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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 5253 OF 2013

SHANKAR DINKAR LABHADE

....PETITIONER

V/s.

SHRI. ADI KAIEKHSRU MISTRY

.....RESPONDENT

Mr. Sugandh B. Deshmukh a/w Mr. Irvin D'Souza i/b Rajaram B. Deshmukh Advocate for Petitioner

Mr. Siddharth C. Wakankar Advocate for Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 8, 2022.

P.C.:

1) Petitioner, based on agreement of construction dated 31/07/2009 in the capacity of civil contractor initiated Suit for recovery of amount of Rs. 50,00,000/- against Respondent-Defendant. Since agreement contains arbitration clause, Respondent-Defendant invoked provisions of Section 8 of The Arbitration and Conciliation Act, 1996 (Hereinafter referred to as 'the Act' for the sake of brevity) vide Application Exh. 18 which is allowed vide impugned order dated 14/03/2013 passed by 6th Jt. Civil Judge Senior Division,

Pune.

2) While questioning the aforesaid order, Shri. Deshmukh, learned counsel for the Petitioner would urge that Suit claim even if is partly based on agreement dated 31/07/2009, such other work as has been mentioned in para 4, i.e. construction carried out on plot no. 2, 13 & 14 are out of the purview and scope of the aforesaid agreement. Drawing support from the Judgment of the Apex Court in the matter of **Sukanya Holdings (P) Ltd V/s. Jayesh H. Pandya and Another**¹ he would urge that Court below has committed an error in referring the matter for arbitration. According to him, scope of jurisdiction of arbitrator will not cover nature of claim in the Suit. In addition, he would claim that Respondent has submitted himself to the jurisdiction of the Civil Court. Respondent under wrong conception that present Petition is allowed, (though there does not exist any order of remand or otherwise) an application for setting aside 'No W.S.' order dated 03/12/2012 was allowed vide order dated 27/06/2015. According to Mr. Deshmukh, written statement is also placed on record by Respondent-Defendant. That being so, Court below can be directed to decide the Suit expeditiously as rival

¹ (2003) 5 Supreme Court Cases 531

pleadings of the parties are already completed. In the aforesaid background, his contentions are, impugned order is liable to be set aside.

3) The claim referred above is resisted by counsel for respondent. According to him, case of the Petitioner that the Suit claim is outside the purview of arbitration agreement dated 31/07/2009 is neither pleaded nor can be inferred. He would further claim that in view of aforesaid, the law laid down by the Apex Court in the matter of **Sukanya Holdings** [cited supra] will have hardly any application. Apart from above, his contentions are, even if at the behest of Respondent, 'No W.S.' order is set aside, however, once the matter is referred to arbitration, relying on provisions of Section 8 of the Act he would urge that orders passed permitting placing written statement on record cannot be acted construed to mean that Respondent-Defendant has consented for participating in the Suit.

4) Considered rival submissions.

5) I have perused the recitals in the agreement dated 31/07/2009 which admittedly provides for an arbitration clause. It is nowhere pleaded by the Petitioner-Plaintiff in the Plaint that scope of work

executed by him against which Suit for recovery was brought in action is outside the purview or scope of said agreement. Rather, in reply to Application Exh. 18 which is moved under Section 8 of the Arbitration Act, Petitioner has not come out with any such plea. In the aforesaid background, if the bundle of facts which has resulted leading to cause of action to the Petitioner for filing the Suit is appreciated, it cannot be inferred that work executed by the Petitioner based on which he has lodged the claim for recovery of amount is outside the scope of arbitration agreement dated 31/07/2009. That being so, Court below was justified in invoking provisions of Section 8 of the Arbitration and Conciliation Act. As such, reliance placed on the Judgment of the Apex Court in the matter of **Sukanya Holdings** [cited supra] will be of hardly any consequence.

6) Once it is rightly held that there exist arbitration agreement and the nature of claim put forth in the Plaint is within the scope and ambit of said arbitration agreement, necessary consequence shall follow. As once the Court below has invoked provisions of Section 8 of the Act thereby referring the matter to the arbitration, it

was for the Petitioner to take appropriate steps in the matter of appointment of arbitrator.

7) In the pending suit at the behest of Respondent-Defendant, even if the order 'No W.S.' is set aside by accepting his W.S. that by itself will not lead to continuation of the suit proceedings. The conduct of Respondent of moving before the civil court in the matter of 'W.S.' is under wrong assumption that order impugned in this Petition is set aside.

8) That being so, I see no reason which warrants interference in extraordinary jurisdiction. Petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]