

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.09.2018

Delivered on : 04.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.Nos.1577, 1578/2018 & 3120 & 3121 of 2017 and
CMP.Nos.12525 & 12526 of 2018 and
CMP.Nos.19135, 19136, 19137 & 19138 of 2017

CMA.No.1577 of 2018

1.S.Tarabai
2.C.Kalyan
3.M/s.Perfect Windows Systems,
Survey No.88/1 & 88/2, Aruvathamman Road,
Kolappancheri, Poonamallee,
Chennai-600 072. ... Appellants/Respondents

Vs

K.Jayanthi ... Respondent/Claimant

Prayer: Civil Miscellaneous Appeal filed under Section 37 of the Arbitration & Conciliation Act, 1996, against the order passed in Application No.2 of 2017 in an arbitral proceedings arising out of Application No.5034 of 2016 in O.P.No.660 of 2015 pending on the file of the learned Sole Arbitrator Mr.Yashodvaradhan.

CMA.No.1578 of 2018

1.S.Tarabai
2.C.Kalyan
3.M/s.German Lite Weight Blocks,
Survey No.88/1 & 88/2, Aruvathamman Road,
Kolappancheri, Poonamallee,
Chennai-600 072. ... Appellants/Respondents

Vs

A.Kannan ... Respondent/Claimant

Prayer: Civil Miscellaneous Appeal filed under Section 37 of the Arbitration & Conciliation Act, 1996, against the order passed in Application No.2 of 2017 in an arbitral proceedings arising out of Application No.5065 of 2016 in O.P.No.703 of 2015 pending

on the file of the learned Sole Arbitrator Mr.Yashodvaradhan.

CMA.No.3120 of 2017

1.S.Tarabai
2.C.Kalyan
3.M/s.Perfect Windows Systems,
Survey No.88/1 & 88/2, Aruvathamman Road,
Kolappancheri, Poonamallee,
Chennai-600 072. ... Appellants/Respondents

Vs.

K.Jayanthi ... Respondent/Claimant

Prayer: Civil Miscellaneous Appeal filed under Section 37 of the Arbitration & Conciliation Act, 1996, against the order passed in Application No.1 of 2017 in an arbitral proceedings arising out of Application No.5034 of 2016 in O.P.No.660 of 2015 pending on the file of the learned Sole Arbitrator Mr.Yashodvaradhan.

CMA.No.3121 of 2017

1.S.Tarabai
2.C.Kalyan
3.M/s.German Lite Weight Blocks,
Survey No.88/1 & 88/2, Aruvathamman Road,
Kolappancheri, Poonamallee,
Chennai-600 072. ... Appellants/Respondents

Vs

A.Kannan ... Respondent/Claimant

Prayer: Civil Miscellaneous Appeal filed under Section 37 of the Arbitration & Conciliation Act, 1996, against the order passed in Application No.1 of 2017 in an arbitral proceedings arising out of Application No.5065 of 2016 in O.P.No.703 of 2015 pending on the file of the learned Sole Arbitrator Mr.Yashodvaradhan.

(In all the CMAs)
For Appellants : Mr.A.Palaniappan
For Respondents : No Appearance

COMMON JUDGMENT

C.M.A.No.1577 of 2018 has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for brevity, "the

Act") assailing the order dated 20.4.2018 passed in Application No.2 of 2017 in arbitral proceedings arising out of A.No.5034 of 2016 in O.P.No.660 of 2015 by the learned Arbitrator.

2. C.M.A.No.1578 of 2018 has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for brevity, "the Act") assailing the order dated 20.4.2018 passed in Application No.2 of 2017 in arbitral proceedings arising out of A.No.5065 of 2016 in O.P.No.703 of 2015 by the learned Arbitrator.

3. C.M.A.No.3120 of 2017 has been filed by the appellants challenging the order dated 17.8.2017 passed in Application No.1 of 2017 in Application No.5034 of 2016 in O.P.No.660 of 2015, by which the respondent/claimant was permitted to amend the statement of claim to include the prayer for a declaration that the retirement deed and memorandum of understanding dated 15.5.2014 are null and void and not binding on the respondent/claimant.

4. C.M.A.No.3121 of 2017 has been filed by the appellants challenging the order dated 17.8.2017 passed in Application No.1/2017 in Application No.5065 of 2016 in O.P.No.703 of 2015 by which the respondent/claimant was permitted to amend the statement of claim to include the prayer for a declaration that the retirement deed and memorandum of understanding dated 15.5.2014 are null and void and not binding on the respondent/claimant.

5. The appellants are the respondents in the arbitration cases and the respondents are the claimants.

6. As all the appeals are intertwined, this Court feels it appropriate to narrate the facts in C.M.A.No.1577 of 2018 as a lead case. The respondent in C.M.A.No.1578 of 2018 is the husband of the respondent/claimant in C.M.A.No.1577 of 2018. The other facts in these appeals are almost identical, but for the change of names of the appellants and respondent claimants.

Facts in the lead case, i.e., C.M.A.No.1577 of 2018:

7. The third appellant firm was constituted vide a Deed of Partnership dated 6.5.2011 by appellants 1 and 2. Subsequently, the respondent claimant was inducted as a partner in the firm vide a Partnership Resolution Deed dated 1.3.2012. It is pleaded in the claim petition that the respondent claimant had invested in the firm a sum of Rs.1,42,75,000/- in the capital and current account as of 5.2.2014. Disputes arose between the respondent's son and one Vijayanandan and it is stated that the same affected the functioning of the third appellant firm.

8. Invoking Clause 13 of the Partnership Reconstitution Deed, the respondent claimant issued notice dated 1.4.2014 to the first appellant, who is the Managing Partner of the firm, informing about her intention to retire from the firm. It is stated that disputes arose qua the sums payable to the respondent. While the respondent pleaded that there was an acknowledgment of liability by the appellants, the appellants took a stand that the respondent, by dint of the retirement deed and the memorandum of understanding, admitted, on her own volition, that no sums were due by the third appellant firm to the respondent claimant.

9. The respondent/claimant, initially, prayed for a direction to the appellants to jointly and severally pay a sum of Rs.1,76,33,676/- with interest @ 12% per annum.

10. Later, this Court by order dated 17.8.2017 passed in Application No.1 of 2017 in Application No.5034 of 2016 in O.P.No.660 of 2015, permitted the respondent/claimant to amend the statement of claim to include the prayer for a declaration that the retirement deed and memorandum of understanding dated 15.5.2014 are null and void and not binding on the respondent/claimant. It is to be noted with the risk of repetition at this stage that assailing the said order dated 17.8.2017, the appellants filed C.M.A.Nos.3120 and 3121 of 2017 are filed and they are also being dealt with hereunder.

11. The appellants denied the allegations levelled by the respondent claimant and categorically averred that the respondent's son, K.Venkatesh Prabhu, was permitted to do banking operations on behalf of the partnership business along with the first appellant and that the respondent's son abused the trust and confidence reposed on him and embezzled funds by forging the signature of the first appellant in the cheque leaves of the firm. It is further averred that the respondent's son involved in several improprieties and this led to the filing of police complaint. The appellants refuted the stand of the respondent claimant that the Deed of Retirement and Memorandum of Understanding were executed by him under duress. It is the stand of the appellants that the letter dated 10.5.2014 said to have been issued by the first appellant acknowledging the firm's liability to the respondent claimant is a rank forgery.

12. It is not in dispute that qua the improprieties police had registered a case in Crime No.244 of 2014 on 22.5.2014, but no action was taken against the accused, which necessitated filing of Criminal O.P.No.25505 of 2016 before this Court, wherein this Court directed the police to secure the two letters dated 10.5.2014 and to complete the investigation as expeditiously as possible. It is stated that in the said

petition, the appellants herein have filed statement of defence and counter claim pleading for dismissal of the claim and for a declaration that the letter dated 10.5.2014 alleged to have been issued by the first respondent is illegal, void and unenforceable and for an order directing the claimant to pay a sum of Rs.50 lakhs to the appellants being the refund of the misappropriated sums with interest @ 18% per annum.

13. Pending such proceedings, in the arbitration case, the appellants filed applications, being Application Nos.2 of 2017 (2 applications) praying for dropping of arbitration proceedings in view of serious allegations of fraud and forgery and for a direction to the claimant to work out the remedy before the competent forum in accordance with law.

14. The learned Arbitrator, vide order dated 20.4.2018, dismissed the applications filed by the appellants, observing that a mere allegation of fraud was not sufficient to detract from the obligation of the parties to submit their disputes to arbitration.

15. Calling in question, the said orders dated 17.8.2017 and 20.4.2018, the present appeals are filed.

16. The learned counsel for the appellants vehemently contended as under:

- (a) When serious allegations of fraud, forgery, misappropriation, commission of criminal breach of trust and issues involving serious counts of criminal consequences which go to the root of the matter are raised by the appellants, which need to be proved after calling for the records from various banks and examining many persons, the learned Arbitrator erred in rejecting the applications for dropping of arbitration proceedings;
- (b) The investigation qua fraud against the third party, i.e., the son of the claimant, would not be an arbitrable issue in the present proceedings before the learned Arbitrator and the initiation of arbitration proceedings by the respondent claimant is only to wriggle out of the criminal liability and penal consequences pertaining to various frauds committed by the respondent claimant's son;
- (c) the first appellant, S.Tarabai, had studied only up to X Standard and she has no English knowledge and, therefore, the letters said to have been generated by her cannot be the sole cause and basis for the arbitral claim;

- (d) the allegation that the respondent claimant had invested Rs.1.40 Crores in the partnership firm is only a self-serving allegation and the same is unsubstantiated and the entries have been fraudulently manipulated by the son of the respondent claimant;
- (e) Qua the allegations of fraud, siphoning of amounts, rank forgery at the instance of the claimant and other related persons, including K.Venkatesh Prabhu, the Police had registered FIR in Crime No.244 of 2014 way back on 22.5.2015 and investigation is in progress and, therefore, it is manifestly clear that the very initiation of the arbitration proceedings is devised to stall and thwart the criminal proceedings;
- (f) When serious issues of fraud are involved, the same cannot be a subject matter of arbitral proceedings. Moreover, where the offence of fraud is so complicated that it goes beyond the scope of arbitration agreement and becomes absolutely essential that such complex issues can be decided only on appreciation of evidence, arbitration proceedings cannot be proceeded with. To fortify the said plea, reliance was placed on a decision of the Hon'ble Supreme Court in A.Ayyasamy v. A. Paramasivam & Ors., (2016) 10 SCC 386 and a decision of the Bombay High Court in Ivory Properties & Hotels Private Ltd. v. Nusli Neville Wadia, reported in 2011 (2) Arb LR 479 (Bom);
- (g) When the essence of fraud is mixed in the claims of parties before the learned Arbitrator, the learned Arbitrator cannot do any piecemeal adjudication of the issues. In support of the said plea, reliance was placed on a decision of the Delhi High Court in K.R.Implex v. Punj Lloyd Ltd., reported in 2017 (6) Arb LR 263 (Delhi).

17. I heard Mr.A.Palaniappan, learned counsel for the appellants in all the Civil Miscellaneous Appeals. There is no representation on behalf of the respondents claimants, since Mr.G.Rajkumar and Mr.G.Guruprasath, learned counsels, who appeared in two Appeals in CMA.Nos.1577 and 1578 of 2018 had withdrawn their appearance and their request was recorded by this Court on 29.01.2019 and hence the Registry was directed to print the name of respondents in all the cases. Accordingly, the respondents names were printed in all the cases in the cause list. But, there was no representation for the respondents. Therefore, this Court is constrained to proceed with the matter

on merits after going through the various documents available on record.

18. At the outset, it needs to be noted that the order passed by the learned Arbitrator had been stayed by this Court and the said stay subsists even as on date and in effect, the order passed by the learned Arbitrator has not been given effect to till date.

19. This Court is cognizant of the fact that the scope of judicial scrutiny and interference by an Appellate Court under Section 37 of the Act is limited. The Hon'ble Supreme Court in the case of *McDermott International Inc. v. Burn Standard Co. Ltd. and Ors*, (2006) 11 SCC 181, held as under:

"52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

(emphasis supplied)

20. The Courts have held time and again that while entertaining appeals under Section 37 of the Act, the Court is not actually sitting as a Court of appeal over the award of the Arbitral Tribunal and therefore, the Court would not re-appreciate or re-assess the evidence.

21. In *Steel Authority of India v. Gupta Brothers Steel Tubes Limited*, (2009) 10 SCC 63, the Hon'ble Supreme Court held that the Arbitrator having been made the final arbiter of resolution of disputes between the parties, the award is not open to challenge on the ground that the Arbitrator has reached a wrong conclusion. The Courts do not interfere with the conclusion of the Arbitrator even with regard to the construction of contract, if it is a plausible view of the matter.

22. It is also trite that interference by Court with arbitral awards is limited and circumscribed and an award which is patently illegal, on account of it being injudicious, contrary to the law settled by the Hon'ble Supreme Court, or vitiated by an apparently untenable interpretation of the terms of the contract, requires to be removed.

23. With this legal dictum in mind, this Court analyzes the case on hand as to whether any interference is warranted or not.

24. Clause 13 of the Partnership Reconstitution Deed dated 1.3.2012 reads as under:

"13. Any partner who wishes to retire from the partnership shall give at least one month's notice of his/her intention to other partners. On the death or retirement of a partner, the legal heirs of the deceased partner or the retiring partner shall be entitled only to the amounts standing to the credit on the account of the deceased partner or retiring partner as the case may be and the same shall be paid within three months from the date of death or retirement."

25. By invoking Clause 13 of the Partnership Reconstitution Deed dated 1.3.2012, by letter dated 1.4.2014, the respondent claimant gave one month's notice of retirement from partnership firm.

26. It is stated that consequent to the same, the appellants had addressed a letter to the respondent on 16.4.2014 to the following effect:

"Since I am authorized signatory for all the bank transactions from date of date of partnership I am giving this letter on behalf of other partner.

The balance payable to you as per Tally accounts maintained as on 31-March-2014 is your K.Jayanthi Partner's capital account and K.Jayanthi Partner's Current account amounting to Rs.1,42,75,000 (Rupees One crore Forty Two Lacs Seventy Five Thousand only)."

(emphasis supplied)

27. Thereafter, it is stated that the appellants addressed another letter to the respondent on 10.5.2014, the operative portion of which reads as under:

"Total Amount of Capital and Current Account

Payable - Rs.1,76,33,676 (Rupees One Crore Seventy Six Lacs Thirty Three Thousand Six hundred and Seventy Six only).

We will be preparing the Partnership reconstitution deed to give effect to your retirement and will be sending it shortly for your signature.

We will arrange your payment before 31-July-2014 as per Clause 13 of Partnership Reconstitution deed dated 01.03.2013."

(emphasis supplied)

28. It needs to be noted at this juncture that while the alleged first letter dated 16.4.2014 stated that Rs.1,42,75,000/- is payable to the respondent claimant, the letter dated 10.5.2014 stated that Rs.1,76,33,676/- is due to the respondent claimant. Within a short span of less than one month, the difference in the amount payable to the respondent claimant varied by around Rs.33.58 Lakhs. It also needs to be noted that the appellants strongly object the issuance of both the above letters.

29. Pursuant to the same, the parties have executed a Deed of Retirement of Partner on 15.5.2014. The first and second appellants and the respondent claimant are signatories to the said Deed of Retirement of Partner. It is apposite to refer to one of the covenants of the said deed, which reads as under:

"Whereas no claim is available between the retiring partner and the continuing partners in personal capacity and partner who continuing the business and all the claims in pursuance of the business between them was settled in toto."

(emphasis supplied)

30. On the very same day, i.e., 15.5.2014, the respondent claimant and her family members, i.e., her husband, her son and her daughter-in-law, executed a Memorandum of Understanding. One of the terms of understanding is as under:

"Whereas the party of the first part hereby give up all their claims whatsoever in the partnership business and the brand name M/s.Perfect Window Systems and they do not have any other rights, title or interest whatsoever and further the party of the first part and their family members will not carry the similar business and also will not use the brand name."

(emphasis supplied)

31. When the respondent claimant had relinquished all her rights and interest over the firm and all her family members are party to the Memorandum of Understanding, which categorically states that they have given up all their claims whatsoever in the partnership business, it does not lie in the mouth of the respondent claimant, who is a signatory to both the above documents, to state that she and her family members were coerced and compelled to sign the same.

32. With the risk of repetition, it needs to be stated that the appellants on their side are denying the execution of the letters dated 16.4.2014 and 10.5.2014 and claim that the same are concocted and are outcome of rank forgery and it is their claim that the signature on the said letters is not that of the first appellant.

33. From the above, it is clear that the parties are disputing the existence of letters dated 16.4.2014 and 10.5.2014 and also the Deed of Retirement of Partner and Memorandum of Understanding executed 15.5.2014.

34. In this factual backdrop, it is apposite to refer to the legal dictum laid down in this regard.

35. In *A.Ayyasamy v. A. Paramasivam & Ors.*, supra, the Hon'ble Supreme Court considered the issue as to disputes which cannot be referred to arbitration despite a valid arbitration agreement and held:

"14. In the instant case, there is no dispute about the arbitration agreement inasmuch as there is a specific arbitration clause in the partnership deed. However, the question is as to whether the dispute raised by the respondent in the suit is incapable of settlement through arbitration. As pointed out above, the Act does not make any provision excluding any category of disputes treating them as non-arbitrable. Notwithstanding the above, the courts have held that certain kinds of disputes may not be capable of adjudication through the means of arbitration. The courts have held that certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, cannot be referred to arbitration. The following categories of disputes are generally treated as non-arbitrable [See O.P. Malhotra on 'The Law and Practice of Arbitration and Conciliation', 3rd Edn., authored by Indu Malhotra. See also note 10 *ibid.*] :

- (i) patent, trade marks and copyright;
- (ii) anti-trust/competition laws;
- (iii) insolvency/winding up;
- (iv) bribery/corruption;
- (v) fraud;
- (vi) criminal matters.

Fraud is one such category spelled out by the decisions of this Court where disputes would be considered as non-arbitrable.

15. "Fraud" is a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his detriment. Fraud can be of different forms and hues. Its ingredients are an intention to deceive, use of unfair means, deliberate concealment of material facts, or abuse of position of confidence. The Black's Law Dictionary defines "fraud" as a concealment or false representation through a statement or conduct that injures another who relies on it [See Ramesh Kumar v. Furu Ram, (2011) 8 SCC 613 : (2011) 4 SCC (Civ) 303 (a decision rendered under the Arbitration Act, 1940).] . However, the moot question here which has to be addressed would be as to whether mere allegation of fraud by one party against the other would be sufficient to exclude the subject-matter of dispute from arbitration and decision thereof necessary by the civil court.

16. In Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak [Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak, AIR 1962 SC 406], serious allegations of fraud were held by the Court to be a sufficient ground for not making a reference to arbitration. Reliance in that regard was placed by the Court on a decision of the Chancery Division in Russell v. Russell [Russell v. Russell, (1880) LR 14 Ch D 471]. That was a case where a notice for the dissolution of a partnership was issued by one of the partners, upon which the other partner brought an action alleging various charges of fraud, and sought a declaration that the notice of dissolution was void. The partner who was charged with fraud sought reference of the disputes to arbitration. The Court held that in a case where fraud is charged, the Court will in general refuse to send the dispute to arbitration. But where the objection to arbitration is by a party charging the fraud, the Court will not necessarily accede to it

and would never do so unless a prima facie case of fraud is proved.

17. The aforesaid judgment was followed by this Court in N. Radhakrishnan [N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72: (2010) 1 SCC (Civ) 12] while considering the matter under the present Act. In that case, the respondent had instituted a suit against the appellant, upon which the appellant filed an application under Section 8 of the Act. The applicant made serious allegations against the respondents of having committed malpractices in the account books, and manipulation of the finances of the partnership firm. This Court held that such a case cannot be properly dealt with by the arbitrator, and ought to be settled by the Court, through detailed evidence led by both parties.

18. When the case involves serious allegations of fraud, the dicta contained in the aforesaid judgments would be understandable. However, at the same time, mere allegation of fraud in the pleadings by one party against the other cannot be a ground to hold that the matter is incapable of settlement by arbitration and should be decided by the civil court. The allegations of fraud should be such that not only these allegations are serious that in normal course these may even constitute criminal offence, they are also complex in nature and the decision on these issues demands extensive evidence for which the civil court should appear to be more appropriate forum than the Arbitral Tribunal. Otherwise, it may become a convenient mode of avoiding the process of arbitration."

(emphasis supplied)

36. In Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak, reported in AIR 1962 SC 406 the Hon'ble Supreme Court observed that when there are serious allegations of fraud against a party and the party who is charged with such fraud desires that the matter should be tried in the regular Court, in that event, it would be a sufficient cause for the Court not to order an arbitration agreement to be filed and not to make the reference. The aforesaid observation made in paragraph (17) of Abdul Kadir Shamsuddin Bubere (supra), though passed prior to enactment of the 1996 Act, was subsequently considered by the Hon'ble Supreme Court in the case of N. Radhakrishnan v. Maestro Engineers and Others, reported in (2010) 1 SCC 72. It is apposite to refer to paragraph (23) of the judgment, which reads

thus:

"23. The learned counsel appearing on behalf of the respondents on the other hand contended that the appellant had made serious allegations against the respondent alleging that they had manipulated the accounts and defrauded the appellant by cheating the appellant of his dues, thereby warning the respondents with serious criminal action against them for the alleged commission of criminal offences. In this connection, reliance was placed in a decision of this Court in the case of had made serious allegations against the respondent alleging that they had manipulated the accounts and defrauded the appellant by cheating the appellant of his dues, thereby warning the respondents with serious criminal action against them for the alleged commission of criminal offences. In this connection, reliance was placed in a decision of this Court in the case of had made serious allegations against the respondent alleging that they had manipulated the accounts and defrauded the appellant by cheating the appellant of his dues, thereby warning the respondents with serious criminal action against them for the alleged commission of criminal offences. In this connection, reliance was placed in a decision of this Court in the case of Abdul Kadir Shamsuddin Buberi vs. Madhav Prabhakar Oak and Another, [AIR 1962 SC 406] in which this court under para 17 held as under:

'17. There is no doubt that where serious allegations of fraud are made against a party and the party who is charged with fraud desires that the matter should be tried in open court, that would be a sufficient cause for the court not to order an arbitration agreement to be filed and not to make the reference.....'

In our view and relying on the aforesaid observations of this Court in the aforesaid decision and going by the ratio of the above mentioned case, the facts of the present case does not warrant the matter to be tried and decided by the Arbitrator, rather for the furtherance of justice, it should be tried in a court of law which would be more competent and have the means to decide such a complicated matter involving various questions and issues raised in the present dispute."

(emphasis supplied)

37. In *Swiss Timing Limited vs. Commonwealth Games 2010 Organising Committee*, reported in (2014) 6 SCC 677, the Hon'ble Supreme Court observed thus:

"25. As Noticed above, the concept of separability of the arbitration clause/agreement from the underlying contract has been statutorily recognised by this country under Section 16 of the Arbitration Act, 1996. Having provided for resolution of disputes through arbitration, parties cannot be permitted to avoid arbitration, without satisfying the Court that it will be just and in the interest of all the parties not to proceed with the arbitration. Section 5 of the Arbitration Act provides that the Court shall not intervene in the arbitration process except in accordance with the provisions contained in Part I of the Arbitration Act. This policy of least interference in arbitration proceedings recognises the general principle that the function of courts in matters relating to arbitration is to support arbitration process. A conjoint reading of Section 5 and Section 16 would make it clear that all matters including the issue as to whether the main contract was void/voidable can be referred to arbitration. Otherwise, it would be a handy tool available to the unscrupulous parties to avoid arbitration, by raising the bogey of the underlying contract being void."

38. It is trite that the mere fact that the allegations of fraud, forgery, fabrication are likely to involve recording of evidence or involve some delay in disposal "are not grounds for refusing to consider the existence of a valid arbitration agreement." However, it must be noted that arbitration itself is supposed to be an efficacious remedy and even at the preliminary stage of the proceedings when there is a serious dispute qua the invocation of the arbitration clause and the existence thereof, inasmuch as the said document itself is disputed by the appellants, it is incumbent to take evidence and satisfy that the agreements and letters in question are forged or fabricated as alleged by the respective parties. Therefore, it naturally follows that the entire exercise would be complicated and time consuming, thus, defeating the very object of the Act, which is to provide an efficacious remedy.

39. It is not in dispute that in case on hand, the differences between the parties have led to filing of criminal cases, where the investigation is still going on and it is for

the competent Court to examine in great detail the evidence that emerges as well as the documents on record. Likewise, before a Civil Court, there would be scope for examination of exhibits and for preparation of scientific forensic report to provide an opportunity to the parties to cross-examine the witnesses.

40. It is not in dispute that with regard to the improprieties committed by the respondent claimant and family members, on the basis of the complaint given by the appellants, police had registered a case in Crime No.244 of 2014 on 22.5.2014, and this Court in Criminal O.P.No.22505 of 2016 directed the police to secure the two letters dated 10.5.2014 and to complete the investigation as expeditiously as possible.

41. It needs to be mentioned that vide order dated 31.7.2014 made in Criminal O.P.No.13509 of 2014, this Court in a petition filed by the respondent claimant and her family members seeking anticipatory bail, held as under:

"21. Prima facie, there is element of cheating, criminal breach of trust, criminal misappropriation and forgery by A-1 also dragging his family members. Out and out main role has been played by A-1. Investigation agency is in possession of many incriminating materials. They are need to be verified with A-1. A-1 is the main accused. He is the main and key manipulator."

Even as per the said order, Investigation agency is in possession of many incriminating materials which need to be verified and this Court was prima facie satisfied that there is element of cheating, criminal breach of trust, criminal misappropriation and forgery. Similar order was passed in Criminal O.P.No.13510 of 2014 by this Court in relation to the son of the respondent claimant, i.e., Venkatesh Prabhu.

42. Moreover, the said Venkatesh Prabhu had also filed Criminal M.P.No.4712 of 2015 on the file of the XI Metropolitan Magistrate Court, Saidapet, inter alia, against the appellants and few others and the Court below, by order dated 7.4.2018, on being prima facie satisfied that the said Venkatesh Prabhu had made out a case for the offences under Section 166-A, 467, 471, 474 read with Section 120-B of the Indian Penal Code, issued summons to some of the accused.

43. It is beyond any cavil that in the usual course the Court is expected to proceed to appoint an Arbitrator if there is in fact a valid arbitration agreement. On the other hand, there might be miscarriage of justice if the Court proceeds to leave all the complicated questions to be decided only by the Arbitrator. In the first instance, the Court must be satisfied that the agreement entered into between the parties and the

documents which are the basis for invocation of such arbitration clause are genuine.

44. When serious allegations of fraud and forgery are alleged by either side, this Court is unable to subscribe to the view of the learned Arbitrator.

45. For the foregoing reasons, the following order is passed:

- (a) The appeals are allowed;
- (b) The order dated 20.4.2018 passed in Application No.2 of 2017 in arbitral proceedings arising out of A.No.5034 of 2016 in O.P.No.660 of 2015 by the learned Arbitrator is set aside;
- (c) the order dated 20.4.2018 passed in Application No.2 of 2017 in arbitral proceedings arising out of A.No.5065 of 2016 in O.P.No.703 of 2015 by the learned Arbitrator is set aside;
- (d) the order dated 17.8.2017 passed in Application No.1 of 2017 in Application No.5034 of 2016 in O.P.No.660 of 2015 by the learned Arbitrator is set aside;
- (e) The arbitration proceedings are dropped and the parties are at liberty to approach the competent Court seeking appropriate relief, if so advised.
- (f) No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

vs

To

1.Mr.Yashodvaradhan,
Sole Arbitrator, Chennai.

2.The Section Officer,
V.R. Section, High Court, Madras.

+4cc to M/s.A.Palaniappan, Advocate SR.No.20464 to 20468

C.M.A.Nos.1577, 1578/2018 & 3120 & 3121 of 2017 and
CMP.Nos.19135, 19136, 19137 & 19138 of 2017 and
CMP.Nos.12525, 12526,

SAI (CO)
GMY (02/07/2019)