



ORDER

The plaintiff in OS No.27293 of 2011 on the file of learned XXVI Additional City Civil and Sessions Judge, (CCH No.20), Mayohall, Bangalore, is seeking grant of writ of certiorari to quash the order dated 25.11.2017 allowing IA No.10 filed by respondent No.1 to refer the dispute to the Arbitrator under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, hereinafter referred to as 'Act').

2. Heard Sri Imran Pasha, learned counsel for the petitioner; Sri Sridhar Chakravarthi, learned counsel for the respondent No.1; Sri H.C.Sundaresh, learned counsel for the respondent No.3 and Sri Omkar Kambi, learned counsel for the respondent No.4 and perused the record.

3. Learned counsel for the petitioner contended that the petitioner as a plaintiff filed the suit in OS No.27293 of 2011, seeking mandatory injunction against defendant No.3, to direct him to deposit the amount in Escrow account held with defendant No.5. The defendants



before the Trial Court have filed their written statement. When the matter was posted for plaintiff's evidence, defendant No.1 filed an application-IA No.10 under Section 8 of the Act, seeking to refer the matter to the Arbitrator and dismiss the suit. Plaintiff raised several objections by filing the objection statement and contended that defendant Nos.3 to 5 are not the parties to the Joint Venture Agreement as the same was entered into only between plaintiff and defendant Nos.1 and 2. Relief sought by the plaintiff against defendant Nos.3 and 5 cannot be granted by the Arbitrator. It is also contended that cause of action arose in favour of the plaintiff cannot be split up against different defendants. It is the contention taken by the plaintiff that jurisdiction of the Civil court is not barred to seek such a relief of mandatory and permanent injunction. It is specifically contended that when defendant Nos.3 to 5 are not parties to the Joint Venture Agreement, the matter cannot be referred to the Arbitrator. None of these objections were considered by the Trial Court, but it proceeded to allow the application casually by referring to



the Arbitration Clause found in the agreement and to dismiss the suit. Being aggrieved by the same, the petitioner is before this court.

4. Learned counsel for the petitioner further submits that, when defendant Nos.3 to 5 are not parties to the agreement and when the plaintiff has made out a specific cause of action against all the defendants, the matter could not have referred to the Arbitrator. The suit is of the year 2011 and defendants have filed written statement and the matter was posted for evidence. At that time, the Trial Court could not have dismissed the suit. It is not the opinion of the Trial Court that, the suit of the plaintiff is not maintainable before the Civil Court. Under these circumstances, he prays for quashing the impugned order by allowing the petition.

5. Per contra, Learned counsel for the respondents opposing the petition submitted that, admittedly, there was Joint Venture Agreement entered into between plaintiff and defendant Nos.1 and 2. Parties have agreed



to refer the dispute to the Arbitrator under the provisions of Act. The Act does not bar inclusion of a third party for determination of the claim of each of the parties before the Arbitrator. The specific stand in that regard was taken by the defendant No.1 while filing the written statement, however, later filed the application under Section 8 of the Act. The Trial court considered all these facts and circumstances and proceeded to pass the impugned order. There is no illegality and perversity in the order passed by the Trial Court. Hence, he prays for dismissal of the petition.

6. Learned counsel for the respondent No.1 places reliance on the decision of the Hon'ble Supreme Court in the case of ***Oil and Natural Gas Corporation Ltd. and another vs. Discovery Enterprises Pvt. Ltd. and another***¹ and contended that, even a third party to the agreement can be impleaded as party before the Arbitrator

¹ ***AIR 2022 SC 2080***



and there is no bar for referring the dispute to the Arbitrator.

7. Further, learned counsel for the respondents places reliance on the decision of the Co-ordinate Bench of Delhi High Court in ***Vistrat Real Estates Pvt Ltd., vs. Asian Hotels North Limited***² and submits that, in Domestic Arbitration, even when the third party is not the signatory to the Arbitration Agreement, he can be joined in the arbitration. Accordingly, prays for dismissal of the petition.

8. The petitioner as plaintiff has filed suit seeking permanent injunction and also for mandatory injunction against the defendant No.3 to perform the terms of the letter of undertaking dated 11.07.2008 and directing to credit all the payments which are to be released to the defendant No.1 to the Escrow account held with defendant No.5. It also sought for perpetual injunction against the

² ***ARB.P.No.1124 of 2021***



defendant No.1 from diverting the amount released to it by defendant No.3 to any account other than Escrow account maintained with defendant No.5. It also sought for perpetual injunction against defendant No.5 from alienating the suit schedule property till such time the payments are released by the defendants 3 and 4, who inturn have undertaken to credit all payments released to it by defendant No.1 directly to the Escrow account of defendant No.5.

9. Admittedly, defendant No.1 entered into a Joint Venture Agreement with the plaintiff and defendant No.2. It is also not in dispute that neither defendant No.3 and nor defendant Nos.4 and 5 are the parties to the said Joint Venture Agreement. Even though learned counsel for the responent No.1 referred to the agreement dated 25.02.2008 produced as per Annexure-H and same was entered into between defendant No.1 and defendant No.5, for which, neither the plaintiff nor defendant Nos.3 and 4 are parties.



10. The Joint Venture Agreement dated 25.02.2008 (Annexure-G) was entered into between the plaintiff and defendant Nos. 1 and 2. Clause VIII refers to the Arbitration and it reads as under:

"Any dispute inters-se among the parties that may arise under this Joint Venture Agreement shall be settled Mutually alternatively by appointment of an Arbitrator under the Provisions of Arbitration and Reconciliation Act."

(emphasis supplied)

This Clause makes it clear that only the dispute that arise interse between the parties are agreed to be settled by referring it to the Arbitrator.

11. Learned counsel for the respondents places reliance on the decision of the Hon'ble Supreme Court in the case of ***Oil and Natural Gas Corporation Ltd.*** (supra), wherein the facts and circumstances of the case are entirely different. The parties to the agreement have referred the dispute to the Arbitrator and Arbitrator had even passed an order. In the appeal under Section 37 of



the Act, the contention was raised that the appellant who instituted the appeal against the interim award passed by the Arbitrator was not a party to the Arbitration Agreement and he must be deleted from array of parties. The Hon'ble Supreme Court considered the rival contentions and held that, signed and written agreement to settle the dispute either present or future to the Arbitration, does not exclude the possibility of Arbitration Agreement binding the third party, it is held that the non-signatory is bound by the operation of the 'group of companies' doctrine as well as, by operation of general rules of private law, principally on assignment, agency, and succession. But in the present case, it is not the case. Therefore, I do not find any reason to apply the dictum laid down by the Hon'ble Supreme Court in the said case.

12. In the judgment relied upon by the learned counsel for the respondents in the case of ***Vistrat Real Estates*** (supra), the Co-ordinate Bench of Delhi High Court referred to the decision of the Hon'ble Supreme



Court in the case of ***Chrolo Controls India Private Ltd., vs. Severn Trent Water Purification Inc. and Others***³

which was basically an international arbitration referring to Section 45 of the Act and held that even third parties who are not signatories to the arbitration agreement can be joined in the arbitration. On facts of the case, before Delhi High Court, the petitioner who initiated the arbitration proceedings contended that, the petitioner had transferred and assigned all rights and title in the premises to the IndusInd Bank Limited along with perpetual right to use the car parking area and he sought for recovery of the security deposit of Rs.15 crores deposited by the petitioner pursuant to the security deposit agreement entered into between the petitioner and the respondent. In terms of the Refundable Security Deposit, the agreement which provides for arbitration, the petitioner in that case had invoked arbitration, which was resisted by the other party. The court held that, since the petitioner had invoked

³ ***(2013) 1 SCC 641,***



the provisions of Security Deposit Agreement, the party who is not a signatory to the said agreement could join in arbitration.

13. In the present case, the plaintiff has already filed suit before the Civil Court against the defendant Nos.1 to 5, having specific cause of action against each one of them. When admittedly the defendant Nos.3 to 5 are not parties to the arbitration agreement, the Court cannot direct them to be parties to the arbitration proceedings as per the terms of the Joint Venture Agreement entered into between the plaintiff and defendant Nos.1 and 2.

14. The plaintiff is seeking mandatory injunction against the defendant No.3 and permanent injunction against the defendant No.1 and 5. Cause of action alleged by the plaintiff is against the all defendants and the same cannot be split up for the purpose referring the dispute to the Arbitrator on the basis of Clause VIII in the Joint Venture Agreement entered into between defendants 1



and 2 and plaintiff. When defendants 3 to 5, against whom the plaintiff is seeking relief are not parties to the Joint Venture Agreement, it cannot be said that the dispute is to be arbitrated by referring to Arbitrator. The jurisdiction of the Civil Court under Section 9 of the CPC is not barred when there is no Arbitration Agreement between the parties to the litigation. Hence, I am of the opinion that, when Section 7 of the Act, refers to "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them, I do not find any reason to hold that Joint Venture Agreement between plaintiff and defendant Nos.1 and 2 to bind defendants 3 to 5, who are not parties to the agreement. Under such circumstances, the Trial Court could not have allowed the application to refer the dispute to the Arbitrator.

15. I have gone through the impugned order passed by the Trial Court. The Trial Court has passed a cryptic order without considering the contentions of the



parties including the objections raised on application-IA No.10. Therefore, impugned order suffers from legality and perversity, which calls for interference of this Court. Accordingly, I pass the following:

ORDER

- i) Writ Petition is ***allowed***;
- ii) Order dated 25.11.2017 passed on IA No.10 in OS NO. 27293 of 2011 by the XXVI Additional City Civil and Sessions Judge, (CCH No.20), Mayohall, Bangalore is set aside. As a result the suit is restored on file.
- iii) The suit is of the year 2011. Therefore, the Trial Court is directed to expedite the matter and dispose of the same, in a time bound manner with the co-operation of both the parties.

**Sd/-
JUDGE**

SB
List No.: 1 Sl No.: 3