

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO. 17 OF 2022
WITH
INTERIM APPLICATION NO. 17517 OF 2022
IN
ARBITRATION APPEAL NO. 17 OF 2022

M/s. Awaas Builders & Developers

...Appellant/Applicant

Versus

Shri Krishna Complex Co-operative HSG.
Society Limited

...Respondent

* * *

- Mr. Anil D'sourza, Valentine Mascarenhas and Ernest Tuscano, for Appellant/Applicant.
- Mr. Ravindra R. Chile, for Respondent

* * *

CORAM : MANISH PITALE, J

DATE : 27th MARCH, 2023.

P. C. :

1. By this appeal filed under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996, the Appellant has challenged an order dated 17th February, 2020, read with order dated 22nd April, 2021, passed by the Court of Civil Judge, Senior Division, Vasai, whereby an application filed by the Appellant under Section 8 of the said Act was rejected.

2. It is the case of the Appellant that the sole ground on which the aforesaid Court rejected the application is wholly unsustainable, as it is based on a wrongly interpretation of the position of law clarified by the Hon'ble Supreme Court in the case of

SHRIKANT
SHRINIVAS
MALANI

Digitally signed by
SHRIKANT
SHRINIVAS
MALANI
Date: 2023.03.31
10:50:05 +0530

*Umesh Goel Vs. Himachal Pradesh Cooperative Group Housing Society Limited*¹.

3. The learned Counsel appearing for the Appellant submitted that despite taking note of the aforementioned judgment of the Hon'ble Supreme Court, the aforesaid Court while passing the impugned orders failed to appreciate the position of law and thereby erroneously rejected the application filed on behalf of the Appellant.

4. The learned Counsel appearing for the Respondent emphasized upon the conduct of the Appellant and submitted that since the Respondent is a Co-operative Society, which had engaged the Appellant for redevelopment of its property, this Court may take an appropriate view in the matter.

5. There is no dispute about the fact that in the redevelopment agreement executed between the parties, there is indeed an arbitration clause. This fact is specifically recorded in paragraph no. 2 of the impugned order dated 17th February, 2020. The only question for consideration is, as to whether the aforesaid Court was justified in rejecting the application filed on behalf of the Appellant under Section 8 of the said Act to refer the parties to arbitration, on the ground that the arbitration clause could not be invoked since the Appellant (Defendant before the Court below) was

¹ (2016) 11 SCC 313

not a registered partnership firm. The aforesaid Court appears to have emphasized upon Section 69(3) of the Partnership Act to hold against the Appellant.

6. The Hon'ble Supreme Court in the case of *Umesh Goel Vs. Himachal Pradesh Cooperative Group Housing Society Limited (supra)* has categorically held that registration or otherwise of a partnership firm is irrelevant insofar as initiation of arbitration proceedings is concerned. The Hon'ble Supreme Court specifically referred to Section 69 of the Partnership Act, which pertains to effect of non-registration of a partnership firm and upon analyzing the position of law, gave a categorical finding that arbitration proceedings cannot be given a go by only on the ground that one of the parties being a partnership firm, is not registered.

7. In the impugned order, dated 17th February, 2020, in paragraph no. 3, the aforesaid Court has specifically referred to the judgment of the Hon'ble Supreme Court in the case of *Umesh Goel Vs. Himachal Pradesh Cooperative Group Housing Society Limited (supra)*. But, in paragraph no. 4, while applying the position of law clarified by the Hon'ble Supreme Court to the facts of the present case, the aforesaid Court committed a glaring error. It is surprising that when the position of law has been clearly laid down by the Hon'ble Supreme Court, as to how the aforesaid Court could hold that

the said position of law is not applicable to the facts of the present case.

8. This Court is of the opinion that the objection to the said application raised on behalf of the Respondent was wholly untenable. As laid down by the Hon'ble Supreme Court in the said judgment, one of the parties being an unregistered partnership firm is of no consequence, insofar as the Arbitration proceedings are concerned. Therefore, this Court is of the considered view that aforesaid Court erred in passing the impugned order dated 17th February, 2020. The error was compounded by rejecting review application filed by the Appellant, thereby indicating that the present appeal deserves to be allowed.

9. In view of the above, the appeal is allowed. The impugned orders are quashed and set aside and the application filed on behalf of the Appellant (original Defendant) under Section 8 of the said Act stands allowed in terms of the prayers made therein.

10. There shall be no order as to costs.

(MANISH PITALE, J.)