THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

THE HONOURABLE SRI JUSTICE T. VINOD KUMAR

Civil Miscellaneous Appeal No.317 of 2020
and
Civil Miscellaneous Appeal No.330 of 2020

COMMON JUDGMENT :

The case of appellants is that there are two theatres by name M/s.Menaka and M/s.Apsara. They were constructed in property bearing M.No.18-3-649 to 660, Lal Darwaza, Hyderabad which is an area of over 11,472 Sq.Yds. in the years 1967 and 1983 respectively.

2. Civil Miscellaneous Appeal No.317 of 2020 is filed under Section 37 of the Arbitration and Conciliation Act, 1996 **(for short, 'the Act')** against order dt.13.03.2020 passed by the X Additional Chief Judge, City Civil Court, Hyderabad dismissing an application filed by appellants under Section 9 of the Act in relation to M/s Menaka theatre. In the said application, the appellants sought an order restraining the respondents from alienating the O.P. schedule property, and also from changing its nature.

3. Civil Miscellaneous Appeal No.330 of 2020 is filed by the appellants under Section 37 of the above Act challenging the order dt.13.03.2020 passed by the X Additional Chief Judge, City Civil Court, at Hyderabad dismissing the application filed under Section 9 of the above Act in relation to M/s Apsara theatre. The said application was filed to restrain the respondents from alienating the O.P. Schedule property and from changing its nature.

4. Initially, the above property was acquired by the father of appellants by name P. Anand Rao and one Vallabha Das Loya under a registered Sale Deed dt.10.04.1961.

5. P. Anand Rao and Vallabha Das Loya then sold the property to one R.S. Chenoy and Shahpur Chenoy under a registered Sale Deed dt.19.02.1963. But, subsequently the legal heirs of R.S. Chenoy and Shahpur Chenoy re-sold the property again to P. Anand Rao (the father of appellants), Vallabhdas Loya, Ch. Hanumanth Rao and Smt. Appayamma under a registered Sale Deed dt.09.03.1966.

6. Both these theatres were being run under a partnership agreement and after the death of P. Anand Rao, the 3rd appellant was inducted as a partner in the two partnership firms by name M/s.Menaka and M/s.Apsara theatres under two separate Deeds of Partnership dt.19.05.1998.

7. According to these partnership Deeds, the appellants were entitled to 15% shares in the partnership firms.

8. Both the theatres were closed in December, 2011 for the purpose of renovation.

The case of the appellants

9. But, according to appellants, the respondents did not come forward to invest their shares for renovation. Thereafter, a meeting was held wherein, according to appellants, the respondents agreed to sell their collective share of 85% in favour of appellants, and it was also agreed thereon that the said property shall not be sold until the share purchase materialized.

10. As things stood thus, appellants alleged that they came to know that the other partners in the Firm, viz., M/s.Apsara theatre, at the behest of one Mr. Praveen Rao and 5th respondent, were making illegal attempts by creating a third-party documents by way of a sale without the knowledge of appellants. The appellants further alleged that the subject property belongs to all partners, and no partner has any right to create third-party interest therein.

11. The appellants therefore invoked Arbitration Clause as per Clause 14 of the Partnership Deed dt.19.05.1998 by issuing a notice dt.18.03.2019 and a Corrigendum dt.12.04.2019 to respondents, and nominated one Rangaiah Goud, Sole Arbitrator, to adjudicate disputes between parties.

12. Thereafter, the respondents gave a reply notice dt.18.03.2019 disputing the allegations in the said notice issued by the appellants, and nominating one B. Sheshadri to adjudicate the matter.

13. In view of difference in opinion among the parties, the appellants filed Arbitration Application under Section 11 of the Act seeking intervention of the High Court to appoint an Arbitrator to adjudicate disputes between the parties.

14. The appellants also alleged that on 20.04.2019 a person by name G. Krishna along with his henchmen, claiming to be owners of the subject property through the respondents, started trespassing into the property and also started demolishing the theatres. The appellants contended that they succeeded in stopping him and lodged a police complaint on 22.04.2019 with the Assistant Commissioner of Police, Falaknuma. But the police expressed their inability to do anything since the dispute is of a civil nature.

15. Therefore, the appellants filed applications under Section 9 of the Act in Arbitration O.P.Nos.52 and 50 of 2019 in respect of M/s.Menaka and M/s.Apsara theatres, respectively.

The case of the respondents

16. Counter-affidavit was filed by respondents opposing grant of any interim relief to appellants.

17. According to respondents, the theatres Menaka and Apsara were not registered firms; that on the ground of non-joinder of necessary parties and on the ground that 2nd respondent is not a partner of the Firm, the O.P.s are liable to be dismissed. They further denied that they had demolished or changed the nature of the property.

They also denied the existence of Partnership Deeds dt.19.05.1998, and contended that since the firms were un-registered there is a bar under Section 69 of the Indian Partnership Act. They further contended that the Agreement of Sale – cum – General Power of Attorney was executed by them in favour of G. Kiran Kumar and M. Kishore Kumar and possession of property was also delivered to them and they tried to dismantle Menaka Theatre only. They also contended that every partner under the Partnership Deed dt.19.05.1998 is entitled to sell their share of the property to a third-party and so the interim relief cannot be granted in the above O.P.s. They also raised a plea that the appellants had not commenced arbitration proceedings after filing the applications under sec.9 CPC.

The order of the Court below

18. Initially the Court below granted status quo orders on 29.4.2019 in both the OPs.

19. But later, by separate orders dt.13.03.2020, the Court below dismissed both the Arbitration applications.

20. The Court below, after referring to the contentions of parties and to Section 9 of the Arbitration and Conciliation Act, 1996, and held that as per the decision of the Supreme Court in **Firm Ashwin Traders vs. Gurmukh Das Saluja**[1]**,** an unregistered partnership firm

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[1] (2004) 3SCC 155

can invoke Sec.9 of the Act as it is not a suit nor a proceeding arising in a suit.

21. But it observed that though initially a *status quo* order had been granted by it on 29.04.2019, even 10 months thereafter, the arbitration proceedings did not commence; and so the *status quo* order was liable to be vacated. It refused to go into the merits and de-merits of the case on the above ground.

The present Appeals

22. Assailing the same, the present Appeals are preferred by appellants.

23. The counsel for appellants contended that the view of the Court below that the arbitral proceedings had not been commenced by the appellants, is erroneous, because under Section 21 of the Act the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

24. He contended that the appellants had issued on 18.03.2019 itself a notice to respondents appointing an arbitrator and had thus initiated arbitration, and the respondents had replied to the same on 25.03.2019 but appointed a different arbitrator; and so the arbitral proceedings are deemed to have commenced at least on 25.03.2019.

25. Section 21 of the Act states as under :

> *"**21. Commencement of arbitral proceedings : -** Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."*

26. This provision has been interpreted by a Division Bench of this Court in **P.B. Karunakar and others vs. State of Telangana and others**[2] at para no.22, as meaning that arbitral proceedings would commence the moment the respondents / opposite party receives the request for the dispute to be referred to arbitration.

27. The Division Bench also relied on the decisions of the Supreme Court in **Sundaram Finance Ltd. v. NEPC India Ltd.**[3] and **Milkfood Ltd. vs. GMC Ice Cream (P) Ltd.**[4].

28. This legal position is not disputed by the counsel for appellants.

29. We may also point out that applications under Section 11 of the Act had been moved by appellants for appointment of an Arbitrator by this Court on 17.04.2019 itself, and these applications were admittedly allowed on 05.06.2020. Therefore, it is not possible to contend, as is being done by respondents, that arbitral proceedings had not been commenced by the time the O.P.Nos.52 and 50 of 2019 under Section 9 were filed by appellants.

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[2] 2018(3) A.L.D. 470 (D.B.)
[3] 1999 (2) S.C.C. 479
[4] 2004 (7) S.C.C. 288

30. Moreover, according to appellants, though a partner has ‘implied authority’ to do certain acts to bind the firm, such ‘implied authority’ does not empower a partner to transfer immoveable property belonging to the firm and relied on Sec.19(2)(g) of the Partnership Act, 1935.

31. However, since the Court below refused to go into the merits and contentions of both parties, and presumed, on an erroneous understanding of law, that arbitral proceedings had not been commenced by the appellants though appellants have done so by issuing a legal notice for appointment of Arbitrator on 18.03.2019 to the respondents, which was even replied by respondents on 25.03.2019, and since the issuance of such notice dt.18.03.2019 under Section 21 of the Act amounts to commencement of arbitral proceedings, we are of the opinion that the impugned order cannot be sustained.

32. Therefore, the appeals are allowed. The order dt.13.03.2020 passed in Arbitration O.P.Nos.50 and 52 of 2019 are set aside. The matters are remitted to the X Additional Chief Judge, City Civil Court, Hyderabad. The said court is directed to decide the said O.P.’s afresh in accordance with law after hearing both sides within four (04) weeks from the date of receipt of copy of the order.

33. Pending disposal of the O.P.s afresh, there shall be interim injunction restraining respondents from alienating the subject property and also changing its nature.

34. However, the Court below shall decide the O.P.s uninfluenced by the contents of this order.

35. No order as to costs.

36. As a sequel, miscellaneous applications pending if any in these Civil Miscellaneous Appeals, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. VINOD KUMAR

Date: 07.04.2021
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