

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A.Nos.1257, 1379 and 1380 of 2017

Date: 22.11.2018

C.M.A.No.1257 of 2017

Between:

M/s.Avinash Hitech City-2 Society,
rep. by its President, having its
registered office at H1B, Hitech City-2,
Survey Nos.30(P), 34(P), 35(P) & 38(P)
Phoenix Infocity-SEZ, Behind Cyber Gateway,
Gachibowli, Hyderabad
and two others.

Appellants

And

Boddu Manikya Malini, W/o.Boddu Ravi,
Aged about 46 years, Occ: Private Employee,
presently residing at 6794, Calihanct,
Richwoods, Frisco, Texas, 75035, USA,
rep. by her General Power of Attorney,
Satish Boddu S/o.Boddu Sathi Raju,
Aged about 45 years, Occ: Business,
presently residing at H.No.6-1-51/3,
Jawahar Street, Suryaraopeta, Kakinada,
East Godavari district-533001, A.P.
vide GPA dated 26.11.2015
and another.

Respondents

Counsel for the Appellants : Mr. P.Veera Reddy, senior counsel
for Mr.N.Sri Hari

Counsel for the Respondents: Mr.D.Prakash Reddy, senior counsel
for Mrs. Varalakshmi Tadepalli for R1

Mrs.P.V.Aruna Kumari for R2

C.M.A.No.1379 of 2017

Between:

M/s.Avinash Hitech City-2 Society,
H1B, Hitech City-2, Survey Nos.30(P),
34(P), 35(P) & 38(P), Phoenix Infocity-SEZ,
Behind Cyber Gateway,
Gachibowli, Hyderabad, rep. by its
Secretary B.Venkata Ramana Chowdary
and two others. ...

Appellants

And

Boddu Manikya Malini, W/o.Boddu Ravi,
Aged about 46 years, Occ: Private Employee,
R/o.USA, rep. by her GPA Holder
B.Sathiraju and four others. ...

Respondents

Counsel for the Appellants : Mr. P.Veera Reddy, senior counsel
for Mr.N.Sri Hari

Counsel for the Respondents: Mr.D.Prakash Reddy, senior counsel
for Mrs. Varalakshmi Tadepalli for R1
Mrs.P.V.Aruna Kumari for R5

C.M.A.No.1380 of 2017

Between:

M/s.Avinash Hitech City-2 Society,
H1B, Hitech City-2, Survey Nos.30(P),
34(P), 35(P) & 38(P), Phoenix Infocity-SEZ,
Behind Cyber Gateway,
Gachibowli, Hyderabad, rep. by its
Secretary B.Venkata Ramana Chowdary
and another ...

Appellants

And

Boddu Sathiraju S/o.B.Raju,
Aged about 70 years, Occ:Business
and 16 others. ...

Respondents

Counsel for the Appellants : Mr. P.Veera Reddy, senior counsel
for Mr.N.Sri Hari

Counsel for the Respondents: Mr.G.Subhash for
Mrs. A.Anasuya for R1 to R3

The Court made the following:

Common Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

These appeals arise out of identical, but separate I.As in S.O.P.Nos.364, 280 and 1072 of 2016 on the file of the Principal District Judge, Ranga Reddy District, L.B. Nagar, vide order dated 17.08.2017.

2. We have heard Mr. P.Veera Reddy, learned senior counsel for the appellants and Mr. D.Prakash Reddy, learned senior counsel for respondent No.1 in C.M.A.Nos.1257 and 1379 of 2017 and Mr. G.Subhash for Mrs. A.Anasuya, learned counsel for respondent Nos.1 to 3 in C.M.A.No.1380 of 2017 and perused the record.

3. Respondent No.1 filed three Society Original Petitions (SOPs) either alone or along with some others, *inter alia* for the following relief:

“to pass order against the respondents granting mandatory injunction directing respondents No.1 and 2 to adhere to the main objectives of the Society prescribed under the bye-laws and to strictly be in compliance with the terms and conditions prescribed in the Bye-laws of the Society and distribute the rents received by the respondent No.1 society in accordance with the provisions of the bye-laws to the petitioner”.

4. The appellants have filed separate but identical interlocutory applications, *i.e.*, I.A.No.1988 of 2016 in S.O.P.No.364 of 2016, I.A.No.1142 of 2016 in S.O.P.No.280 of 2016 and I.A.No.2724 of 2016 in S.O.P.No.1072 of 2016, under Section 8 of the Arbitration and Conciliation Act, 1996, for appointing an Arbitrator as per Clause-19 of the Addendum dated 12.03.2010, for resolving the

dispute among the parties. Respondent No.1 resisted the said applications on the ground that there is no provision for settling the disputes between it and the owners through arbitration. The court below accepted the plea of respondent No. 1 and dismissed the I.A.s.

5. The core issue, which engaged the attention of the lower court and which arises before this Court, is whether Clause-19 of the Addendum to the Supplemental Development Agreement, encompasses a dispute between appellant No.1, which is a society, and the owners, within the meaning of the said agreement. For proper appreciation, Clause-19 is reproduced herein:

“The owners agree that any dispute between the Owners, including the dispute relating to this Addendum and all questions relating to its interpretation shall be construed in accordance with the laws of India, without reference to its principles of conflicts of law. Except as otherwise specifically provided in this Agreement, the following provisions apply in the event of any dispute or difference arising among the Parties out of, in connection with or relating to the Agreement (The ‘Dispute’).

(a) The Dispute shall be deemed to have occurred, when one Party serves on the other Party/ies a notice stating the nature of the Dispute (‘Notice of Dispute’).

(b) The Parties hereto agree that they will use all reasonable efforts to resolve among themselves, any Disputes between them through negotiations.

(c) Any Disputes and differences whatsoever arising between the Owners which could not be resolved by Parties through negotiations, within a period of thirty (30) days from the service of the Notice of Dispute, the same shall be referred to and shall finally be settled by arbitration in accordance with the (Indian) Arbitration and Conciliation Act, 1996, and all the proceedings shall be conducted in English and a daily transcript in English shall be prepared.

(d) In the event of any dispute which involves two or more Societies or Owners who are the members of two different Societies, the arbitral tribunal shall comprise of three or more arbitrators. In such a situation, each party to the dispute shall

appoint one arbitrator, who shall be from the office bearers of their respective Societies and the two or more arbitrators so appointed shall appoint a presiding arbitrator, who shall be one of the office bearers of the Hitech City-2 Owners Welfare Association (HOWA) and the Chairman of the arbitral tribunal; and the venue of arbitration shall be in Hyderabad, India.

(e) In the event of any dispute which involves two or more Owners of the space in the same building, the arbitral tribunal shall comprise of the sole arbitrator. In such a situation, each party to the dispute shall refer the matter to the office bearers of their respective Society which shall be the arbitral tribunal; and the venue of arbitration shall be in Hyderabad, India.

(f) The Parties are debarred from exercising any right or filing any application to any court or tribunal having jurisdiction in connection with matters involving substantial questions of law arising during any arbitration.

(g) The Parties hereby submit to the Arbitrator's award and the award shall be enforceable in any competent court of law"

6. The learned counsel for the appellants argued that the main limb of Clause-19 provides for the resolution of disputes through arbitration arising under the agreement 'among the parties'. Alternatively, he submitted that sub-clause-(e) of Clause-19 of the Agreement, covers the disputes between the owners and the society.

Mr. D.Prakash Reddy, learned senior counsel for respondent No.1, opposed the above submission.

On a careful analysis of the main limb of Clause 19, it would be evident that it is in two parts. Under the first part, the owners agree that any dispute between them including the dispute relating to the addendum and all questions relating to its interpretation shall be construed in accordance with the laws of India, without reference to its principles of conflicts of laws. Thus, this limb *per se* does not mention reference of any dispute to arbitration.

Under the second limb, with an exception to a specific provision elsewhere in the agreement, clauses (a) to (g) will apply in the event of any dispute or difference arising among the parties out of, in connection with or relating to the agreement. Thus, the second limb is not a self contained one in order to know as to the nature of disputes and the parties among whom such disputes have to be referred to arbitration.

To know the same, one has to necessarily fall back on Sub-clauses-(a) to (g). Under Sub-clause-(e), on which the learned senior counsel for the appellants placed heavy reliance, any dispute which involves two or more owners of the space in the same building shall be referred to an Arbitral Tribunal comprising the sole arbitrator. The expression “owner” is applied to eight individuals falling under first part. Admittedly, appellant No.1 falls under third part and is described as “co-developer”. Thus, Sub-clause-(e) does not cover the disputes between the owners and the co-developers. No other sub-clause is relied upon by the learned senior counsel for the appellants.

In the light of the discussion undertaken above, we are of the opinion that the dispute between respondent No.1-‘owner’ falling under first part and appellant No.1-‘co-developer’ falling under third part, are not comprehended by any of the Sub-clauses of Clause-19 so as to refer the same to an Arbitral Tribunal. While the Court below has adopted the same reasoning as was given by us above, it however relied on an additional ground for dismissing the I.As., *viz.*,

that unlike the addendum to Supplementary Development Agreement in the present case, the Addendum of the remaining three societies contained a clause for reference of disputes between the owners and the society to an arbitrator. In our opinion, the said additional reason does not suffer from any illegality as the same was evidently relied upon by the Court below to fortify its view on interpretation of Clause-19 of the Addendum to the present Agreement.

We are of the opinion that the Court below has rightly declined to refer the dispute raised by respondent No.1 to Arbitral Tribunal.

For the afore-mentioned reasons, we do not find any merit in these Civil Miscellaneous Appeals and the same are accordingly dismissed.

As a sequel to dismissal of the Appeals, interim orders, dated 05.01.2018, in CMA.Nos.1379 and 1380 of 2017 and interim order, dated 29.12.2017, in CMAMP.No.2253 of 2017 in CMA.No.1257 of 2017 are vacated and the pending Miscellaneous Petitions shall stand dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.AMARNATH GOUD

22nd November, 2018
msb/dr