

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

MONDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION NO: 33 OF 2020

Between:

A. Jagal Reddy, S/o Ram Reddy, aged 54 years, R/o Plot No 11, Chaitanyanagar,
Opp: B N Reddy Nagar, Karmanghat, Saroonagar, Ranga Reddy District

...APPLICANT

AND

Namani Ashok, Age 46 years, Occ: Business R/o H.No 7-730, Ibrahimpatnam
Village and Mandal, Ranga Reddy District.

...RESPONDENT

Arbitration Application under Section 11(5) & (6) of the Arbitration and
Conciliation Act, 1996, read with Scheme for Appointment of Arbitrators 2006
praying that in the circumstances stated in accompanying affidavit, the High Court
may be pleased to :

- i) Appoint an arbitrator to adjudicate the claims and disputes between the
Applicant and the Respondents; and
- ii) Award the costs of the present applications.

Counsel for the Applicant: SRI KIRAN PALAKURTHI

Counsel for the Respondent : SRI VANAM VISHWANATHAM

The Court made the following ORDER:

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Arbitration Application No.33 of 2020

ORDER:

This Arbitration Application is filed under Section 11(5) & (6) of the Arbitration & Conciliation Act, 1996 (for short 'the Act') for appointment of an arbitrator for adjudicating the claims and disputes between the parties.

2. It is the case of the applicant that the respondent is the owner and possessor of the house bearing No.7-104(old) and 7-730 (new) admeasuring 316 sq.yds situated at Ibrahimpatnam Village and Mandal, Ranga Reddy District (subject property). The respondent approached the applicant for sale of the property and that the subject property is under mortgage, as such, he requested the applicant to make payment directly to the financier. He entered into an agreement of sale dated 06.11.2019 with the applicant for sale of the subject property. During the course of transaction, disputes arose between the parties in payment of the consideration in respect of the subject property. There was exchange of notices between the applicant and respondent and ultimately, applicant got issued notice under Section 21 of the Act dated 05.02.2020 invoking arbitration clause contained in the Agreement of Sale dated 06.11.2019 calling upon the respondent to give consent for appointment of sole arbitrator suggested in the notice. As there is no response from the respondent, the present application is filed.

3. Counter affidavit is filed by the respondent denying the averments in the affidavit filed in support of this Application disputing the claim of the applicant on merits as well as execution of alleged agreement of sale dated 06.11.2019. Though the signatures of the respondent are admitted, but it is asserted that the respondent was under the impression that it was a loan agreement. Though a complaint was lodged with the police, Ibrahimpatnam regarding fraudulent intention of applicant, the police closed the same on 29.07.2020 stating that the complaint is civil in nature. It is also asserted that the respondent got issued legal notice dated 24.07.2020 cancelling the unregistered agreement of sale dated 06.11.2019.

4. Heard Sri Kiran Palakurthi, learned counsel for the applicant and Sri Vanam Vishwanatham, learned counsel for the respondent.

5. Learned counsel for the applicant submits that existence of arbitration clause in the agreement of sale dated 06.11.2019 and invocation of the same by issuing legal notice dated 05.02.2020 is not disputed, as such, the application is to be allowed.

6. Learned counsel for the respondent while reiterating the averments in the counter affidavit vehemently argued that the agreement of sale itself is fabricated one, as the signatures of the respondent were obtained by petitioner giving an impression that it is a loan agreement. He submits that the signatures of the respondent were obtained by playing fraud. He submits

that since there is no arbitral dispute between the parties, the question of appointment of sole arbitrator does not arise, as such, this application is liable to be dismissed.

7. In this case, it is to be seen that the respondent does not dispute his signatures on the agreement of sale dated 06.11.2019, but only states that he signed the same under the impression that the same is a loan agreement and the document is a fabricated one. However, it is a fact that the agreement of sale dated 06.11.2019 contains an arbitration clause 13, which reads as follows:

"That all or any disputes and questions in connections with or referable to or arising from the transaction, this deed its interpretation, and or any matter arising out of or related to its implementation, howsoever remote and arising between the parties or between any of them and the legal representatives of the other or others or between their respective legal representatives whether during or after the period specified in this agreement shall be referred to arbitration at the hands of sole nominee of the Vendee alone, which person shall be either a retired Judge or an Advocate nominated at the unilateral discretion of the vendee in which nomination of the Vendor has no say."

A perusal of the above clause goes to show that there exists an arbitration clause. The question as to whether the signatures of the respondent were obtained in agreement of sale or loan agreement, itself is an arbitrable dispute, apart from the disputes arising out of the alleged agreement of sale between the parties, which has to be necessarily to be decided by the arbitrator. That apart, as per Section 11(6A) of the Act after Amendment Act, 2015 which came into force with effect from

23.10.2015, this Court is required to see the existence of arbitration clause and its invocation and nothing more and nothing less. Since the applicant invoked the arbitration clause contained in the agreement of sale by issuing legal notice dated 05.02.2020, this Court is of the considered opinion that this application needs to be allowed.

Accordingly, this Arbitration Application is allowed nominating Sri Koka Raghava Rao, learned Senior Advocate, for resolving the disputes between the parties.

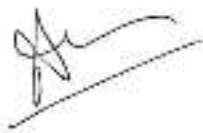
As a sequel thereto, miscellaneous applications, if any, pending in this Arbitration Application, shall stand closed.

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Sd/-B.S.CHIRANJEEVI
JOINT REGISTRAR
Ch Ch
SECTION OFFICER

To,

1. Sri Koka Raghava Rao, Senior Counsel, H.No 3-6-312/1, Saraswati Nilayam Adjacent lane to HDFC House, Hyderguda, Hyderabad 500029 (by Special Messenger) (along with a copy of Arbitration Application, affidavit and material papers filed with A.A.)
2. One CC to SRI. KIRAN PALAKURTHI, Advocate [OPUC]
3. One CC to SRI. VANAM VISHWANATHAM, Advocate [OPUC]
4. Two CD Copies



HIGH COURT

ARR,J

DATED:17/08/2020



ORDER

ARB. APPL.No.33 of 2020

ALLOWING THE ARBITRATION APPEAL.

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HMA
05/31/8/2020,