in the case of **Aliens Developers (P) Ltd, Hyderabad** (supra).

Learned counsel for the respondent-defendant is not justified in claiming that Section 16 of the Act would have to be kept in mind. For, Section 16 of the Act is as under:

“16. Competence of arbitral tribunal to rule on its jurisdiction.—

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

- (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
- (b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.”

A bare perusal of the said provision clearly reveals that the provision empowers an Arbitral Tribunal to rule with regard to its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. However, the issue before the Court is not with regard to the jurisdiction of the Arbitral Tribunal or with regard to the existence or validity of the arbitration agreement. It is with regard to the issue whether the Agreement should be declared as cancelled, since the developer has not fulfilled its part of the agreement, namely, to complete the construction within the stipulated period of thirty six months, or not? Therefore, the reliance placed on Section 16 of the Act by the learned counsel for the respondent-defendant is highly misplaced.

Section 31 of the Specific Relief Act, 1963 is as under:

“31. When cancellation may be ordered.—

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

Clearly, the Section can be divided into two parts. Under Sub-clause (1), the power to cancel a void or voidable agreement has been vested upon the Civil Court. Under Sub-Clause (2), if the instrument has been registered, the Civil Court is required to send a copy of the decree to the officer, in whose office the instrument has been registered. Having received a copy of the decree, the officer is required to note on the copy of the instrument contained in his books the fact that the instrument has been cancelled by a Civil Court. Obviously, the Arbitral Tribunal does not have the power to send a copy of the award to the Registrar's office and direct him to make the necessary endorsement on the instrument

contained in his books. The said power is bestowed upon the Civil Court. Therefore, the Arbitral Tribunal would not even be justified in usurping the powers of the Civil Court under Section 31 of the Specific Relief Act. Hence, to relegate the parties to an Arbitral Tribunal would be an exercise in futility.

For the reasons stated above, the Civil Revision Petition is allowed. The impugned order dated 19.07.2018 in I.A.No.306/2016 in O.S.No.1046/2014 is set aside. The learned Civil Court is directed to proceed with the suit.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

 (RAGHVENDRA SINGH CHAUHAN, J)

(M. SATYANARAYANA MURTHY, J)

28th December, 2018
JSU

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



Civil Revision Petition No.6032 of 2018

Date: 28.12.2018

JSU