

High Court for the State of Telangana

**THE HON'BLE THE CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

C.R.P.No.571 of 2012

Date: 21.08.2019

Between:

M/s Sri Krishnadevaraya Hatcheries Pvt., Ltd,
A company registered under the Companies Act, 1956
Having its Regd. Office at "Srinivasa House", Plot No.1028,
Road No.45, Jubilee Hills, Hyderabad, Rep. by its
Authorised Representative SriK.Ramana Kumar

...Petitioner

and

Smt.P.Ratna Kumari and three others

...Respondents

Counsel for the petitioner: Mr. Vikram Pooserla

Counsel for the respondents: Mr.M.Govind Reddy

The Court made the following:

JUDGMENT: *(Per the Hon'ble the Chief Justice Sri Justice Raghvendra Singh Chauhan)*

The petitioner is aggrieved by the order dated 18.01.2012, passed by the learned III-Additional Chief Judge, City Civil Court, Hyderabad, whereby the learned Chief Judge has allowed the application filed by the respondents - defendants, under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), and referred the dispute between the parties to arbitration.

2. Briefly stated the facts of the case are that the petitioner was the plaintiff, who had filed a suit for specific performance and perpetual injunction against the respondents. The case of the petitioner is that the parties had entered into a development agreement dated 28.08.2002 and subsequently again entered into a development agreement dated 16.08.2004. Under the said agreement, the respondents were required to deliver vacant possession of the suit schedule property. Once the vacant possession was handed over to the petitioner, the petitioner was required to complete the construction of multi-storied building within thirty months from the date of taking possession of the property. However, the respondents had failed to handover the vacant possession. The petitioner had not only sought for specific performance and perpetual injunction, but also sought for award of damages to a tune of Rs.3 crores for the business loss suffered by the petitioner.

3. During the pendency of the suit, the respondents had filed an application under Section 8 of the Act. According to the respondents, since the development agreement contained an arbitration clause, namely, clause No.28, the dispute should have

been referred to an Arbitrator and could not be entertained by a Civil Court. After hearing both parties, by the impugned order, the learned Civil Court allowed the said application, and referred the dispute to an Arbitrator for arbitration. Hence, this revision petition before this Court.

4. Mr. Vikram Pooserla, the learned counsel for the petitioner, has raised the following contentions before this Court:

Firstly, relying on the case of **Atul Singh and others v. Sunil Kumar Singh and others**¹, the learned counsel has pleaded that Section 8(2) of the Act is a mandatory provision. Therefore, it was necessary that the respondents while filing an application under Section 8(1) of the Act should have filed a copy of the development agreement containing an arbitration clause. However, the respondents failed to do so. The learned counsel has pointed out that in the case of **Atul Singh**, the Hon'ble Supreme Court has clearly opined that the requirement of Section 8(2) of the Act is a mandatory one. Therefore, in case the application filed under Section 8(1) is not contained by the agreement, a reference cannot be made for arbitration. Despite the fact that the said contention was raised by the petitioner, the learned Civil Judge has erred in rejecting the said contention, and in allowing the application filed by the defendants.

5. On the other hand, Mr. Govind Reddy, the learned counsel for the respondents, has relied on the case of **Ananthesh Bhakta Represented by mother Usha A. Bhakta and others v. Nayana**

¹ (2008) 2 SCC 602

S.Bhakta and others² in order to buttress his plea that where the document has been produced by the plaintiff, there is no need for the defendants to produce the same document while filing the application under 8(1) of the Act. Therefore, the learned counsel has supported the impugned order.

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

7. Admittedly, in the present case, the petitioner, as the plaintiff, while filing the plaint, had submitted a copy of the development agreement entered into between the parties. The agreement itself contained an arbitration clause, namely Clause No.28. Undoubtedly, the respondents did not file a copy of the development agreement along with their application under Section 8(1) of the Act.

8. In the case of **Atul Singh and others** (1 supra), the Hon'ble Supreme Court in para 19 held as under:

“There is no whisper in the petition dated 28.2.2005 that the original arbitration agreement or a duly certified copy thereof is being filed along with the application. Therefore, there was a clear non-compliance with sub-section (2) of Section 8 of the 1996 Act which is a mandatory provision and the dispute could not have been referred to arbitration. Learned counsel for the respondent has submitted that a copy of the partnership deed was on the record of the case. However, in order to satisfy the requirement of sub-section (2) of Section 8 of the Act, Defendant 3 should have filed the original arbitration agreement or a duly certified copy thereof along with the petition filed by him on 28.2.2005, which he did not do. Therefore, no

² (2017) 5 SCC 185

order for referring the dispute to arbitration could have been passed in the suit.”

9. However, in the case of **Ananthesh Bhakta** (2 supra), the Hon’ble Apex Court has clearly noted in para 16 that *“it is relevant to note that in Atul Singh case, the submission of the respondent was noticed that the copy of the partnership deed was on the record of the case, but the Court has not proceeded to examine as to when such copies are already on record what is the effect”*. Therefore, while deciding the case of **Ananthesh Bhakta**, the Hon’ble Apex Court was not just seized of the issues framed by it in the said case, but most importantly it also answered the question as to what would be the effect if the document had been filed by the plaintiff and whether the requirement is still there for the defendant to file a copy of the same in its application under Section 8(1) of the Act or not? While answering this question, the Hon’ble Supreme Court has observed in para 29, page 195 of the Report, as under:

“In the present case it is relevant to note that the retirement deed and partnership deed have also been relied upon by the plaintiffs. Hence, the argument of the plaintiffs that the defendants’ application IA No.IV was not accompanied by the original deeds, hence, liable to be rejected, cannot be accepted. We are thus of the view that the appellants’ submission that the application of the defendants under Section 8 was liable to be rejected, cannot be accepted”.

Therefore, in case the plaintiff himself has filed the document, and in case the defendant fails to file a copy of the document, while filing the application under Section 8 of the Act, it does not lie in the mouth of the plaintiff to plead that the application should be

dismissed on the ground that the application is not accompanied with the copy of the document containing the arbitration clause.

10. In the case of **Ananthesh Bhakta** (2 supra), the Hon'ble Supreme Court has also considered the fact that if there is pendency of the application for consideration, the petitioner were to file either the original copy of the agreement or a certified copy thereof, this in itself would suffice to fulfil the requirement of Section 8(2) of the Act.

11. Hence, the learned Civil Judge was certainly justified in dismissing the contention raised by the petitioner.

12. For the reasons stated above, this Court does not find any merit in the present revision and it is hereby dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(DR. SHAMEEM AKTHER, J)

21st August, 2019

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