

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

**ARBITRATION APPEAL NO. 14 OF 2018
ALONGWITH
CIVIL APPLICATION NO. 13 OF 2018**

M/s. Parmar Constructions ... Appellant
V/s.
Krishnakumar Ramsinh Parmar ... Respondent

**WITH
ARBITRATION APPEAL NO. 15 OF 2018
ALONGWITH
CIVIL APPLICATION NO. 317 OF 2017
WITH
CIVIL APPLICATION NO. 12 OF 2018**

M/s. Parmar Constructions ... Appellant
V/s.
Krishnakumar Ramsinh Parmar ... Respondent

**WITH
ARBITRATION APPEAL NO. 16 OF 2018
ALONGWITH
CIVIL APPLICATION NO. 14 OF 2018**

M/s. Parmar Constructions ... Appellant
V/s.
Krishnakumar Ramsinh Parmar ... Respondent

Mr. Bharat Joshi for the Appellant.
Mr. Jaikumar Shiradhonkar for the Respondent in ARA No. 14/2018 and ARA No. 15/2018.
Mr. Uday Bobade a/w. Mr. Jaikumar Shiradhonkar for the Respondent in ARA No. 16 of 2018.

CORAM : G. S. KULKARNI, J.

DATE : 16th October, 2019.

PC:-

1] Heard learned counsel for the applicant and learned counsel for the respondent. These are three appeals filed under section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), whereby the appellant has assailed three similar orders dated 16th March 2017 passed, by the Ld. Civil Judge Senior Division, Dadra and Nagar Haveli, Silvassa in the proceedings of the suits before the learned trial judge. By the impugned order the applications of the appellant/defendant filed under section 8 of the Act stand rejected.

2] The only reason on which the appellants applications stand rejected, which is common in all the three orders, is as set out in paragraph no.6 of the impugned order which reads thus :

6] In order to adjudicate the tenability of the present application, I look into the agreement. Document no.1/3 is the copy of agreement for development dated 28.10.2000. On going through the contents of this agreement, it was executed in between Krishnakumar Ramsinh Parmar and M/s. Parmar Construction i.e. the present plaintiff and defendant. This agreement and the Terms and Conditions therein would have been specifically enforceable in between the parties to the agreement. I mention here it as that the defendant in his written statement has contended this agreement to be illegal and my Ld. Predecessor at Exh.9 was pleased to frame issue no.3 accordingly in SCS No.11/2009. The defendant at paragraph no.12 has also averred that even on the basis of the execution of the 'will',

the defendant shall not be personally responsible for any such personal liability of deceased Ramaben. He has further averred his liability either also on the basis of the 'will'. Hence, the defendant cannot adopt of a dual strategy of denying the agreement for development or the 'will' and thereafter seek enforcement of either of the clause of the agreement or the 'will' which he denies. Hence, at the cost of repetition, I mention that the clause of referring the matter to the arbitration shall be enforceable only in between the parties to the agreement. Hence, for these reasons, I find that the present application is not maintainable. Hence, I answer point no.1 in the negative.

3] Perusal of the above reasoning in my opinion would indicate the learned trial judge over looking the specific provisions of section 8 of the Act and more particularly that the requirement is merely an existence of an arbitration agreement between the parties and further that the circumstances are not such that the defendant has acquiesced himself to the proceedings of the suit, in the manner as clearly define by section 8 of the Act namely that such an objection is raised at the appropriate time and not later than the date of submitting his first statement on the substance of the disputes.

4] A perusal of the reasoning, in my opinion would not satisfy the requirement of section 8 of the Act on any counts. Accordingly the orders impugned in these appeals are set aside.

5] The application as filed by the appellant is restored to the file

of Learned Civil Judge Senior Division, Dadra and Nagar Haveli, Silvassa to be heard afresh and decide on its own merits.

6] All contentions of the parties are expressly kept open, including the contention as urged on behalf of the respondent that there is delay in filing section 8 application of about 9 years by the appellant.

7] Appeals are accordingly allowed in the aforesaid terms. No costs.

8] Parties are directed to appear before the Learned Trial Judge on 4th November 2019.

9] The Learned Trial Judge may permit the parties to file such further pleadings as may be necessary.

10] The Learned Trial Judge shall endeavour to decide the section 8 application as expeditiously as possible.

11] Civil Applications would not survive. They are accordingly disposed of.

(G.S.Kulkarni, J.)