

First Stonex Let. Vs. Manoj Kumar and Others

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Court : Delhi

Decided On : Dec-16-1998

Reported in : AIR1999Delhi302; 77(1999)DLT231; (1999)121PLR45

Judge : M.S.A. Siddiqui, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 7, Rule 11; [Arbitration Act, 1940](#) - Sections 20

Appeal No. : I.A. No. 681-683 of 1995 & Suit No. 1423 of 1994 I.A. No. 693-95 & Suit no. 1439/94, I.A. No

Appellant : First Stonex Let.

Respondent : Manoj Kumar and Others

Advocate for Def. : Mr. R. Nedumaran, Adv.

Advocate for Pet/Ap. : Mr. M.S. Vinyak, Adv

Judgement :

1. This order shall also govern the disposal of I.A. Nos. 686/95, 693/95 and 696/95 in Suit Nos. 1440/94, 1439/94, 1441/94 respectively.

2. By this petition under Section 20 of the Arbitration Act, the petitioner seeks directions to the respondents to file original agreement before the Court and to appoint an Arbitrator to adjudicate upon the disputes which have arisen between

the parties in respect of the said agreement. The respondents have filed the application under Order 7, Rule 11, CPC for rejection of the petition on the ground that there is no valid and binding contract between the parties.

3. Facts relevant and requisite for the purpose of deciding the application under Order 7, Rule 11, CPC lie in a narrow compass. By the collaboration agreement dated 26.6.1992, the respondents agreed to grant mining lease to the petitioner after obtaining the requisite statutory approval under M.P. Minor Minerals Rules from the Competent Authority. As per terms of the agreement, the petitioner paid a sum of Rs. 2,47,000/- to the respondents. The petitioner also incurred expenditure amounting to Rs. 12,45,978/- in mobilising machinery, labour and equipment for undertaking mining operations. However, the performance of the contract became impossible as the respondents were restrained by the Competent Authority from entering into collaboration agreement with the petitioner. The petitioner demanded refund of the amount paid by the petitioner but the said demand did not invoke any response from the respondents.

4. The question is : whether there is a sub sifting and valid arbitration agreement between the parties? Learned Counsel for the respondents contended that according to the petitioner's own showing the agreement dated 26.6.1992 is void ab initio and so the arbitration clause cannot operate, for on this view the clause itself is also void. Learned Counsel for the respondents have invited my attention to the following averments made in paragraphs 7, 8 and 11 of the petition:

'7. That plaintiff also mobilised its machinery, men and equipment for undertaking operations under the agreement entered into by defendants. Plaintiff incurred Rs. 12,45,978/- by way of expenditure in mobilisation of above, in question as also of other Associates of defendants, holding similar leases, under similar agreements with plaintiff. The agreement was found as non-workable in view of defendants prohibited/debarred from entering into collaboration agreement with plaintiff, for allowing plaintiff to start operation of quarries in its own name and the quarry held by defendants not giving a yield to required quality and size of blocks assured by defendants and as desired by plaintiff.

8. That plaintiff required defendants to refund amounts received by them from the plaintiff and to reimburse plaintiff for the monies spent in pursuance of agreement. Defendants failed and neglected to respond to plaintiff's requests, reminders and demands, leading to following disputes arising between the parties:

(a) The legality, validity and effect of Collaboration Agreement entered into between the parties in terms of enforceability and voidness thereof.

(b) Plaintiff's entitlement to secure refund of amounts paid to defendants and for reimbursement of expenses incurred besides the commercial loss suffered by acting upon representations of defendants.

The disputes and plaintiff's entitlements there under are set out in Annexure 'A' hereto.

11...Cause of action arose to plaintiff upon representations made by defendants being found to be illegal, the subject matter of agreement between the parties being found to be against law and purpose of agreement being rendered void...'

5. Thus, according to the petitioner's own showing the collaboration agreement dated 26.6.1992 is void ab initio. Now the question is: Whether an arbitration clause can be invoked in the case of a dispute under an invalid contract? It is well settled that if a contract is void ab initio, the arbitration clause being a component part of the contract, cannot operate on disputes under such contract, for its operative force depends upon the existence of the contract and its validity Union of India Vs . Kishori Lal : [1960]1SCR493 . I, therefore, find and hold that the petitioner is not entitled to invoke arbitration clause of the agreement dated 26.6.1992, which has no legal existence.

6. For the foregoing reasons, the petition under Section 20 of the Arbitration Act is rejected. No order as to costs.