

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 219 OF 2020

DINU @ DINESH LAXMAN
MADGAONKAR & 4 ORS. ... PETITIONERS
Vs.
SAHARA INDIA, REP. BY ITS
DIRECTOR & 9 ORS. ... RESPONDENTS

Mr. Ganesh R. Naik, Advocate for the Petitioners.

Ms. Manasvi Shirodkar, Advocate holding for Ms. C.
Collasso, Advocate for Respondent No. 9.

CORAM: BHARAT P. DESHPANDE, JJ.

DATED: 24th AUGUST 2023

ORAL ORDER:

1. Heard Mr. Naik for the Petitioners and Ms. M. Shirodkar for Respondent No. 9. The remaining Respondents, though duly served, remained absent.
2. Vide order dated 20.03.2023, it was made clear that the matter will be taken up for final disposal. Accordingly, today the matter is heard finally with consent.
3. The order impugned is dated 28.06.2019, passed by the learned Civil Court, whereby the Application filed by

Respondents/Defendants under Order VII Rule 11 of CPC was in fact rejected. However, since the agreement between the parties contained an arbitration clause, the learned Trial Court directed the Plaintiffs to approach the Arbitral Tribunal as per condition no. 14 of the contract.

4. The Petitioners/Plaintiffs being aggrieved by such an order, preferred the present Petition.

5. Mr. Naik, learned Counsel for the Petitioners would submit that there are averments in the plaint with regard to fraud and cheating by the Defendants, which cannot be gone into during the Arbitral proceedings and therefore, the Civil Court is the only forum to decide such contentions. He invited the attention of this Court to the plaint and more specifically, paragraph 10 onwards.

6. The learned Counsel for Respondent No. 9 would submit that the impugned order has been passed after considering the pleadings in the plaint, which except the words fraud and cheating, nowhere discloses the details of it. Therefore, such an order need not be interfered with.

7. On perusal of the impugned order, it is clear that the learned Trial Court found that there are no pleadings in connection with fraud and cheating except some vague statements in paragraph 10. The learned Trial Court also found that

condition no. 14 in the general terms and conditions which states that there is a provision of arbitration, in case of any dispute between the parties. Such documents are relied upon by the Plaintiffs themselves.

8. On perusal of the plaint and more specifically paragraph 10 onwards, it is clear that except for the vague statements by mentioning the words “fraud” and “cheating”, there are no specific details or pleadings. Order VII of CPC mandates that whenever the averments with regard to fraud and cheating are made, necessary details are mandatory. If such details are lacking in the plaint, such pleadings cannot be entertained. In the present proceedings filed before the Trial Court except the words fraud and cheating, no other particulars are mentioned.

9. It is clear from the impugned order that the learned Trial Court rightly rejected the Application under Order VII Rule 11 of CPC since the contentions raised therein are not covered under Order VII Rule 11 of CPC. However, the learned Trial Court clearly observed that the receipts regarding investments contained general terms and conditions and condition no. 14 specifically refers to the agreement between the parties for referring any such dispute to the Arbitral Tribunal.

10. The approach of the learned Trial Court in directing the Plaintiffs to refer the dispute to arbitration is therefore justified and there is no illegality or perversity in the impugned order so as to interfere with it under the supervisory jurisdiction of this

Court. Accordingly, the Petition must fail. Writ Petition stands dismissed. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.

VAIGANKAR
ESHA SAINATH

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