



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JULY, 2024

PRESENT

THE HON'BLE MRS JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

COMMERCIAL APPEAL NO. 189 OF 2024

BETWEEN:

M/S AKSHAYA PRIVATE LIMITED,
REPRESENTED BY ITS
CHIEF EXECUTIVE OFFICER J RAVI,
OFFICE AT 7TH FLOOR, 117/1,
L B ROAD, ADYAR,
CHENNAI - 600020.
MOBILE NO. 9791501188,
(RAM GANESH) EMAIL ID
RAMGANESG@AKSHAY.COM

...APPELLANT

(BY SRI HARSH GUPTA, ADVOCATE FOR
MS. MANEESHA KONGOVI, ADVOCATE)

AND:

M/S S P SAI TECHNOLOGIES
REPRESENTED BY ITS
AUTHORISED SIGNATORY,
SRI UMESH MALICK,
AGED ABOUT 50 YEARS,
S/O NABAKISHORE MALLICK,

OFFICE ADDRESS:

AMRUTHA MAPLE, OPP TO HOUSE 4TH CROSS,
NEAR AYAPPA TEMPLE,
BELLATHUR, KADUGODI,
BANGALORE - 560067, MOBILE NO. 9741929093





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...RESPONDENT

(BY SRI JAGANNATH PRASAD UDGATA, ADVOCATE (ABSENT))

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1A) OF THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT, 2015 READ WITH SECTION 37(1)(b) OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO:

1. CALL FOR LOWER COURT RECORDS IN I.A.NO.1 OF 2024 IN COMM O.S.NO.1474 OF 2023, FILED BEFORE THE HON'BLE COURT OF THE LD. LXXXV ADDL. CITY CIVIL AND SESSIONS JUDGE AT BENGALURU (CCH-86).

2. ALLOW THE PRESENT APPEAL.

3. CONSEQUENTLY, SET ASIDE THE ORDER DATED 18.04.2024 PASSED BY THE HON'BLE COURT OF THE LD. LXXXV ADDL. CITY CIVIL AND SESSIONS JUDGE AT BENGALURU IN I.A.NO.1 OF 2024 IN COM.O.S.NO.1474 OF 2023 (ANNEXURE-A) AND REFER THE PARTIES TO ARBITRATION UNDER SECTION 8 OF THE ARBITRATION AND CONCILIATION ACT, 1996 AND ETC.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS JUSTICE ANU SIVARAMAN
AND
HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE)

1. Heard learned counsel appearing for the appellant.

None appears for the respondent.



2. This matter was heard on 15.07.2024. Awaiting appearance of the learned counsel for the respondent, the matter was listed today. Again there is no appearance on behalf of the respondent.

3. This appeal is arising from the order rejecting Section 8 application under the Arbitration and Conciliation Act, 1996 (Hereinafter referred to as the 'Act, 1996' for short).

4. Plaintiff had filed a suit for recovery of money. The defendant contested the jurisdiction of the Court by filing an application under Section 8 to refer the matter to the arbitration. To the said application, respondent filed objections. The respondent took a stand that the matter between the parties is settled and in terms of the settlement, the defendant has agreed to pay a certain sum of money and there is no arbitrable dispute between them. The Trial Court has concluded that the dispute between the parties is settled and what is brought before the Court is plaintiff's right to enforce the settlement and rejected the application to refer the matter to be resolved through arbitration.



5. Learned counsel appearing for the appellant would submit that there is a valid arbitration agreement between the parties where the parties had agreed to resolve the dispute through arbitration. It is his further submission that dispute is not settled as contended by the defendant and no document is placed before the Court to show that the dispute is settled. The Trial Court after going through the Statement of Objections and the arbitration agreement has concluded that the arbitration clause also provides for an amicable settlement of dispute between the parties. The Trial Court also held that the respondent/plaintiff has made a claim that the dispute is settled and the defendant has offered to pay certain amount to the plaintiff, and accordingly concluded that the matter cannot be referred to arbitration as the suit is filed to enforce the agreement creating new obligation.

6. Learned counsel appearing for the appellant would contend that the findings of the Trial Court is erroneous inasmuch as the dispute is not yet settled. It is his further submission that assuming that the matter is settled and some amount is agreed to be paid by one party to another, and if that amount is not paid, then, such dispute has to be resolved through arbitration as the



alleged offer to make payment is also arising from the original contract which contains an arbitration clause. He would also submit that arbitration clause is not cancelled in terms of the alleged settlement arrived by the respondent.

7. Learned counsel would also refer to the latest judgment of the Hon'ble Apex Court in **SBI GENERAL INSURANCE CO. LTD. vs KRISH SPINNING** reported in 2024 SCC Online SC 1754.

8. Admittedly, there is a valid arbitration clause between the appellant and the respondent. Though the Trial Court has observed that the defendant has not signed the arbitration agreement, it is to be noticed that the plaintiff is not disputing the agreement and the defendant is admitting the agreement which contains an arbitration clause.

9. In the judgment cited, the Hon'ble Apex Court has held that even if the defence of accord and satisfaction is raised by one of the parties and if the parties are bound by the arbitration clause in an agreement which came into existence earlier to accord and satisfaction alleged, then the claim relating to accord



and satisfaction raised by the other party is to be resolved by the Arbitral Tribunal.

10. This Court is of the view that the ratio laid down in the said judgment applies to the present case. The alleged assurance by the defendant to pay certain amount to the plaintiff is arising from the original contract between the parties which contains an arbitration clause. The respondent though claims that the dispute is settled, has not placed anything on record to show that the dispute is settled between the parties by cancelling earlier arbitration agreement. If the appellant had agreed to pay a certain sum of money, to the respondent, then the right to enforce the said obligation emanating from the settlement, has to be through arbitration as the alleged settlement is in respect of a transaction arising from the first contract which contained an arbitration clause, and nothing is placed on record to show that the arbitration agreement is cancelled.

11. For the aforementioned reasons, the impugned order is set-aside.



12. Hence, the following:

ORDER

- (i) Appeal is allowed.
- (ii) Section 8 application is allowed and it is for the respondent to seek arbitration in the manner known to law. Consequently, suit is dismissed.
- (iii) The time spent in prosecuting the suit and this appeal is to be excluded in computing the limitation in case the plaintiff/respondent invokes the provisions of Act, 1996 to seek resolution of dispute through arbitration.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(ANANT RAMANATH HEGDE)
JUDGE**