

B. Kamala Devi and Another Vs. Mehta Builders

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Court : Andhra Pradesh

Decided On : Oct-19-2000

Reported in : 2001(2)ALD191; 2001(2)ALT271

Judge : Vaman Rao, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 8

Appeal No. : CRP No. 327 of 2000

Appellant : B. Kamala Devi and Another

Respondent : Mehta Builders

Advocate for Def. : Mr. Andan Mahmood, Adv.

Advocate for Pet/Ap. : Mr. P. Venugopal, Adv.

Judgement :

ORDER

1. This civil revision petition is directed against the order dated 16-11-1999 passed in IA No.1226 of 1997 in OS No.3204 of 1997 on the file of the X Junior Civil Judge, City civil Court, Hyderabad under which the learned Judge allowed the application filed on behalf of the defendant under Section 8 of the [Arbitration and Conciliation Act, 1996](#) to refer the parties to arbitration in terms of the agreement between the parties. The suit OS No.3204 of 1997 was filed by the petitioners

herein for perpetual injunction restraining the defendant from carrying on the construction in the multi-storied complex of three floors contrary to Municipal sanction.

2. The parties shall be referred to as they are arrayed in the trial Court.

3. The facts in brief leading to this controversy may be stated as follows:

The plaintiffs entered into an agreement with the defendant-builders for developing certain property. In terms of the agreement three floors have been constructed in the complex planned by the defendant-builders. The agreement provides that on the terrace of the third floor, the defendant-builder shall be entitled to construct his office. It also provides that if further floors are sought to be constructed, then the parties shall have the same rights in the additional construction as per the agreement namely in the proportion of 45% to the plaintiffs and 55% to the defendant-builder. This suit in question has been filed for the limited relief restraining the defendant-builder from undertaking construction contrary to the Municipal sanction. Before the defendants filed their written statements, the present application in IA No.1226 of 1996 was filed for referring the matter to the arbitrator in terms of Clause 15 of the agreement between the parties. The agreement itself is not disputed. On this application the Junior Civil Judge passed impugned order directing the matter to be referred to the arbitrator with a direction that the arbitrator shall pass an award within one month in terms of explanation to Section 8 of Arbitration Act.

4. It is this order, which is now challenged in this petition. The learned Counsel for the petitioner contends that the suit filed by the plaintiffs is extremely limited in its scope. The contention is that the suit seeks relief of an injunction restraining the defendant-builder from making any construction contrary to the sanctioned plan of the Municipal Corporation. It is pointed out that the suit does not raise any question as to disputed rights of the parties in respect of the subject-matter of the suit or in giving effect to terms of the agreement.

5. The learned Counsel for the respondents on the other hand contends that the agreement between the parties is comprehensive enough to encompass all

disputes that arise between them.

6. I am inclined to accept the submission made on behalf of the petitioners that the suit itself has the limited scope of injunction preventing the defendant-builder from making construction contrary to law. It may be pertinent to mention that any construction made contrary to the sanctioned plan would be illegal and such construction and consequently the building itself shall be exposed to the risk of demolition if the Municipal Authorities choose to take action in this behalf. It is seen that the suit does not raise any question which touches upon the rights of the parties in respect of the subject-matter of the suit or their claims as to their share in the construction made. Clause 15 of the agreement, which is the basis of order passed by the learned Junior Civil Judge, is extracted below for ready reference.

'In case of any dispute as regards the said agreement, the same would be referred to Sri K. Venkataswamy who shall be the sole arbitrator and his decision would be binding on the parties.'

7. A fair and reasonable reading of this clause will make it abundantly clear that what is provided for reference to arbitrator is dispute as to the rights of the parties arising out of the agreement. Obviously, it is not a case where the defendant-builder has claimed any exclusive rights over the proposed construction or that he denied the 45% share provided for the plaintiffs in any construction made in the complex. The plaintiffs-petitioners have merely sought in this suit an injunction to ensure that any construction made by the defendant-builder is in accordance with law. In fact, there cannot be an agreement, which may be declared as valid if it provides for any construction to be made contrary to law.

8. To avoid any controversy in this regard on behalf of the petitioners a memo has been filed in the Court specifically making it clear that the suit was only in regard to the relief or restraining the defendant-builder from constructing contrary to the Municipal permission. It is further stated in the memo that the plaintiffs-petitioners have no objection if any further construction is made by the defendant-builder in accordance with the terms of agreement after obtaining Municipal sanction.

9. Considering the very limited scope of the relief sought in the suit which does not involve any dispute as to the rights of the parties under the agreement, there is no scope for invoking the clause providing for arbitration in the agreement. In this view of the matter, the order of the learned Junior Civil Judge referring the matter for arbitration in terms of Clause 15 of the agreement cannot be sustained.

10. In the result, the civil revision petition is allowed. The suit shall continue in accordance with law.

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