

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

Arbitration Application No.130 of 2018

ORDER:

Heard the learned counsel for the petitioner and Sri R.Ramabrahma, the learned counsel for the 1st respondent.

2. This Arbitration Application is filed under Section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the dispute between the applicant and the 1st respondent arising out of the agreement of sale dated 03-11-2017.

3. Clause No.9 of the said agreement states that any dispute between the parties under this agreement would be resolved by Sole Arbitrator and the seat of Arbitration is Hyderabad.

4. In the counter affidavit filed by the 1st respondent, it is admitted that the agreement is only between the applicant and the 1st respondent (see para-10).

5. However, other defences were raised by the 1st respondent such as serious fraud and inducement etc. to get over the plea of the applicant for appointment of the Arbitrator, and reliance is placed by the 1st respondent's counsel on the decision of the Supreme Court in **A.Ayyasamy Vs. A.Paramasivam and others**¹ wherein the Supreme court laid down that where serious allegations of fraud are made,

¹ (2016) 10 S.C.C. 386

which virtually make a case of criminal offence or where allegations of fraud are so complicated, that only a Civil Court would be able to decide it on appreciation of voluminous evidence etc., the arbitration clause can be ignored by the Court exercising jurisdiction under Section 11 of the Act.

6. However, it is important to note that clause 6-A of Section 11 of the Act was added by the Arbitration and Conciliation (Amendment) Act, 2015 with retrospective effect from 23-10-2015 stating that the High Court, while considering application under sub Section 11 (4), 11 (5) or 11 (6) shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of the Arbitration Agreement. This amendment has been interpreted in **Duro Felguera, S.A. Vs. Gangavaram Port Limited**² as under:

*“59. The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in **SBP and Co. Vs. Patel Engineering Limited**³. This position continued till the amendment brought about in 2015. After the amendment, all that the courts need to see is whether an arbitration agreement exists- nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court’s intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11 (6-A) ought to be respected.”*

7. Therefore, in view of the said judgment, since the existence of the clause in the agreement dated 03-11-2017 between the applicant and the 1st respondent is not disputed, and since the applicant had

² (2017) 9 S.C.C. 729

³ (2005) 8 S.C.C. 618

invoked the arbitration clause, against the respondent through legal notice dated 19-07-2018, Hon'ble Sri Justice J.Chalameswar, Judge (Retd.), Supreme Court, is appointed as Sole Arbitrator to decide the dispute between the applicant and 1st respondent arising out of the agreement of sale dated 03-11-2017.

8. Accordingly, the Arbitration Application is allowed. It is open to the respondents to raise all defences on questions of fact and law before the learned Arbitrator. No order as to costs.

9. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-07-2019

Note:-

Copy to be marked to Hon'ble Sri Justice J.Chalameswar, Judge (Retd.), Supreme Court, H.No.1-2-593/3/D/9, Gate No.84, Opp. Ramachandra Mission, St. No.3, Domalguda, Hyderabad-500033. (Phone No.08800878668)

B/o.
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