

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

MISCELLANEOUS FIRST APPEAL NO.6586 OF 2024 (AA)

BETWEEN:

1 . SRI R. NATARAJ
AGED ABOUT 62 YEARS
S/O LATE M.K. RADHAKRISHNA REDDY
R/AT NO.35, RBD LAYOUT
NEAR WIPRO CORPORATE OFFICE
SARJAPURA MAIN ROAD
BANGALORE-560035. ... APPELLANT

(BY SRI VIJAY SIMHA M.D., ADVOCATE)

AND:

1 . SMT. R. PUNITHA
AGED ABOUT 47 YEARS
D/O LATE M.K. RADHAKRISHNA REDDY
R/AT NO.143,
RAINBOW RESIDENCY LAYOUT
OPPOSITE WIPRO CORPORATE OFFICE
SARJAPURA MAIN ROAD
BANGALORE-560035.

2 . SRI. R. SOUNDARAJAN
AGED ABOUT 58 YEARS
S/O LATE M.K. RADHAKRISHNA REDDY
R/AT NO.113 AND 114, GREEN VILLAS,
OPPOSITE TO WIPRO CORPORATE OFFICE
SARJAPURA MAIN ROAD
BANGALORE-560035.

- 3 . M/S. ASTRO LAND DEVELOPERS
A PARTNERSHIP FIRM HAVING
REGISTERED OFFICE AT NO.117/1,
RAKSHITHA COMPLEX, 1ST FLOOR,
NEAR WIPRO CORPORATE OFFICE
SARJAPURA MAIN ROAD
BANGALORE-560035
REPRESENTED BY ITS PARTNERS
SMT. R.PUNITHA AND
SRI. R.SOUNDARAJAN.

- 4 . SRI. R. RAVICHANDRA
MAJOR IN AGE
S/O LATE M.K. RADHAKRISHNA REDDY
R/AT NO.35, RBD LAYOUT,
NEAR WIPRO CORPORATE OFFICE
SARJAPURA MAIN ROAD,
BANGALORE-560035.

... RESPONDENTS

(BY SRI KESHAVA BHAT S.N., ADVOCATE FOR R1 & R3)

THIS M.F.A. IS FILED UNDER SECTION 37(1)(c) OF THE ARBITRATION AND CONCILIATION ACT, 1996, AGAINST THE JUDGMENT DATED 26.07.2024 PASSED IN O.S.NO.1705/2023 ON THE FILE OF THE VII ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, BENGALURU RURAL BENGALURU, DISMISSING THE IA FILED UNDER SECTION 8 OF ARBITRATION AND CONCILIATION ACT, R/W SECTION 9 OF CPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 14.11.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: Hon'ble'BLE MR JUSTICE H.P.SANDESH

CAV JUDGMENT

Heard the learned counsel for the appellant and learned counsel for respondent Nos.1 and 3.

2. This miscellaneous first appeal is filed praying this Court to set aside the order dated 26.07.2024 passed on I.A. filed under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') read with Section 9 of CPC in O.S.No.1705/2023 on the file of the VII Additional Senior Civil and JMFC, Bengaluru Rural District, Bengaluru and allow the application filed under Section 8 of the Act and grant such other relief.

3. In the suit in O.S.No.1705/2023, the respondents have sought for the relief to declare that "deed of arrangement and confirmation" dated 29.12.2021 in Book No.1 as null and void for want of majority decision of partners of plaintiff No.3, consequently, declare that schedule property vested to the absolute ownership of plaintiff No.3, so as to ensure all the partners exercising their equal rights on the said capital asset

and also consequently direct the Sub-Registrar, Bidarahalli to cancel the entry made in Book No.1 and pass an order of injunction prohibiting the defendant No.1 from developing, alienating or otherwise creating any encumbrances on the schedule property.

4. In the said suit, appellant filed the application under Section 8 of the Act seeking for a direction to direct the parties to appear and adjudicate their matter before arbitration as there is an arbitration agreement between the parties. It is contended that he is the partner of plaintiff No.3 and filed written statement that may be read as part and parcel of the affidavit. It is contended that the plaintiff Nos.1 and 2 along with defendant Nos.1 and 2 are the partners of plaintiff No.3 as per the registered deed of admission of new partner and reconstitution of partnership deed dated 12.12.2022. As per Clause No.15 of the said deed, it is clearly stated that, in case of any dispute between the parties in respect of any matter relating to or arising out of the deed, same shall be referred to arbitration of single arbitrator to be appointed by their mutual consent. The

plaintiffs without invoking/complying to the above agreement have filed the present suit which is not maintainable.

5. On the other hand, the plaintiffs filed objections to the application stating that the said application is filed to drag the proceedings and the same is devoid of merits. It is also contended that defendant No.1 has conceded to the jurisdiction of this Court by filing written statement. The defendant No.1 has no locus to file interim application of present nature. The defendant has filed application because of misconception of provisions of the Act. It is further contended that the defendant by filing written statement has abundant the power so conferred in the provisions of the Act. It is contended that the application has been filed without accompanied by original arbitration agreement of certified copy thereof and submitted that there is no absolute bar on the Civil Courts exercising jurisdiction. Hence, prayed the Court to reject the application.

6. The Trial Court having considered the application and statement of objection, comes to the conclusion that Section 8 of the Act states that the submissions for referring to arbitration

should be made not later than the date of submitting his statement on the substance of the disputes. In the present case, the above application is filed by the defendant No.1 on the same day of filing his first statement before this Court. If at all the defendant No.1 is filing the present application, then for what reason he has putforth his defence by filing written statement in the above suit. Hence, the defendant No.1 cannot invoke Section 8 of the Act. Being aggrieved by the order of the Trial Court, present miscellaneous first appeal is filed before this Court.

7. Learned counsel for the appellant would vehemently contend that the conclusion arrived by the Trial Court is erroneous and Section 8 of the Act has been misinterpreted by the Trial Court in passing such an order and the Trial Court failed to appreciate the basic condition contemplated under Section 8 of the Act and erroneously failed to understand that the parties are governed by arbitration agreement. The counsel also brought to notice of this Court Clause No.15 of the said registered partnership deed.

8. Learned counsel for the appellant, in support of his argument, relied upon judgment of Division Bench of this Court in **PRICEWATERHOUSE COOPERS SERVICE VS. MR. MOHAN KUMAR THAKUR** passed in **M.F.A.NO.8750/2019** dated **05.11.2020**, wherein an elaborate discussion is made as regards Section 8 of the Act and so also discussed the judgment of the Apex Court in **RASHTRIYA ISPAT NIGAM LIMITED AND ANOTHER VS. VERMA TRANSPORT COMPANY** reported in **(2006) 7 SCC 275**, wherein this Court has extracted paragraph Nos.36 and 42 of the said judgment and also the judgment of the Apex Court in **P. ANAND GAJAPATHI RAJU AND OTHERS VS. P.V.G. RAJU (DEAD) AND OTHERS** reported in **(2000) 4 SCC 539** and extracted paragraph No.5 and observed that defendant filed his written statement along with an application invoking Section 8 of the Arbitration Act. This Court in paragraph No.48 of the judgment discussed that the term 'not later than' used in Section 8(1) of the Act permits the filing of an application seeking for reference of the parties along the written statement and the filing of the written statement and application for reference under Section 8

simultaneously cannot and should not lead to an inference that the defendant had submitted to the jurisdiction of the Civil Court and had waived its right to seek for reference to arbitration as provided under Section 8 of the Act. It is also observed in paragraph No.49 of the judgment that the Legislature has used the term 'not later than' consciously and deliberately to convey the meaning that a party is required to apply for reference to arbitration at the earliest point in time and a party so applying was essentially indicating his intent to abide by the terms of the agreement, which was to get the disputes resolved by means of arbitration and such an application is required to be accepted.

9. Learned counsel for the appellant referring this judgment would contend that, in similar set of facts, the Division Bench of this Court delivered the judgment and set aside the order of the Trial Court and remanded the matter to the Trial Court for fresh consideration and the contentions of both the sides on the application filed under Section 8 of the Act was kept open. Therefore, the order passed by the Trial Court in the case on hand requires interference of this Court.

10. Per contra, learned counsel for respondent Nos.1 and 3 would vehemently contend that when the written statement and an application is filed, the Trial Court in detail discussed the same and in paragraph No.7 of the order, given reasons in coming to the conclusion that by filing written statement, the defendant No.1 has abandoned the power so conferred in the provisions of the Act without referring the dispute for adjudication to the arbitrator and relied upon the judgment of the Apex Court in ***GREAVES COTTON LIMITED VS. UNITED MACHINERY AND APPLIANCES*** reported in ***(2017) 2 SCC 268***. Hence, it does not require any interference.

11. Having heard learned counsel for the appellant and learned counsel for respondent Nos.1 and 3, there is no dispute with regard to Clause No.15 of the registered partnership deed about arbitration. Further, having considered the reasons given by the Trial Court and so also the judgment of the Division Bench of this Court which has been relied upon by the learned counsel for the appellant, the Division Bench of this Court relied upon the judgment of the Apex Court in ***P. ANAND GAJAPATHI***

RAJU's case and **RASHTRIYA ISPAT NIGAM LIMITED's** case and extracted paragraph No.36, wherein it is observed that expression "first statement on the substance of the dispute" contained in Section 8(1) of the 1996 Act must be contradistinguished with the expression "written statement". It employs submission of the party to the jurisdiction of the judicial authority. What is, therefore, needed is a finding on the part of the judicial authority that the party has waived its right to invoke the arbitration clause. If an application is filed before actually filing the first statement on the substance of the dispute, in our opinion, the party cannot be said to have waived its right or acquiesced itself to the jurisdiction of the Court. Hence, the same cannot be understood that he had waived his right, since both the written statement and application is filed simultaneously and the same cannot and should not lead to an inference, since the defendant had submitted to the jurisdiction of the Trial Court and waived his right. The Apex Court also observed that the Legislature has used the term 'not later than' consciously and deliberately to convey the meaning that a party is required to apply for reference to arbitration at the earliest

point in time. In the case on hand, the application is filed and simultaneously written statement is also filed and in the judgment of the Division Bench of this Court, in similar set of facts and circumstances, this Court set aside the order of the Trial Court and remanded the matter for fresh consideration on the application filed under Section 8 of the Act.

12. Having taken note of the principles laid down in the judgment of the Apex Court and elaborate discussion made by the Division Bench of this Court and also having taken note of the discussion made with regard to the term 'not later than' used under Section 8(1) of the Act, the appeal filed by the appellant requires to be allowed and the order passed by the Trial Court requires to be set aside and matter is remanded to consider the same afresh since the same is not considered on merits and only dismissed on the ground of technicality.

13. In view of the discussion made above, I pass the following:

ORDER

- (i) The miscellaneous first appeal is allowed.

- (ii) The impugned order of the Trial Court dated 26.07.2024 passed on I.A. filed under Section 8 of Act in O.S.No.1705/2023 is set aside and the matter is remanded to the Trial Court to consider the application filed invoking Section 8 of the Act afresh on merits.
- (iii) The Trial Court is directed to consider the application within a period of one month from today.
- (iv) The contentions of both sides on the application filed under Section 8 of the Act are kept open.

**Sd/-
(H.P. SANDESH)
JUDGE**

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