SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Petitioner Vs. Respondents

Petitioner Vs. Respondents

SooperKanoon Citation : sooperkanoon.com/1188851

Court : Chennai

Decided On : Aug-19-2016

Judge : M.M. Sundresh

Appeal No. : O.A. No. 514 of 2015 & A. No. 3273 of 2015 in C.S. No. 399 of 2015

Appellant : Petitioner

Respondent : Respondents

Judgement :

1. Before going into the issues involved, the background facts surrounding the case required for the proper narration are to be looked into.

2. For the sake of brevity, the parties are arrayed as per their rank in the suit.

3. The plaintiff is the company engaged in the business of education services and is listed at the National Stock Exchange as well as Bombay stock exchange. The second defendant was functioning as the Managing Director of the plaintiff till 13.02.2012 i.e. date of his resignation. Needless to state that he was incharge of the day to day operations of the plaintiff during the said period.

4. The first defendant company was incorporated in the year 2007 through the second defendant along with his daughter third defendant. They were also the promoters and Directors of the first defendant. Defendants 4 to 6 being the relatives of the second defendant and the employees of the plaintiff, were inducted

as Directors in the first defendant company. Subsequently, the seventh and eighth defendants, who are also employees of the plaintiff were inducted as Directors on 15.04.2013. The earlier induction of defendants 4 to 6 was done in the month of October, 2009. Defendants 4 and 5 are the cousin sisters of the second defendant and the sixth defendant is the husband of the fifth defendant.

5. When defendants 4 to 8 were continued to be the employees of the plaintiff, an agreement was entered into on 01.04.2010. This agreement was signed on behalf of the plaintiff by the second defendant and on behalf of the first defendant by the fourth defendant. Prior to the said agreement dated 01.04.2010, which is a Master Rental and Financing Agreement, loan was obtained by the first defendant from Axis Bank. Curiously, in the said document, the second defendant was shown as a promoter. A communication of the Bank was also addressed to the plaintiff, which is also surprising, since it was meant for the first defendant.

6. The Memorandum of Articles of Association of the first defendant would indicate the main objects. These objects are pertaining to dealing, selling, buying and trading of commodities through commodity exchanges, carrying on business of stock brokers to undertake the broking activities. Needless to state that there are certain ancillary objects also incorporated.

7. On 17.11.2009, the plaintiff entered into an agreement with the Government of Uttar Pradesh for implementing the comprehensive computer education in 1099 Government Senior Secondary Schools. Though the project was initially for a sum of Rs.91.87 crores, the value was reduced to Rs.48 crores with the corresponding deduction in the number of schools covered by the project to 571 schools. This was done in the year 2009.

8. Thereafter, the plaintiff entered into an agreement dated 05.12.2009 with HCL Infosystems Limited (in short 'HCL') for the purpose of acquiring computers with its accessories. A purchase order dated 05.12.2009 was issued by HCL for the aforesaid purposes.

9. Strangely, a Master Rental and Financing Agreement was entered into on 01.04.2010 between the plaintiff and the first defendant. It was meant for leasing

equipments for the amount of Rs.111.87 crores approximately. This was done despite the earlier agreement with HCL and the agreement with the Government of Uttar Pradesh having been modified. The subsequent agreement was also a lease agreement whereas what was required to be supplied to the Government of Uttar Pradesh was the BOOT model by purchase and sale.

10. The plaintiff purchased the equipments and allied accessories from HCL thereafter for a sum of Rs.11,69,45,939/-. Purchase orders were also placed with various third parties for complying with the requirement qua the State of Uttar Pradesh. The plaintiff was also made to give a corporate guarantee for a term loan of Rs.59.12 crores obtained by the first defendant from Axis Bank.

11. The agreement dated 01.04.2010 entered into between the plaintiff and the first defendant does contain an arbitration clause, as could be seen from Page No.63 of the typed set of papers. Thus the entire option of appointing an Arbitrator was doled out in favour of the first defendant by the plaintiff represented by the second defendant with the sole liability to pay the cost for the aforesaid purpose.

12. Payments have been made pursuant to the said agreement in favour of the first defendant by the plaintiff as seen from the documents filed on behalf of the defendants except one year period governing the annual tax statement was during the tenure of the second defendant, who thereafter, resigned from his post.

13. the new management has taken over, action was initiated against the defendants. A complaint was given before the jurisdictional Court on a public transaction concerning with the loan and the same was closed. Thereafter, another complaint, by invoking Section 156(3) Cr.P.C. was given, pursuant to which, a case has been registered against the defendants.

14. Now, seeking the remaining payment due to the first defendant under the agreement dated 01.04.2010, a legal notice was issued. It was followed by the appointment of sole Arbitrator by the first defendant and the communication sent by him. The learned Arbitrator has also sent a notice pursuant to the same. At that stage, the plaintiff has come forward to file the suit seeking the following reliefs:

"(a) pass a permanent injunction restraining the defendants from enforcing the provisions of the Master Rental and Financing Agreement dated 01.04.2010;

(b) award the costs of the present suit in favour of the plaintiff; and

(c) grant such other and further relief(s) in favour of the plaintiff and against the defendants as this Hon'ble Court may deem fit, just and proper in the circumstances of this case and thus render justice."

15. In the suit, the Master Rental and Financing Agreement dated 01.04.2010 is sought to be challenged on the following grounds:

"(i) The said agreement is for taking the equipment on lease from Defendant No.1 while the agreement with the UP Govt. was on a BOOT model which meant that the equipments supplied and installed in the schools was required to be transferred to the UP Govt upon the expiry of the term of 5 years. Therefore, the plaintiff was required to purchase the equipment and could not have taken the same on lease;

(ii) The plaintiff had entered into an agreement dated 05.12.2009 with HCL Infosystems Limited for purchasing the computers and other accessories required for performing its obligations under the UP Govt. project and HCL had completed the supply and installation of almost all such computers and accessories by September 2010;

(iii) While the plaintiff was to initially receive an amount of Rs.91.87 crore from the UP Govt., the value of the project was subsequently reduced to about Rs.48 crore. The computers and accessories for the said mproject were procured from HCL for a sum of Rs.11,69,45,939/- (Rupees eleven crore sixty nine lakh forty five thousand nine hundred and thirty nine only). As against the aforesaid, the plaintiff was liable to pay an amount of about Rs.111.87 crore to Defendant No.2 under the said sham agreement;

(iv) As per the Memorandum of Association of Defendant No.1 company, it has been established for the object of doing the business of trading and dealing in commodities and acting as stock brokers and not for the business of leasing

equipments for schools;

(v) Defendant No.1 has been promoted by Defendant No.2 (former Managing Director of the Plaintiff) and Defendant No.3 and at present is also owned and controlled by their close relatives and confidantes, i.e. Defendant Nos.3 to 8;

(vi) The fact that the close relatives of Defendant No.2, i.e. Defendant Nos.3 to 6 had an interest in Defendant No.1 was deliberately concealed by Defendant No.2 in violation of statutory requirement. Consequently, the requisite approvals were also not taken for the said sham agreement with a company in which the then Managing Director of the plaintiff was interested (through his close relatives)."

16. Pending the suit, the plaintiff has filed these two applications in O.A.No.514 of 2015 and A.No.3273 of 2015, seeking the following reliefs:

(i) Pass an order of injunction restraining the respondents from taking any steps pursuant to the Master Rental and Financing Agreement dated 01.04.2010, and consequently stay the arbitration proceedings initiated by Respondent No.1 under the Master Rental and Financing Agreement dated 01.04.2010.

(ii) grant leave to the applicant to initiate separate legal proceedings against the respondents for recovery of the payments made to Respondent No.1 and the losses and expenses incurred by the applicant on account of the Master Rental and Financing Agreement dated 01.04.2010 and for any other relief to which the applicant may be entitled under the law.

17. Curiously, all the defendants have filed counter affidavits, which are verbatim the same.

18. Heard Mr. P.S. Raman, learned senior counsel for the plaintiff and Mr.M.K.Kabir, learned senior counsel for defendants 1, 2, 4 and 7 and 8.

19. Learned senior counsel for the plaintiff submits that the agreement dated 01.04.2010 is vitiated by fraud. The second defendant has acted in collusion with others in defrauding the plaintiff. The second defendant was acting as a Managing Director of the plaintiff as well as the Promoter/Director of the first defendant. The

first defendant is the company meant for the plaintiff. Similar is the case with defendants 3 to 6. All of them played twin roles. The power of the Civil Court is plenary in nature. The very agreement and the arbitration agreement were created by fraud. The issue sought to be raised in the present suit cannot be decided in the arbitration proceedings as they are also different. The very appointment of the Arbitrator by the first defendant itself is being questioned, as all the defendants have acted in collusion with each other. The address of the first defendant coincides with the address of the other defendants including the third defendant till her marriage, which is also one more factor to come to the conclusion of fraud. There is no mention about the agreement dated 17.11.2009 in any of the earlier proceedings. The circumstance under which it was entered into is also mysterious. There is absolutely no need for such an agreement, that too, for lease to complete the project, which is of a lesser value and for which, the orders have been placed and materials obtained followed by payment. Thus fraud vitiates all solemn acts.

20. Even as per the main object of the first defendant, there was no indication of leasing activity and thus, it can, at best be incidental. It is strange that the second defendant has acted as a promoter/guarantor on behalf of the first defendant. The document under challenge is signed by the second defendant on behalf of the plaintiff and the fourth defendant on behalf of the first defendant during the currency of their specified roles with the plaintiff as well as the defendants. The TDS was deducted for three years when the second defendant was in service. The mere fact that it was done in the next year cannot be a ground to exonerate the defendants as it was not done without verifying the records. Under those circumstances, Section 16 of the Arbitration and Conciliation Act, 1996 does not have any application. Reliance has been made on the decision of the Supreme Court in N.Radhakrishnan Vs. Maestro Engineers and Others ((2010) 1 SCC 72) for the proposition that any case of this nature it is only the High Court which is competent to go into the issues involved, which are of very serious in nature. Learned senior counsel further submits that the contention of the defendants, placing reliance on the Division Bench judgment of this Court in MMTC Ltd., Vs. Shiv Sahai and Sons and Another (2015 (3) R.A.J. 676 (Mad)) cannot be countenanced since the decision rendered in Swiss Timing Limited Vs. Commonwealth Games 2010 Organising Committee ((2014) 6 SCC 677) is not a

binding precedent as held in State of West Bengal Vs. Associated Contractors (AIR 2015 SC 260). It is further submitted that the decision of the Division Bench of this Court has also been stayed by the Apex court on the same issue. Accordingly, the learned senior counsel prayed for making an order of injunction absolute.

21. The learned senior counsel appearing for defendants 1, 2, 4, 7 and 8 submits that the principles governing the grant of ante-suit injunction are not satisfied in the case on hand. Merely because the defendants have played different roles qua the plaintiff and the first defendant, the same cannot be a ground to maintain the suit in the absence of any embargo under any statute. Under Section 16 of the Arbitration and Conciliation Act, 1996, the learned Arbitrator is authorised to decide all the issues including his own jurisdiction. A conjoint reading of Sections 5, 7, 8, 14, 16, 21 and 45 of the Arbitration and Conciliation Act, 1996, would clearly establish the intention of the legislature to discourage a party to approach the civil Court when there is an existence of an arbitration agreement. It is not as if the arbitration proceedings are oppressive and vexatious. The doctrine of severability of the agreement would come into play as the plaintiff has acted upon the agreement as seen from the documents evidencing the deduction of TDS. To buttress the submissions, the learned senior counsel has made reliance upon the following decisions:

(1) Modi Entertainment Network Vs. W.S.G. Cricket Pte. Ltd., ((2003) 4 SCC 341)

(2) Swiss Timing Limited Vs. Commonwealth Games 2010 Organising Committee ((2014) 6 SCC 677)

(3) MMTC Ltd., Vs. Shiv Sahai and Sons and Another (2015 (3) R.A.J. 676 (Mad))

(4) Reliance Industries Limited and Another Vs. Union of India ((2014) 7 SCC 603)

(5) Sundaram Brake Linings Ltd., Vs. Kotak Mahindra Bank Ltd., (A.No.8078 of 2007 in C.S. No. 1072 of 2007 dated 24.07.2008)

22. Almost all the basic facts narrated in detail are borne out by records and not seriously disputed. Suffice it to state that starting from the second defendant,

perhaps with the exception of the third defendant, all of them have played multiple roles qua the plaintiff and the first defendant. While holding a responsible post, i.e. Managing Director in absolute control of the administration, the second defendant has started the first defendant concern along with his daughter/third defendant and entered into transactions inter se. Prima facie the records show an absolute lack of necessity for such a transaction. There is no necessity for the creation of the first defendant followed by a lease between the parties and execution of the agreement by the second defendant on behalf of the plaintiff and the fourth defendant on behalf of the first defendant. This document has been executed when the plaintiff and the fourth defendant are very much in the realm of affairs of the plaintiff. The fact that the agreement was entered into with HCL for the sale of the computer and allied accessories is not in dispute and so is the case with the purchase orders placed, supply effected, followed by payment.

23.The nature of agreement between the Government of Uttar Pradesh and the plaintiff is totally different. It is surprising that for the aforesaid purpose, a lease was entered into with a company, which was not doing the said business hitherto, for a substantial amount of money than the one involved in the project itself and when the same has been complied with by separate agreement with various third parties including HCL. Prima facie, it appears that amount has flown from the plaintiff to the first defendant. The loan sanction letter further speaks about the underlying truth in which the second defendant has stood as a guarantor/promoter of the first defendant and the letter itself has been addressed to the plaintiff. It is needless to state that the second defendant was at the realm of affairs at that point of time. The plaintiff was also made to stand as a corporate guarantor for the term loan of Rs.59.12 crores obtained by the first defendant from Axis Bank. That the Bank is in hot pursuit of the plaintiff is another story. It is strange that all the defendants have given the same address except the third defendant, who also did the same, till her marriage. Thus the address of the first defendant tallies with that of the others. At the time of entering into the agreement on 01.04.2010, there was an existing agreement with the aforesaid parties with HCL and pursuant to the same, much water had flown under the bridge, of course, with the knowledge of the second defendant. The relationship between the second defendant and others is also not in dispute. Deduction of TDS was substantially made during the period

for which the second defendant was in control of the affairs of the plaintiff. Merely because for the subsequent year it was followed and the liability shown in the records though for a lesser amount cannot be the adequate factors to absolve the defendants.

24. It is not a case of a sham agreement between the parties alone. The very same parties have entered into an arbitration agreement as well. Thus, as rightly submitted by the learned senior counsel for the plaintiff that the logic and reasoning attributable to the agreement dated 01.04.2010 be made applicable to the arbitration agreement. On a cursory look, it is apparent that the said agreement is grossly one sided. It is for obvious reasons. Though these factors are to be decided by a full pronged trial, a prima facie case of the arbitration agreement being void is made out as the first defendant company appears to be a shield company created by defendants 2 and 3 and continued by others. The scope of the suit along with pleadings is totally different from the one that is sought to be raised before the learned Arbitrator. In fact, the challenge in the suit also extends to the arbitration agreement. The object is to avoid injustice. Therefore, this Court finds much force in the submissions made by the learned senior counsel for the plaintiff.

25. The powers of the civil Court are plenary. An exhaustive mechanism is available to the civil Court, especially while dealing with the cases of fraud. The narration does not merely reflect the serious allegations of fraud. But there are certain strong evidence in the form of proved and admitted facts. In such a case, it will not be proper for the Court to refer the matter to the learned Arbitrator. The principles governing an ante-suit injunction is based on good conscience, equity and fair play. Whether the proceeding initiated such as arbitration is oppressive or vexatious, is a matter to be decided on examination of facts. Needless to state that fraud would vitiate all solemn acts.

26. This Court does not find any necessity to adopt the doctrine of severability to the case on hand for the reasons stated above. Prima facie it appears that the arbitration clause may not sustain in the eye of law. Dealing with a case involving fraud, it has been held in N.Radhakrishnan Vs. Maestro Engineers and Others

((2010) 1 SCC 72) as under:

"7. In our opinion, the contention of the respondents relating to the jurisdiction of the Arbitrator to decide a dispute pertaining to a matter of this proportion should be upheld, in view of the facts and circumstances of the case. The High Court in its impugned judgment has rightly held that since the case relates to allegations of fraud and serious malpractices on the part of the respondents, such a situation can only be settled in Court through furtherance of detailed evidence by either parties and such a situation cannot be properly gone into by the Arbitrator.

. . . . . .

10. The learned counsel appearing on behalf of the respondents on the other hand contended that the appellant had made serious allegations against the respondent alleging that they had manipulated the accounts and defrauded the appellant by cheating the appellant of his dues, thereby warning the respondents with serious criminal action against them for the alleged commission of criminal offences. In this connection, reliance was placed in a decision of this Court in the case of Abdul Kadir Shamsuddin Bubere vs. Madhav Prabhakar Oak and Another,[AIR 1962 SC 406] in which this court under para 17 held as under:

"There is no doubt that where serious allegations of fraud are made against a party and the party who is charged with fraud desires that the matter should be tried in open court, that would be a sufficient cause for the court not to order an arbitration agreement to be filed and not to make the reference....."

11. In our view and relying on the aforesaid observations of this Court in the aforesaid decision and going by the ratio of the above mentioned case, the facts of the present case does not warrant the matter to be tried and decided by the Arbitrator, rather for the furtherance of justice, it should be tried in a court of law which would be more competent and have the means to decide such a complicated matter involving various questions and issues raised in the present dispute. This view has been further enunciated and affirmed by this Court in the decision of Haryana Telecom Ltd. vs. Sterlite Industries (India) Ltd.[AIR 1999 SC

2354], wherein this court under para 4 observed :

"Sub-section (1) of section 8 provides that where the judicial authority before whom an action is brought in a matter, will refer the parties to arbitration the said matter in accordance with the arbitration agreement. This, however, postulates, in our opinion, that what can be referred to the Arbitrator is only that dispute or matter which the Arbitrator is competent or empowered to decide."

12. The learned counsel for the respondent further elaborated his contention citing the decision of the High Court of Judicature at Madras in the case of Oomor Sait HG Vs. Asiam Sait, 2001 (3) CTC 269, wherein it was held:

".....Power of civil court to refuse to stay of suit in view of arbitration clause on existence of certain grounds available under 1940 Act continues to be available under 1996 Act as well and the civil court is not prevented from proceeding with the suit despite an arbitration clause if dispute involves serious questions of law or complicated questions of fact adjudication of which would depend upon detailed oral and documentary evidence.

..Civil Court can refuse to refer matter to arbitration if complicated question of fact or law is involved or where allegation of fraud is made.

....Allegations regarding clandestine operation of business under some other name, issue of bogus bills, manipulation of accounts, carrying on similar business without consent of other partner are serious allegations of fraud, misrepresentations etc., and therefore application for reference to Arbitrator is liable to be rejected."

13. We are in consonance with the above-referred decision made by the High Court in the concerned matter. In the present dispute faced by us, the appellant had made serious allegations against the respondents alleging him to commit malpractices in the account books and manipulate the finances of the partnership firm, which, in our opinion, cannot be properly dealt with by the Arbitrator. As such, the High Court was justified in dismissing the petition of the appellant to refer the matter to an Arbitrator. In this connection, it is relevant to refer the observation

made by the High Court in its impugned judgment :

"The above decision squarely applies to the facts of the present case. In the present case as well there is allegation of running rival firm, interference with the smooth administration of the firm. As already stated since the suit has been filed for declaration to declare that the revision petitioner is not a partner with effect from 18.11.2005, and for consequential injunction restraining the petitioner from disturbing the smooth functioning of the first respondent firm, the issue relates to the causes which compelled the respondents to expel the revision petitioner from the partnership firm and the necessity to reconstitute the firm by entering into a fresh partnership deed. Therefore such issues involve detailed evidence which could be done only by a civil court....."

27. The High Court of Delhi in RRB Energy Limited Vs. Vestas Wind Systems and Others (C.S. (O.S.No.999 of 2014), considering the very same issue, was pleased to hold as follows:

"52. So far as the first observation is concerned, there can be no two opinions about the same with regard to the factual position that as on date there is the grey area as regards the cases of serious fraud and fraud to which I have used the word simpliciter. I feel that the Law Commission had in mind that there may be cases where fraud is prima facie supported by way of evidence and where fraud is merely alleged. While as in the case of former perhaps the arbitral tribunal may be conceived to have no jurisdiction while as in the latter case, where there are simple allegations of fraud without there being any prima facie proof just to forestall the proceedings before the arbitral tribunal, in such cases the arbitral tribunal ought to have the jurisdiction."

28. The ratio laid down in the aforesaid decisions would apply in all fours to the present case.

29. The learned senior counsel for the respondents has made reliance upon the decision of the Division Bench in MMTC Ltd., Vs. Shiv Sahai and Sons and Another (2015 (3) R.A.J. 676 (Mad)) and Sundaram Brake Linings Ltd., Vs. Kotak Mahindra Bank Ltd., (A.No.8078 of 2007 in C.S. No. 1072 of 2007 dated

24.07.2008) in support of his contention that the dispute will have to be resolved only by way of arbitration.

30. The Division Bench in the decision referred supra was pleased to arrive at a conclusion based upon the decision of the Apex Court in Swiss Timing Limited Vs. Commonwealth Games 2010 Organising Committee ((2014) 6 SCC 677), of course, after referring to the decision in N.Radhakrishnan Vs. Maestro Engineers and Others ((2010) 1 SCC 72), being the latest one governing the field. As rightly submitted by the learned senior counsel for the plaintiff, basing reliance on the decision rendered in State of West Bengal Vs. Associated Contractors (Civil Appl. Nos.6691 of 2005 and 4808 of 2013 dated 10.09.2014), the decision in Swiss Timing Limited case (referred supra) cannot be termed as a decision of the Apex Court and thus has no precedential value having rendered in exercise of power under the Act. It is apposite to reproduce para 17 of the said decision, which reads as under:

17. That the Chief Justice does not represent the High Court or Supreme Court as the case may be is also clear from Section 11(10):

The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to him.

The scheme referred to in this sub-section is a scheme by which the Chief Justice may provide for the procedure to be followed in cases dealt with by him under Section 11. This again shows that it is not the High Court or the Supreme Court rules that are to be followed but a separate set of rules made by the Chief Justice for the purposes of Section 11.

Sub-Section 12 of Section 11 reads as follows:

(a) Where the matters referred to in Sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to "Chief Justice" in those subsections shall be construed as a reference to the "Chief Justice of India".

(b) Where the matters referred to in Sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitraration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in Clause (3) of Sub-section (1) of Section 2 is situate and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court.

It is obvious that Section 11(12)(b) was necessitated in order that it be clear that the Chief Justice of "the High Court" will only be such Chief Justice within whose local limits the Principal Civil Court referred to in Section 2(1)(3) is situate and the Chief Justice of that High Court which is referred to in the inclusive part of the definition contained in Section 2(1)(e). This sub-section also does not in any manner make the Chief Justice or his designate, not being the decision of the Supreme Court or the High Court, as the case may be, has no precedential value being a decision of a judicial authority which is not a Court of Record.

31. Even in Swiss Timing Limited Vs. Commonwealth Games 2010 Organising Committee ((2014) 6 SCC 677), it has not been held that in all situations, a Court has to refer a dispute to arbitration. In this regard, the following paragraphs are apposite to be reproduced:

"28. To shut out arbitration at the initial stage would destroy the very purpose for which the parties had 30 Page 31 entered into arbitration. Furthermore, there is no inherent risk of prejudice to any of the parties in permitting arbitration to proceed simultaneously to the criminal proceedings. In an eventuality where ultimately an award is rendered by arbitral tribunal, and the criminal proceedings result in conviction rendering the underlying contract void, necessary plea can be taken on the basis of the conviction to resist the execution/enforcement of the award. Conversely, if the matter is not referred to arbitration and the criminal proceedings result in an acquittal and thus leaving little or no ground for claiming that the underlying contract is void or voidable, it would have the wholly undesirable result of delaying the arbitration. Therefore, I am of the opinion that the Court ought to act with caution and circumspection whilst examining the plea that the main contract is void or voidable. The Court ought to decline reference to arbitration

only where the Court can reach the conclusion that the contract is void on a meaningful reading of the contract document itself without the requirement of any 31 Page 32 further proof.

. . . . . .

30. I must also notice here that the defence of the contract being void is now-a-days taken routinely along with the other usual grounds, to avoid/delay reference to arbitration. In my opinion, such ground needs to be summarily rejected unless there is clear indication that the defence has a reasonable chance of success. In the present case, the plea was never taken till the present petition was filed in this Court. Earlier, the respondents were only impressing upon the petitioners to supply certain information. Therefore, it would be appropriate, let the Arbitral Tribunal examine whether there is any substance in the plea of fraud now sought to be raised by the respondents."

32. Therefore, reliance made by the learned senior counsel for defendants 1, 2, 4 and 7 and 8 on various provisions of the Arbitration and Conciliation Act, 1996 to persuade this Court to bring the case under the fold of Section 16 does not find favour with this Court.

33. In the result, the order of injunction granted in O.A. No.514 of 2015 is made absolute and the application stands allowed. Consequently, the application in A.No.3273 of 2015 stands allowed, granting liberty to the plaintiff to initiate separate legal proceedings against the defendants for the recovery of payment made.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com