IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.04.2024

Pronounced on : 29.04.2024

CORAM

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

A.No.689 of 2024
in
C.S.No.8 of 2024

1.Suraj Goyal

...Applicant / 1st defendant

Vs.

1.C.M.Goyal ...1st Respondent / Plaintiff

2.Suchitra Goyal alias Suchitra Tamia

3.Bank of India
Rep. by its Bank Manager
Mount Road Branch
No.827, Anna Salai,
Post Box No.2703,
Chennai – 600 002.

4.Kotak Mahindra Bank Ltd.
Rep. by its Bank Manager
Vepery Branch
Ground & 1st Floors,
Door Nos.35 to 41 (Old No.28)
EVK Sampath Road
Chennai – 600 007.

5.Conjap Electronics Private Ltd.
Old No.9, New No.10, Krishnappa Chetty Street,
[as per Property Tax Assessment Old Door No.10/1,
New Door No.19, Krishnappa (C) Lane],
Chintadripet,
Chennai – 600 002.

6.M. Krishnan

7.Amit Khemka
...2nd to 7th Respondents / Defendants

Prayer:- This application filed under Order XIV Rule 8 of the Original Side Rules R/w. Section 8 of Arbitration and Conciliation Act, 1996, prayed to refer the parties to arbitration for resolution of the disputes.

For Applicant	: Mr.P.R.Raman, Senior Counsel For Mr.C.Seethapathy
For Respondents	: Ms.Bijesh Thomas

ORDER

This Application has been filed by the 1st defendant in the suit taking advantage of Section 8 of the Arbitration and Conciliation Act, 1996, to refer the parties to arbitration for resolution of the disputes.

2.Even before examining the averments made in the affidavit filed in support of the Judges Summons, it would be appropriate to extract the plaint in brief.

3.The plaintiff, C.M.Goyal had filed the suit against his son, Suraj Goyal, the 1st defendant, and against his daughter-in-law / 2nd defendant and against five other defendants seeking a judgment and decree directing the 1st defendant to repay a sum of Rs.25/- Lakhs which according to him was withdrawn by the 1st defendant from his (plaintiff's) account in Bank of India Ltd., Mount Road Branch and also for a preliminary decree directing the 1st defendant to render true and proper account for the business Syndicate Electronics for the previous three years and for a final decree to be passed with respect to the amount due to the plaintiff and also for a declaration against the 1st and 7th defendants that they had unlawfully lodged incorrect statutory returns to the Goods & Service Tax and Income Tax authorities for the two businesses, Conjap Electronic Industries and Syndicate Electronics on behalf of the plaintiff and to direct the 1st and 7th defendants to pay a sum of Rs.9,85,000/- as damages to the plaintiff and also for a declaration that the registration of a Sale Deed dated 12.03.2020 with respect to a property at No.9/10, Krishnappa Chetty Street, Chintadripet, as being null and void and not binding on the plaintiff and for a further permanent injunction restraining the 1st defendant from interfering with the plaintiff's access to the two businesses, Conjap Electronic Industries and Syndicate Electronics and also for a permanent injunction restraining the 1st defendant from operating the bank account in Kotak Mahindra Bank Ltd., in the name of Syndicate Electronics and for permanent injunction restraining the 1st defendant from alienating the property at No.9/10, Krishnappa Chetty Street, Chintadripet, Chennai and also for cost of the suit.

4.A reading of the reliefs would indicate that the plaintiff had joined several causes of action. There is a distinct cause of action against the 1st defendant directing him to repay a sum of Rs.25/- Lakhs which according to the plaintiff had been unlawfully withdrawn from the account of the plaintiff in Bank of India, Mount Road Branch, Chennai. There is a separate relief sought relating to the property at No.9/10, Krishnappa Chetty Street, Chintadripet including seeking a declaration that a Sale Deed with respect to the said property is null and void and for an injunction against the 1st defendant from further alienating the property. There is yet another distinct cause of action relating to the business Syndicate Electronics for which the plaintiff seeks a direction against the 1st defendant to produce accounts for three financial years and for damages against the 1st and 7th defendants for lodging incorrect statutory returns to the Goods & Service Tax and Income Tax Authorities. A further relief is sought restraining the 1st defendant from interfering with the plaintiff's right to access to the two businesses, Conjap Electronic Industries and Syndicate Electronics. A separate relief is also sought restraining the 1st defendant from operating a bank account at Kotak Mahindra Bank Ltd., which is in the name of the Syndicate Electronics.

5.A further break-up of the reliefs would indicate that the plaintiff had sought reliefs surrounding the business Syndicate Electronics and also clubbed the same with distinct causes of action inducted.

6.In the averments made, the plaintiff claimed that he had been trading in electronic parts and accessories since 1957 under the name of Conjap Electronic Industries and in a partnership called Syndicate

Electronics between himself and the 1st defendant. The plaintiff claimed that he had put in the entire capital for the business Syndicate Electronics and specifically averred that the 1st defendant had not contributed any amount to the said business. It was stated that after the death of the wife of the plaintiff, the plaintiff inducted the 1st defendant as a partner in Syndicate Electronics. The plaintiff further claimed that the bank account of Conjab Electronic Industries is in Bank of India and there is also a savings bank account of the plaintiff in the same branch. The bank account of Syndicate Electronics is also at Bank of India.

7.It is contended that in June 2023, the plaintiff came to know that the 1st defendant had opened another bank account in Kotak Mahindra Bank, in the name of Syndicate Electronics without the consent of the plaintiff and the funds from the two businesses of the plaintiff in Bank of India were transferred to the said account at Kotak Mahindra Bank. It was stated that the 1st defendant and the 2nd defendant had purchased movables to the disadvantage of the plaintiff. It was further stated that both the businesses were operating in the property at No.9/10, Krishnappa Chetty Street, Chintadripet. The office premises was tenanted by the plaintiff since 2004. In 2020, the landlord had offered to sell the office premises to the plaintiff. The sale consideration was agreed at Rs.90/- Lakhs. The plaintiff claimed that he had entrusted the entire sale consideration to the 1st defendant to complete the purchase. The plaintiff however, found that taking advantage of his age and illness and solitude, the 1st and 2nd defendants had taken complete control of the two businesses and also of all other assets of the plaintiff. The plaintiff also suffered from fracture in his ribs and was not able to attend to the business activities. The 1st and 2nd defendants prevented the plaintiff from travelling outside and controlled his movements. The plaintiff was able to break free from them in June, 2023. He found that the 1st and 2nd defendants had transferred the funds from the two business to their account.

8.The plaintiff issued a notice on 01.08.2023 to the 1st, 2nd and 5th defendants. A common reply was issued by the said defendants. The plaintiff also found that the 1st defendant had fabricated bills in the name of Conjab Electronic Industries without the knowledge of the plaintiff and caused loss of Rs.76/- Lakhs. He had also filed returns before the statutory authorities without the knowledge and consent of the plaintiff. A fresh account was opened in the name of Syndicate Electronics in

Kotak Mahindra Bank and amounts were diverted to that particular account. It was also found that the amount of Rs.90/- Lakhs which was the sale consideration for the office premises at No.9/10, Krishnappa Chetty Street, Chintadripet, Chennai, was utilized by the 1st defendant for his personal use and the 1st defendant had withdrawn amounts from the business entities and had purchased the office premises in his name. The plaintiff had issued cheques trusting the 1st defendant. It is also stated that the 1st defendant had also taken control of the online access of the bank accounts of the plaintiff and had withdrawn a sum of Rs.25/- Lakhs unlawfully and without authority.

9.It is stated that it was under those circumstances that the suit had been filed clubbing the causes of action into one suit though specific permission for such clubbing the causes of action was not formally granted by the Court.

10.The 1st defendant had filed the application now under the consideration in A.No.689 of 2024 claiming that the business of the Syndicate Electronics was a partnership firm and the partnership deed contained a clause to refer disputes to arbitration. It was therefore contended that since the plaint contained averments relating to the said business and disputes had been raised relating to the said business, the issues should be referred to arbitration.

11.In the affidavit filed in support of the said application, it had been very specifically contended that the partnership deed dated 27.07.2012 contained a clause to refer any dispute between the parties to arbitration. It was stated that the plaintiff had dealt with three entities namely, Conjap Electronic Industries, Syndicate Electronics and Conjap Electronics Pvt. Ltd. It was stated that since the dispute relating to Syndicate Electronics are referable to arbitration and the prayers Nos. 2, 3, 5 and 6 relate to the partnership firm Syndicate Electronics, the plaintiff had erred in invoking the ordinary original jurisdiction of this Court. It was therefore contended that the dispute should be referred to arbitration.

12.A counter has been filed stating that the intention of the 1st defendant was to protract the proceedings and that the 1st defendant lacked bonafide or genuine intent to arbitrate. It was contended that the application is confined to the business Syndicate Electronics and not to all the disputes in the composite suit filed by the plaintiff. It was also stated that the subject matter of the suit is composite and much wider than the restricted subject matter of the proposed arbitration. It was also stated that the arbitration agreement is only between the plaintiff and 1st defendant and the plaintiff had impleaded other defendants also who are not parties to the arbitration. It was also contended that bifurcation of disputes is not permitted. It is also stated that when fraud is alleged in the plaint, the same could not be the subject matter of arbitration. It was also stated that non-signatories like 3, 4 and 7 defendants could not be forced to subject themselves to arbitration. It was therefore contended that the application should be dismissed.

13.Heard arguments advanced by Mr.P.R.Raman, learned Senior Counsel for the applicant and Mr.Bijesh Thomas, learned counsel for the 1st respondent.

14.Mr.P.R.Raman, learned Senior Counsel pointed out the reliefs sought in the plaint and claimed that practically all the reliefs surrounded the business Syndicate Electronics, which was a partnership between the plaintiff and the 1st defendant. The learned Senior Counsel stated that the plaintiff had raised disputes in the running of the partnership firm and then pointed out the partnership deed which provided for resolution of disputes through arbitration. The learned Senior Counsel pointed out that merely because the plaintiff had impleaded the other defendants, the 1st defendant cannot be denied the right to arbitrate the disputes which had arisen in the partnership, Syndicate Electronics. It was therefore contended that the plaintiff had erred in filing the civil suit and that the plaintiff had deliberately included various other relief to avert referral to arbitration, the disputes arising out of the business, Syndicate Electronics. The learned Senior Counsel therefore stated that the application should be allowed and the plaintiff and the 1st defendant should be permitted to resolve the disputes through arbitration. The learned Senior Counsel was of the opinion that other issues which are unrelated could be proceeded for trial in the suit.

15.Mr. Bijesh Thomas learned counsel for the 1st respondent / plaintiff however, disputed the said contentions. According to the learned counsel, the plaintiff had sought substantial several reliefs not only based on the dispute in the firm Syndicate Electronics but also distinct causes of action relating to withdrawal of amounts from the Bank of India and relating to the property at No.9/10, Krishnappa Chetty Street, Chintadripet, Chennai. He contended that a further relief was sought with respect to the account at Kotak Mahindra Bank Limited, wherein, the allegation is that the 1st defendant had fraudulently opened the account in the name of Syndicate Electronics. The learned counsel stated that the plaintiff had specifically alleged fraud on the part of the 1st and 2nd defendants. He contended that a sum of Rs.90/- Lakhs had been handed over for purchase of the office premises at No.9/10, Krishnappa Chetty Street, Chintadripet, Chennai. The 1st defendant had utilized that amount for personal use and had, on the other hand used the cheques issued by the plaintiff to pay the sale consideration and had purchased the property in his name to the detriment and loss of the plaintiff. The learned counsel pointed out that all these facts would imply that the issues will have to be tried in manner known to law and therefore contended that the application should be dismissed.

16.The learned counsel placed reliance on the judgment of the Hon'ble Supreme Court reported in ***(2003) 5 SCC 531, Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and Ors***, wherein, the Hon'ble Supreme Court had held as follows:

"13.Secondly, ***there is no provision in the Act that when the subject matter of the suit includes subject matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject matter of the suit to the arbitrators.***

14.Thirdly, ***there is no provision – as to what is required to be done in a case where some parties to the suit are not parties to the arbitration agreement.*** *As against this, under Section 24 of the Arbitration Act, 1940, some of the parties to a suit could apply that the matters in difference between them be referred to arbitration and the Court may refer the same to the arbitration provided that the same can be separated from the rest of the subject matter of the suit. Section also provided that the suit would continue so far as it related to parties who have not joined in such application.*

15.The relevant language used in Section 8 is-- "in a matter which is the subject matter of an arbitration agreement". Court is required to refer the parties to arbitration. Therefore, the suit should be in respect of 'a matter' which the parties have agreed to refer and which comes within the ambit of arbitration agreement. ***Where, however, a suit is commenced - "as to a matter" which lies outside the arbitration agreement and is also between***

some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. *The word 'a matter' indicates entire subject matter of the suit should be subject to arbitration agreement.*

17.Secondly, ***such bifurcation of suit in two parts, one to be decided by the arbitral tribunal and other to be decided by the civil court would inevitably delay the proceedings.*** *The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums."*

(Emphasis Supplied)

17.The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court reported in ***(2023) 7 SCC 193***, ***Gujarat Composite Limited Vs. A Infrastructure Limited and Ors***., wherein, the Hon'ble Supreme had held as follows:

"17.1. ....the frame of the suit and various other reliefs claimed, ***involving subsequent purchasers too and the allegations of fraud, the dispute cannot be said to be arbitrable at all.*** *.......*

17.2.There being no doubt about non-existence of arbitration agreement in relation to the entire subject-matter of the suit, and ***when the substantive reliefs claimed in the suits fall outsite the arbitration clause in the original licence agreement,*** *the view taken by the High Court* ***does not appear to be suffering from any infirmity*** *or against any principle laid down by this Court."*

(Emphasis Supplied)

18.I have carefully considered the arguments advanced and the materials on record.

19.The present application is confined to the dispute between the plaintiff and the 1st defendant alone. They are father and son. It is the contention of the plaintiff, a senior citizen of advanced age who also suffers from illnesses, that he had started trade in electronic items and accessories in the year 1957 and had slowly built up a creditable business entity in the name of Conjap Electronics which was a sole proprietorship firm. Later he also inducted his son, 1st defendant into the business and formed a partnership, Syndicate Electronics. A partnership deed was entered into between the parties on 27.07.2012. The partnership deed also contained the following clause:

"13.ARBITRATION:

In the event of any dispute between the parties or their legal representatives, either in the conduct of the business or as regards terms of partnership or on dissolution, such dispute will be referred to an arbitrator as agreed to by the parties or in the event of there being no agreement on appointment of such one arbitrator, by arbitrators, one appointed by each of the parties, and decision of such arbitrator and in the absence of consensus between them, the dispute will be referred to an umpire as agreed between them and such umpire's decision will be binding on all parties."

20.The learned Senior Counsel for the 1st defendant / applicant placed strong reliance on the aforementioned clause and contended that since the disputes in the plaint primarily revolve around the business Syndicate Electronics, the disputes should be referred to arbitration.

21.The plaint had been extracted in detail. The primary cause for the plaintiff to institute the suit is not a dispute with respect to the partnership firm Syndicate Electronics but various allegations of fraud against the 1st defendant. The allegation of fraud surround not only the business Syndicate Electronics but also the bank account of another entity Conjap Electronic Industries. It also surrounds fraud, according to the plaintiff, in purchase of office premises where both Conjap Electronic Industries and Syndicate Electronic were functioning at No.9/10, Krishnappa Chetty Street, Chintadripet, Chennai, in the name of the 1st defendant instead of either in the name of the plaintiff or in the name of the business. The underlying factor in the plaint is a serious allegation of fraud.

22.It is trite in law to point out that when allegations of fraud outside the scope of the agreement are asserted by the plaintiff and denied by the defendant then that is an issue to be examined in an adversarial litigation and not through arbitration. The plaintiff must be afforded an opportunity to point out the acts of fraud, according to him, committed by the 1st defendant. When fraud is alleged the dispute moves out of the zone of arbitration. An arbitrator cannot examine the issue where fraud is the allegation and more particularly when the acts of fraud were with respect to activities outside the ambit of the agreement.

23.In the plaint, the instances of the fraud commence with confining the plaintiff to solitary confinement and taking advantage of his age and illness and lack of ability to move around and obtaining access to the online passwords of the bank accounts and withdrawing amounts for personal gain of the 1st and 2nd defendants. It also extended to utilizing cheques issued by the plaintiff in the name of the business to purchase the office premises where the business was running and purchasing the same in the name of the 1st defendant. It also extended to allegations of unlawful withdrawal of a sum of Rs.25/- Lakhs from the individual account of the plaintiff in Bank of India. It also included allegations of submitting unauthorized statutory returns to the Goods & Service Tax and Income Tax Authorities without the consent of the plaintiff. These allegations are outside the scope of the partnership deed.

24.The plaintiff has also sought for injunction restraining the 1st defendant from preventing the access of the plaintiff the businesses Syndicate Electronics and Conjap Electronic Industries. These are reliefs which the arbitrator can never grant. It is only a Civil Court which can examine the relief of injunction when it is based on allegations of fraud and restraint on the basis of fraud.

25.The plaintiff has also alleged fraudulent opening of an account at Kotak Mahindra Bank in the name of Syndicate Electronics. That particular account is not the account of the partnership firm. It may have the same name, but it is an account, according to the plaintiff, opened with malafide intention to siphon and misappropriate the fund from the actual Syndicate Electronic account in Bank of India. These are all issues which again go beyond the concept of arbitration.

26.As very clearly put and held in ***Sukanya Holdings Pvt. Ltd.,*** referred *supra*, when there is multiplicity of causes of action, there cannot be bifurcation of the suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the Civil Court. The only issue with respect to arbitration is the limited aspect of the partnership firm Syndicate Electronics but here the dispute is not between the parties relating to an interpretation of the agreement but a wider dispute of allegation of fraud against one of the partners namely, the 1st defendant, not limited with respect to performance or non-performance of the terms stipulated in the agreement, but going far wider on the personal conduct of the 1st defendant. These allegations takes the disputes away from the purview of arbitration and directly into the fold of the Civil Court.

27.In ***(2021) 4 SCC 713, Avitel Post Studioz Limited and Others Vs. HSBC PI Holdings (Mauritius) Limited***, the Hon'ble Supreme Court had examined when allegations of fraud will be non-arbitrable. It had been held that a two-fold test could be adopted. It was held as follows:

> *"**34.** In a recent judgment reported as Rashid Raza [Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710 : (2019) 4 SCC (Civ) 503] , this Court referred to Sikri, J.'s judgment in Ayyasamy [A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386 : (2017) 1 SCC (Civ) 79] and then held : (Rashid Raza case [Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710 : (2019) 4 SCC (Civ) 503] , SCC p. 712, para 4)*
>
>> *"4. The principles of law laid down in this appeal make a distinction between serious allegations of forgery/fabrication in support of the plea of fraud as opposed to "simple allegations". Two working tests laid down in para 25 are : (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain."*

***35.** After these judgments, it is clear that "serious allegations of fraud" arise only if either of the two tests laid down are satisfied, and not otherwise. The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have been met in cases in which allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or mala fide conduct, thus necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain."*

28.In the instance case, the allegations of fraud, are not with respect to performance or otherwise of the terms in the partnership deed. As a matter of fact, the learned Senior Counsel for the applicant, contended that the partnership itself has dissolved. This would indicate that there is no existing agreement between the plaintiff and the 1st defendant. Therefore, the allegation of fraud being out of purview of the partnership deed, I hold that the allegations of fraud cannot be subject matter of arbitration.

29.I further hold, the 1st defendant has filed this application evidently to protract the proceedings and to avoid the jurisdiction of this Court. The parties had been referred to mediation but that effort failed. There are multiple issues raised in the plaint. Whether the plaintiff had filed an application seeking to join the causes of action or not is a separate aspect. But so far as this particular application is concerned it has to suffer an order of dismissal, as the suit is, as stated in the counter a composite suit. The reliefs cannot be bifurcated. The suit has as its primary basis, the allegations of fraud. The dispute in the partnership is not with respect to the interpretation of the partnership deed or with respect to the non-performance of any of the obligation under the partnership deed but direct allegation of fraud on the conduct of one of the partners.

30.For all these reasons, this Application stands dismissed. No costs.

29.04.2024

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Index : Yes / No
Internet : Yes / No
Speaking order : Yes / No

C.V.KARTHIKEYAN, J,

smv

Pre-delivery order made in

A.No.689 of 2024
in
C.S.No.8 of 2024

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