HC-KAR
NC: 2026:KHC:64461
WP No. 13076 of 2024
CNR: KAHC010273862024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

WRIT PETITION NO.13076 OF 2024 (GM-CPC)

BETWEEN:

1. M/S. BHADRA LANDMARKS PVT LTD.,
HAVING ITS OFFICE AT NO.59/4
BHADRA, FIRST FLOOR, MARKET ROAD
BASAVANAGUDI, BENGLAUR-560004.

A COMPANY INCORPORATED UNDER
THE COMPANIES ACT 1956
REP. BY ITS MANAGING DIRECTOR
SARVESHAA S.B.

...PETITIONER

(BY SRI. KISHAN G.S. ADV.,)

AND:

1. SMT. S. SARVAMANGALA
W/O LATE U.K. SHADAKSHARA
AGED ABOUT 78 YEARS.

2. SMT. INDUMATHI SIVAPRASAD
W/O SIVA PRASAD
D/O LATE U K SHADAKSHARA
AGED ABOUT 60 YEARS.

BOTH R/AT NO.152, OLD MADRAS ROAD
HALASURU, BENGALURU-560008.

...RESPONDENTS

(BY SMT. PRIYA KALA, ADV., FOR
SRI. GEORGE JOSEPH, ADV., FOR R1 & R2)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DTD 23.04.2024 PASSED ON IA NO.3 I.E THE APPLICATION

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FILED UNDER SEC 8 OF THE ARBITRATION AND CONCILIATION ACT, 1996 PASSED BY THE HON'BLE VIII ADDL. CITY CIVIL AND SESSIONS JUDGE (CCH-15) AT BENGALURU IN OS NO.5189/2019 (ANNEXURE-K) & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

ORAL ORDER

The petitioner-plaintiff has filed this writ petition challenging the order dated 23.04.2024 passed by the VIII Additional City Civil and Sessions Judge (CCH-15), Bengaluru (hereinafter referred to as the 'Trial Court') in O.S.No.5189/2019 on I.A.No.3 filed by the respondents-defendants under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act'), whereby the application came to be allowed and the parties were referred to arbitration.

2. The parties are referred to as per their ranking before the Trial Court.

3. The brief facts leading to the filing of this writ petition are as follows:

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The plaintiff is a registered company incorporated under the provisions of the Companies Act and is engaged in the business of construction of residential apartments. The plaintiff entered into a Joint Development Agreement (for short, 'JDA'), dated 21.12.2017 with the defendants vide Annexure-B. When the defendants issued a notice seeking cancellation of the JDA, the plaintiff instituted a suit in O.S.No.5189/2019 before the Trial Court seeking reliefs of mandatory injunction and other consequential reliefs.

4. Upon service of summons, the second defendant filed a written statement on 31.01.2020. Subsequently, on 07.01.2021, the defendants filed I.A.No.3 under Section 8 of the Act, seeking reference of the disputes to arbitration. The Trial Court, by the impugned order dated 23.04.2024, allowed the said application. Aggrieved by the same, the petitioner-plaintiff is before this Court.

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5. The learned counsel appearing for the petitioner, assailing the impugned order, would raise the following contentions:

(i) Firstly, it is contended that an application under Section 8 of the Act is required to be filed before the submission of the first statement on the substance of the dispute. In the present case, the defendants filed their written statement on 31.01.2020 and, thereafter, filed the application under Section 8 of the Act only on 07.01.2021. Therefore, the defendants, having submitted their first statement on the substance of the dispute before the Civil Court, were precluded from subsequently seeking reference of the dispute to arbitration. The impugned order, having been passed contrary to the mandate of Section 8 of the Act, is unsustainable in law. In support of the said contention, learned counsel places reliance on the decision of this Court in ***Ramakrishna Theatre Limited, represented by its Chairman, Udupi v. M/s.***

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***General Investments and Commercial Corporation Limited, represented by its Director, Udupi*,** reported in **ILR 2003 KAR 3463,** and submits that an application under Section 8 of the Act filed after filing of the written statement is not maintainable.

(ii) Secondly, it is contended that the object of referring the dispute to arbitration is to ensure expeditious adjudication of the disputes between the parties. In view of the establishment of Commercial Courts under the Commercial Courts Act, 2015, the suit itself can be adjudicated within the timelines prescribed under the said enactment. Therefore, no useful purpose would be served by referring the matter to arbitration. On these grounds, the learned counsel seeks interference with the impugned order.

6. Per contra, the learned counsel appearing for the respondents-defendants would contend as follows:

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(i) Firstly, it is submitted that the defendants, immediately upon entering appearance, filed their written statement on 31.01.2020. In the written statement itself, they specifically raised a plea regarding the existence of an arbitration clause in the JDA and contended that the dispute was required to be resolved through arbitration. Therefore, the defendants had, at the earliest opportunity, expressly objected to the jurisdiction of the Civil Court and had not submitted to its jurisdiction.

(ii) Secondly, it is contended that, after filing of the written statement, no effective proceedings took place before the Trial Court on account of the COVID-19 pandemic and the consequential nationwide lockdown. The proceedings were resumed only on 07.01.2021, and on the very first date of reopening, the defendants filed the application under Section 8 of the Act. Therefore, there was neither any undue delay nor any waiver of their right to seek reference of the dispute to arbitration. In support

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of the said contentions, learned counsel places reliance on the decision of the Division Bench of the Delhi High Court in ***Sharad P. Jagtiani v. M/s. Edelweiss Securities Ltd.,*** reported in **2014 SCC OnLine Del 4015;** the decision of the learned Single Judge of the Delhi High Court in ***Madhu Sudan Sharma and Others v. Omaxe Ltd.,*** reported in **2023 SCC OnLine Del 7136;** and the decision of the Division Bench of this Court in ***Pricewaterhouse Coopers Service Delivery Centre (Bangalore) Private Limited,*** reported in **2020 SCC OnLine Kar 3434**. Accordingly, it is submitted that, in the absence of any conduct indicating submission to the jurisdiction of the Civil Court, the defendants cannot be said to have waived their right to invoke the arbitration clause. Hence, the learned counsel seeks dismissal of the writ petition.

7. I have heard the learned counsel for the parties and perused the writ petition papers.

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8. It is not in dispute that the parties have entered into a Joint Development Agreement on 21.12.2017. It is also not in dispute that there is an arbitration clause in the Joint Development Agreement. The plaintiff filed a suit for mandatory injunction and other reliefs. The suit summons were served and first defendant appeared on 27.08.2019 and the second defendant on 16.10.2019. The written statement was filed on 31.01.2020. In the written statement, the defendants have specifically taken a contention that the civil court has no jurisdiction to try the suit as the Joint Development Agreement clearly stated that the dispute shall be resolved by way of arbitration. The relevant paragraph 2 is extracted below:

> *"2. That the suit filed by the plaintiff is false, frivolous and vexatious and the same is not maintainable in law or on facts of the case and is hence liable to be dismissed in limine. The averments indicate that the suit filed is only to harass the above mentioned defendants and should be dismissed at the threshold without giving any credence to the same and the suit should be dismissed on this ground*

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alone. It is further submitted that this Hon'ble court has no jurisdiction to try the said matter as the Joint development agreement clearly states that in the event of any dispute the dispute shall be resolved by way of arbitration."

9. The aforesaid pleading assumes significance. It demonstrates that the defendants, at the earliest stage of the proceedings, had expressly brought to the notice of the Trial Court the existence of the arbitration agreement and had specifically contended that the disputes were required to be referred to arbitration. Thus, the defendants had not, by their conduct, unequivocally accepted the jurisdiction of the Civil Court or abandoned their right to invoke the arbitration agreement.

10. In this regard, the Division Bench of the Delhi High Court, in ***Sharad P. Jagtiani*** **(supra),** has considered a similar issue and examined the circumstances in which a party can be said to have submitted to the jurisdiction of the Civil Court and waived

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its right to seek reference to arbitration. The relevant paragraphs of the said judgment are extracted below:

> *"14. We simply need to highlight the phrase 'not later than when submitting his first statement on the substance of the dispute' in sub-Section (1) of Section 8. The requirement is to bring to the notice of the Court at a point not later than when submitting the first statement on the substance of the dispute that there exists an arbitration clause between the parties and that the subject matter of the action brought before the Court by way of the suit falls within the ambit of the arbitration clause.*
>
> *15. Section 8 does not specify the manner in which the party has to submit its first statement on the substance of the dispute, and normally with respect to a suit, the first statement on the substance of the dispute by the defendant would be the written statement. Thus, if in the written statement filed it is brought to the notice of the Court that there exists an arbitration agreement between the parties which embraces the subject matter of the suit there would complete compliance with the mandate of the law and the Court would be obliged to refer the parties to arbitration if the plea in the written statement is made good.*

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16. On the facts of the instant case, it may be true that in the written statement filed a specific prayer has not been made to refer the parties to arbitration, but we have highlighted hereinabove that in the written statement filed a preliminary objection has been taken that the suit is barred in view of the arbitration agreement. The written statement filed is with strings attached by challenging the maintainability of the suit in view of the arbitration clause and therefore in such circumstance the said objection taken by Edelweiss contained in the written statement could be treated as an application under Section 8 of the Arbitration and Conciliation Act, 1996.

17. It is trite that it is the substance of a matter contained in a document which matters and not the form thereof.

18. For three reasons, the appeal has to be dismissed. Firstly the arbitration agreement in the instant case being the result of a statute there being no estoppel against the statute, required by law to be held; secondly the view taken by us hereinabove relating to the interpretation of Section 8 of the Arbitration and Conciliation Act, 1996; and thirdly Section 89 of the Code of Civil Procedure, 1908 which empowers a Court to refer the parties to arbitration if in the opinion of the Court appears that there exists

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element of a settlement which may be acceptable to the parties. There cannot be a better case where such element exists than a case where the parties themselves have agreed for referring the matter to arbitration at the time of entering into contract itself."

11. Following the aforesaid decision, the learned Single Judge of the Delhi High Court, in ***Madhu Sudan Sharma*** **(supra),** has reiterated that where a party has specifically raised the objection regarding existence of an arbitration agreement in its written statement and has challenged the maintainability of the civil proceedings on that ground, such conduct is relevant in determining whether the party has submitted to the jurisdiction of the Civil Court or waived its right to seek arbitration.

12. The principles emerging from the aforesaid decisions are applicable to the facts of the present case. In the written statement itself, the defendants had specifically pleaded that the JDA contained an arbitration clause and that the disputes between the parties were required to be resolved through arbitration. Therefore, the

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subsequent filing of the application under Section 8 of the Act, in the peculiar facts and circumstances of the case, cannot be considered in isolation, without examining the specific objection already raised by the defendants in their written statement.

13. It is also relevant to notice the sequence of events after filing of the written statement. The written statement was filed on 31.01.2020. On 14.02.2020, the matter was referred to mediation and was subsequently posted to 16.04.2020. However, on account of the nationwide lockdown and disruption of judicial proceedings due to the COVID-19 pandemic, no effective proceedings could take place before the Trial Court. The matter was adjourned from time to time and no substantive proceedings were undertaken until 07.01.2021.

14. On 07.01.2021, being the first date on which the matter was taken up after the disruption of regular Court proceedings, the defendants filed I.A.No.3 under Section 8

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of the Act seeking reference of the disputes to arbitration. Thus, the intervening period between filing of the written statement and filing of the application is sufficiently explained by the circumstances prevailing during the COVID-19 pandemic. There is nothing on record to indicate that, during the said period, the defendants had taken any steps in the suit amounting to an unequivocal submission to the jurisdiction of the Civil Court or abandonment of their right to invoke the arbitration clause.

15. In the light of the specific objection raised in the written statement, the absence of any effective proceedings before the Trial Court during the intervening period and the filing of the application on the first date when the matter was taken up thereafter, this Court is of the considered view that it cannot be held that the defendants have waived their right to seek reference of the disputes to arbitration.

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16. Further, the contention of the learned counsel for the petitioner that, in view of the establishment of Commercial Courts under the Commercial Courts Act, 2015, the suit itself could be disposed of expeditiously and, therefore, reference to arbitration would serve no useful purpose, cannot be accepted. Once the parties have voluntarily entered into an agreement containing an arbitration clause and the requirements of Section 8 of the Act are satisfied, the judicial authority is required to give effect to the arbitration agreement in accordance with law. The mere availability of an alternative adjudicatory forum or the possibility of expeditious disposal of the suit before a Commercial Court cannot, by itself, constitute a ground to decline reference to arbitration.

17. In view of the foregoing discussion, this Court finds that the defendants had specifically invoked the arbitration clause at the earliest stage by raising an objection in their written statement. Further, the delay in

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filing the application under Section 8 of the Act stands explained by the circumstances arising out of the COVID-19 pandemic and the absence of effective proceedings before the Trial Court during the relevant period.

18. Therefore, this Court finds no illegality or infirmity in the order dated 23.04.2024 passed by the Trial Court on I.A.No.3 in O.S.No.5189/2019 warranting interference in exercise of the writ jurisdiction of this Court.

Accordingly, the writ petition is dismissed.

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(H.T. NARENDRA PRASAD)
JUDGE

CM
List No.: 1 Sl No.: 79