

(2012) 08 KAR CK 0154

Karnataka High Court

Case No: C.M.P. No. 25 of 2012

Peter Caddy No. 4, I Floor,
Kapital St. Patrick's Complex
Bangalore-560025

APPELLANT

Vs

Cheiryan Abraham No. 4A,
Regency Heights No. 3/2-1,
Cleveland Road Frazer Town
Bangalore-560005

RESPONDENT

Date of Decision: Aug. 13, 2012

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 11

Hon'ble Judges: Mohan Shantanagoudar, J

Bench: Single Bench

Advocate: Dhananjay Joshi, for M/s. Sreevatsa Associates, for the Appellant; Arjun Rego, for M/s. L.P.E. Rego, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. A partnership deed came to be entered into between the parties as per Annexure-A, dated 12.1.2011 to carry on business of real estate, constructions, buying and selling properties. However, the disputes are stated to have been arisen between the parties. The petitioner sent notice as per Annexure-C, dated 14.12.2011 for invoking the arbitration clause for resolving the dispute. However, no response is received from the respondent. Having no other way, this petition is filed praying for appointment of Arbitrator for resolution of the dispute u/s 11 of the Arbitration and Conciliation Act, 1996. The partnership deed contains arbitration clause, which reads thus:-

17. Arbitration: All questions and disputes in connection with this partnership between the partnership between the partners or between them and the legal

representatives of the deceased partner and whether during the subsistence of this agreement or after the dissolution of partnership shall be referred to arbitration in which case the provisions of the Indian Arbitration and Conciliation Act, 1996, shall apply.

It is clear from the said arbitration clause that all the questions and disputes in connection with the partnership deed in question which arise during the subsistence of the agreement or after dissolution of the partnership firm shall be referred to arbitration. Thus, the disputes if any, arising out of the partnership deed dated 12.1.2011 need to be adjudicated upon by the Arbitrator. The petitioner has named the Arbitrator in his notice at Annexure-C. The respondent has no objection for the said Arbitrator to be appointed.

2. Sri Rego, Learned Counsel appearing for the respondent submits that the Arbitral Tribunal is required to resolve the disputes if any, arising out of the partnership deed and not the disputes which allegedly arose earlier before the execution of the partnership deed. He relies upon the judgment of the Apex Court in the case of Indowind Energy Ltd. vs. Wescare (I)Ltd. & another, reported in AIR 2000 SC 1793.

The said submissions are opposed by the Learned Counsel appearing for the petitioner contending that all questions should be kept open.

Be that as it may, since the Arbitrator needs to proceed strictly in accordance with the arbitration clause contained in the partnership deed in question and as per law, no further observation needs to be made in this regard.

Accordingly, the following order is made:-

S. Venkataraman, Former Judge of High Court of Karnataka, #161, II Block, III Stage, West of Chord Road, Judges" Colony, Bangalore-560 079 is appointed as Sole Arbitrator, to resolve the dispute between the parties. The learned Arbitrator, on receipt of a copy of this order shall enter upon the reference, issue notice to the parties and then proceed to resolve the dispute, in accordance with the Arbitration and Conciliation Act, 1996.

Office is directed to send a copy of this order to the learned Arbitrator, forthwith. Office is further directed to return all the original papers, if any, filed along with the petition to the petitioner to enable him to produce before the learned Arbitrator.

Petition is disposed of accordingly.