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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9041 OF 2017

Kaajal Amar Ahuja & anr. ..Petitioners
vs.
Ishwarlal Ramchandra Ahuja & ors. ..Respondents
....
Ms. Seema Sarnaik a/w. Shri Ameya Tamhane for petitioners.
Shri M.S. Raje for respondents

....
CORAM : M.S.KARNIK, J.
DATE : 3rd OCTOBER, 2019

P.C. :

Heard learned counsel for the petitioners and
learned counsel for the respondents.

2. The challenge in this Petition is to the common order passed below Exhibits 20 and 21 filed by defendant Nos. 2 and 3 under Section 8 of the Arbitration and Conciliation Act for reference of the suit to Arbitrator and to stay the suit.

3. The petitioners are the original plaintiffs. Petitioner No.1 is the original plaintiff No.1. She is the wife of defendant

No.2 – present respondent No.2. There was some matrimonial dispute between the plaintiff No.1 and defendant No.2. The plaintiff No.2 is the son of plaintiff No.1 and defendant No.2. The plaintiffs filed a suit for dissolution and accounts of partnership valued at Rs.1000/-. In the Plaint it is the contention that admittedly the plaintiffs are the partners of the partnership firm. However, by an alleged Deed of Retirement dated 1/4/2010, it is pleaded by the defendants that, both the plaintiffs have retired from the business of the said firm. It is the case of the plaintiffs that they have never signed on any Deed of Retirement and/or never signed any form/s to be submitted to the Registrar of Firms. It is alleged by the plaintiffs in the Plaint that defendant No.2 by practicing fraud upon plaintiff No.1, might have obtained signatures of plaintiff No.1 on some documents, which the defendants are claiming to be Deed of Retirement of both the plaintiffs. The essence of the plaintiffs' case is that plaintiff No.1 never signed/executed any document styled as "Deed of Retirement" or any document having effect of retirement of the plaintiffs from the said firm.

4. The defendants filed two separate applications on 16/4/2015 praying that in view of the Clause 18 of the Partnership Deed which provides for arbitration clause, the suit be referred to the arbitrator and till then further proceedings in the suit be stayed.

5. By an order dated 10/3/2016 the application below Exhibit 19 filed by defendant No.1 was disposed of in view of learned advocate for defendants not pressing the application.

6. So far as applications below Exhibits 20 and 21 filed by defendant Nos. 2 and 3 are concerned, the trial Court passed the order on 22/11/2016 referring the suit to arbitrator as per the partnership deed.

7. Learned counsel for the petitioners submitted that when serious allegations of fraud are made by the plaintiffs, in such a case the trial Court should have proceed with the suit instead referring the matter to arbitrator. She would further submit that though specific allegations of fraud are made in the

suit which aspect has not been adverted to by the trial Court. Learned counsel would therefore submit that this is not a case which could be properly dealt with by the arbitrator and ought to have been settled by the trial Court by detailed evidence led by both the parties. She would rely upon the decision of the Apex Court in the case of **N. Radhakrishnan v/s. Maestro Engineers and others** reported in **(2010) 1 SCC 72** in support of her submissions.

8. Learned counsel for the respondents on the other hand invited my attention to the averments made in the Plaint. He would submit that the allegations of fraud are levelled only for the sake of making some allegations and there is nothing on record to show that the arbitrator cannot decide all these questions. According to him, the issues raised in the Plaint are not of such a complex nature that the decision on these issues demand extensive evidence for which civil Court would appear to be more appropriate forum than the Arbitral Tribunal. According to him, it is just that the plaintiffs have stated that

they have never signed the retirement deed and that it is the case of the plaintiffs that defendant No.2 might have obtained signature of plaintiff No.1 on some blank forms. Learned counsel for the respondents would rely upon the decision of the Apex Court in the case of **A. Ayyasamy v/s. A. Paramasivam & others** reported in **(2016) 10 SCC 386** in support of his submissions.

9. I have gone through the order passed by the trial Court. The trial Court has proceeded on the footing that as there is Clause 18 in the Partnership Deed which reads as under :

“18. in case of any dispute arising between the parties hereto as regards the business of the Firm or the interpretation of these present, the same shall be referred to arbitration under the Indian Arbitration Act as in force on that date and decision of the arbitration shall be final and binding on the parties hereto”

that the dispute will have to be referred to arbitrator. However, in so far as the contention of the plaintiffs that there has been

fraud practiced in obtaining the signature on the partnership deed has not been considered by the trial Court. It may be that the plaintiffs have made averments to avoid the process of arbitration by simply using the device of making allegations of fraud and pleading that issue of fraud needs to be decided by the civil court. However, this is an aspect which the Civil Court needs to advert to while deciding the applications below Exhibits 20 and 21 in the context of the law laid by the Apex Court in the case of **A. Ayyasamy** (supra). As I find that the trial Court has not touched this aspect of the matter so far as averments made by the plaintiffs as regards fraud practiced in obtaining the signatures, the impugned order needs to be set aside.

10. The impugned order is set aside. The applications Exhibits 20 and 21 are remitted back to the trial Court for a fresh consideration in the light of the averments made in the Plaint and in the context of the law laid down by the Apex Court in the above referred decisions.

11. Learned counsel for the petitioners and the respondents undertake to appear before the trial Court on 14/10/2019 when the trial Court may fix the further schedule of the hearing of the applications Exhibits 20 and 21.

12. It is made clear that I have not expressed any opinion on the merits of the applications filed below Exhibits 20 and 21 and the trial Court is free to decide the applications on its own merits without being influenced by any observations made by me in this order.

13. The trial Court is requested to decide the applications, preferably within a period of 12 weeks from the date of uploading of this order.

14. The Petition is partly allowed.

15. Parties to act on the basis of an authenticated copy of this order.

(M.S.KARNIK, J.)