

27.07.2023.
Item No. 9.
Court No. 13
ap

F.M.A.T. No. 337 of 2023
With
I.A. No. CAN 1 of 2023
Swen Entertainment Private Limited
Versus
Indian Arm Wrestling Federation & Ors.

Mr. Ratnanko Banerji, Id. Sr. Advocate,
Mr. Suddhasatva Banerjee,
Mr. Shounak Mitra,
Mr. Alok Vajpeyi,
Ms. Vaibhavi Pandey,
Ms. Shivangi Thard,
Ms. Prachi Gupta.

...For the appellant.

Mr. Prabal Kumar Mukherjee, Id. Sr. Advocate,
Mr. Souradipta Banerjee,
Mr. Manabendra Saha Ray,
Mr. Sounak Bhattacharya,
Mr. Anirban Saha Ray.

...For the respondents.

1. Affidavit-of-service filed in Court today be taken on record.
2. The Advocate-on-record for the appellant undertakes to rectify the defects pointed out by the Stamp Reporter dated 26th July, 2023.
3. The instant appeal is directed against an ex parte ad interim order dated 20th July, 2023 passed by the learned 13th Bench, City Civil Court at Calcutta in Title Suit No. 1336 of 2023 (Indian Arm Wrestling Federation – Vs. – Swen Entertainment Private Limited & Ors.).

4. The principal subject matter of the case is an agreement dated 14th March, 2019 between the appellant/defendant no.1 and the respondent/plaintiff.

5. By the said agreement, the plaintiff/respondent is stated to have covenanted with the appellant to conduct all events and tournaments of its Federation through the appellant. The agreement admittedly contains an Arbitration Clause at Clause 13 as also an exclusive territorial jurisdiction Clause.

*“13. GOVERNING LAW AND DISPUTE RESOLUTION:
In the league/tournament any dispute, differences or controversies should arise between the Parties thereto, out of or in connection with the provisions of this Agreement, or any action taken hereunder, the Parties hereto shall thoroughly explore all possibilities for an amicable settlement. In case amicable settlement cannot be reached, such disputes, differences or controversies shall be referred to arbitration and the parties will mutually agree upon the Arbitrator with the provisions of the Arbitration and Conciliation Act, 1996 as may be modified and substituted from time to time and the venue of such arbitration shall be Mumbai. The award of such arbitration shall be final and binding upon the Parties hereto. The arbitration proceedings shall be conducted in English. This Agreement shall be governed in accordance with the laws of India and subject to the exclusive jurisdiction of the Courts at Mumbai.”*

6. Prior to the institution of the suit and the passing of the impugned order, the appellant had, pursuant to the aforesaid Arbitration Clause, instituted an application under Section 9 of the Arbitration and Conciliation Act, 1996 (in short Act of 1996) before the Bombay High Court being Commercial Arbitration Petition (L) No. 15643 of 2023.

7. Upon hearing the appellant as well as the respondents, a Single Bench of the Bombay High Court vide an order dated 16th June, 2023 permitted the respondent no.1/plaintiff to conduct a Tournament at Pragati Maidan at New Delhi that was due to start on the same date. Affidavits were called from the appellant. The respondent no.1 was directed to intimate the appellant if it was desirous of organizing any further events.

8. By such time, a Pro Panja League known as Arm Wrestling Tournament, which is scheduled to start at New Delhi tomorrow i.e. 28th July, 2023, was widely advertised by the appellant.

9. The respondent no.1 filed the instant suit and obtained the impugned order dated 20th July, 2023 ex parte restraining the appellant from holding the Tournament at New Delhi, which is due to start tomorrow.

10. It is interesting to note that the entire plaint case is based on the agreement dated 14th March, 2019 as, inter alia, evident from paragraph 5 of the plaint. The prayers (a), (b) and (d) in the plaint are set out hereinbelow:

“(a) Decree for declaration that the Agreement dated 14th March, 2019 entered into by and between the plaintiff federation and the defendants is binding upon the parties;

(b) Decree for declaration that defendants are duty bound to obey the terms and conditions stipulations contained in the said Agreement dated 14th day of March, 2019;

(d) Decree for declaration that the defendants are not entitled to organize any tournament in the name of plaintiff federation or in any name without complying the terms and conditions stipulated in the Agreement dated 14th March, 2019;”

11. The respondents claim before this Court that the appellant is liable to them for various sums of money payable in terms of the agreement dated 14th March, 2019.

12. It is, therefore, clear and explicit that the entire cause of action of the respondents is based on the said agreement which contains an exclusive territorial jurisdiction Clause i.e. at Mumbai as also an Arbitration Clause.

13. In aid of such Arbitration Clause, the appellant has instituted an application under Section 9 of the Act of 1996, which is pending consideration before the Bombay High Court. In the affidavit, however, filed by the respondent no.1/ plaintiff in Bombay High Court, it has been averred that the said agreement is void.

14. This Court is of the clear view that –

(a) The respondent no.1/plaintiff has suppressed the proceedings in Bombay High Court before the City Civil Court at Calcutta in Title Suit No. 1336 of 2023;

(b) Despite asserting and seeking enforcement of the agreement dated 14th March, 2019 in the City Civil Court at Calcutta, the plaintiff has suppressed the Arbitration and exclusive jurisdiction Clause in the agreement dated 14th March, 2019.

(c) Such suppression of the Arbitration and exclusive jurisdiction Clause in the said agreement dated 14th March, 2019 and approbation and reprobation, has misled into passing the impugned order.

(d) There is gross abuse of process of law on the part of the plaintiff/respondent no.1 and this Court's mind is not free from doubt that the respondents may have perpetrated fraud on the Court below.

15. It is now well settled that exclusive jurisdiction Clause binds the parties to the Court to which they have conferred jurisdiction. Reliance may be made to the case of **A.B.C Laminart Pvt. Ltd. & Anr. – Vs. – A.P. Agencies, Salem** reported in **(1989) 2 SCC Page 163**.

16. Further an Arbitration Clause is an agreement, particularly after it is invoked would prevent the plaintiff/respondent no.1 from filing the suit.

17. In the facts and circumstances of the case, this Court is inclined to set aside the order of injunction dated 20th July, 2023 passed by the learned Judge,

13th Bench, City Civil Court at Calcutta in Title Suit No. 1336 of 2023.

18. Since this Court in no uncertain terms finds that the suit itself being Title Suit No. 1336 of 2023 is not maintainable in the facts of the case and, inter alia, by the conduct of the respondent no.1/plaintiff in having participated in Section 9 proceedings albeit with a contention that the agreement is void, the said Title Suit No. 1336 of 2023 cannot survive. The said suit shall stand dismissed.

19. For the reasons indicated hereinabove and the conduct of the respondents in suppressing the material facts and instituting the suit, approbation and reprobation more fully discussed hereinabove, the respondents shall pay costs assessed at Rs.1,00,000/- (Rupees one lac only) to the appellant.

20. It is, however, made clear that dismissal of the suit shall not prevent the respondents from either contesting the proceedings before the Bombay High Court between the parties and taking out any other remedies available to them in law before the Court in Bombay and take any other defence and/or stand in respect of the agreement dated 14th March, 2019. All the claims and defences of the parties remain for being agitated in accordance with law before the appropriate forum.

21. F.M.A.T. No. 337 of 2023 shall stand disposed of.

22. In view of the disposal of the appeal itself, the connected application being CAN 1 of 2023 shall also stand disposed of.

23. Liberty is granted to the parties to communicate this order to whomsoever is necessary.

24. Let a copy of this order be communicated to the Registrar of City Civil Court at Calcutta.

25. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)

(*Supratim Bhattacharya, J.*)