

24.04.2025
Item no. 2.
Court No.37.
AB

**F.M.A. 293 of 2025
With
CAN 1 of 2025**

**Rudraksh Educational Trust & Others
Vs
Kaushik Mukherjee & Others**

Mr. Prantick Ghosh,
Ms. Sabana Hasin,
Mr. Sourav Guhafor the Appellants.

Mr. Anirban Bose,
Mr. Sourath Dutt,
Mr. Satyajit Senapati,
Mr. Dipanjan Karmakar,
Ms. Atreyee Senapatifor the Respondents.

Dictated by Arijit Banerjee, J.

1. This appeal is directed against an order dated November 7, 2024, passed by the Court of the learned District Judge, North 24 Parganas, in Misc. Case No.44 of 2021 (Trust).
2. Shorn off unnecessary details, the material facts of the case are that the appellants excepting the first appellant and the respondents are trustees of a Trust called “Rudraksh Educational Trust”, which is the first appellant.
3. The respondents herein initiated an action under Section 92 of the Code of Civil Procedure against the appellants herein alleging mismanagement of the affairs of the Trust and claiming declaration, injunction etc.
4. The appellants herein made an application under Section 8 of the Arbitration and Conciliation Act,

1996, contending that the action ought to be stayed and the disputes between the parties should be referred to arbitration in view of existence of an Arbitration Clause in the relevant Trust Deed. The Clause that they rely upon reads as follows:

“9(i) To file suit on behalf of the trust and to refer to arbitration all actions proceedings and disputes touching the trust properties and to compromise and compound the suits filed.”

5. The learned Trial Judge dismissed the application.

Operative portion of the order of the learned Trial Judge reads as follows:

“On perusal of the copy of the Trust Deed, the Court finds that under Clause 9(i) of the same, the trustees have been empowered to file suit on behalf of the Trust and refer the disputes to arbitration against all actions, proceedings and dispute touching the Trust properties, to compromise and to compound the suit filed. On bare perusal of such clause it does not appear that all the disputes and differences arising out of the said Trust Deed is directed to be decided through arbitration and that clause is not at all an arbitration clause. Moreover, the mandate of the Hon’ble Supreme Court clearly and unequivocally states that even if the arbitration clause or agreement is in existence in the Deed of Trust, the disputes relating to the same are not capable of being decided by the arbitrators.

Considering all these aspects, this Court find no merit in the instant application and hence, the same is rejected on contest but without any order as to cost.”

6. Being aggrieved, the trustees, who had applied under Section 8 of the 1996 Act, are before us by way of this appeal.

7. Mr. Ghosh, learned Counsel appearing for the appellants argued that the clause in question is

clearly an Arbitration Clause. The present disputes between the trustees can well be resolved through arbitration in terms of that clause. He says that all disputes are arbitrable excepting the ones indicated by the Hon'ble Supreme Court at paragraph 76 of the judgment in the case of **Vidya Drolia & Others Vs Durga Trading Corporation** reported at **(2021) 2 SCC 1**. The said paragraph reads as follows:

"76. In view of the above discussion, we would like to propound a fourfold test for determining when the subject matter of a dispute in an arbitration agreement is not arbitrable:

76.1.(1) When cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

76.2.(2) When cause of action and subject matter of the dispute affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable.

76.3.(3) When cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.

76.4.(4) When the subject matter of the dispute is expressly or by necessary implication non arbitrable as per mandatory statute(s).

76.5. These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject matter is non arbitrable. Only when the answer is affirmative that the subject-matter of the dispute would be non arbitrable.

76.6. However, the aforesaid principles have to be applied with care and caution as observed in Olympus Superstructures (P) Ltd. (SCC p.669, para 35)

“35. Reference is made there to certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, which cannot be referred to arbitration. It has, however, been held that if in respect of facts relating to a criminal matter, say, physical injury, if there is a right to damages for personal injury, then such a dispute can be referred to arbitration. Similarly, it has been held that a husband and a wife may refer to arbitration the terms on which they shall separate, because they can make a valid agreement between themselves on that matter.”

8. Mr. Ghosh argued that in view of the said decision, the learned Judge clearly fell in error in dismissing the application under Section 8 of the 1996 Act.

9. We have not called upon learned Counsel for the respondents to argue.

10. We have carefully considered the clause in the Trust Deed that the appellants herein rely upon. That clause authorizes the trustees to initiate action on behalf of the Trust including arbitration proceedings. It empowers the trustees to protect the interest of the Trust including the Trust Properties. That clause does not contemplate resolution of disputes inter se the trustees.

11. Therefore, in our considered opinion, the learned Trial Judge committed no error in rejecting the application under Section 8 of the 1996 Act for reference of the disputes between the trustees to arbitration.

12. The Supreme Court decision relied upon by the appellants is not applicable to the facts of this case. In that decision what is indicated is even where there is in fact an Arbitration Clause, notwithstanding the existence thereof, certain disputes will not be arbitrable. In the present case, there is no Arbitration Clause in the Trust Deed for resolution of disputes between the trustees.
13. In view of the aforesaid, this appeal fails and the same is hereby dismissed along with the connected application.
14. There will be no order as to costs.
15. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Om Narayan Rai, J.)

(Arijit Banerjee, J.)