
Sri M. Venugopal Vs Sri Munegowda and Others

C.M.P. No. 86 of 2011

Court: Karnataka High Court

Date of Decision: Jan. 15, 2013

Acts Referred:

Arbitration and Conciliation Act, 1996 & Section 11#Evidence Act, 1872 & Section 73

Hon'ble Judges: A.S. Bopanna, J

Bench: Single Bench

Advocate: V.B. Shivakumar, for VBS Law. Inc, for the Appellant; M.L. Gowda and Associates for R1 and 4 and Sri Srinivasa N ., for R2, R3 and R5, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

A.S. Bopanna, J.

The petitioner is before this Court seeking appointment of the Arbitrator. The brief facts of the case is that the petitioner

and respondents herein had entered into a sale agreement dated 25.03.2009. According to the petitioner, since the respondents have failed to

perform their part of the agreement, the petitioner is entitled to seek specific performance. In that regard, reference is made to Clause 16 of the

agreement which provides for dispute resolution. As per the said Clause, the dispute or difference arising between the parties is to be referred to a

Sole Arbitrator who will thereafter decide upon the dispute between the parties.

2. In that regard, the petitioner is stated to have addressed a letter dated 23.04.2011 (Annexure-B) to the respondents herein nominating an

Arbitrator and seeking response from the respondents to confirm the same or to suggest any other name who could be appointed as an Arbitrator.

Though respondents No. 2, 3 and 5 had consented to the same, the other respondents did not respond to the notice. It is in that circumstance, the

petitioner is before this Court seeking appointment of the Arbitrator.

3. Respondents No. 1 and 4 have filed their objection statement to the petition. By the said objection statement, the very existence of the

agreement dated 25.03.2009 is disputed. It is their case that the said document had been fabricated with the connivance of respondents No. 2, 3

and 5. Therefore, they have contended that the question of appointment of Arbitrator would not arise. In that regard, it is also the case of

respondents No. 1 and 4 that respondents No. 2, 3 and 5 had instituted a suit in O.S. No. 142/2011 against respondent No. 1 herein on

03.02.2011 and in the said suit, they have sought for share of the property and having failed in the same have connived with the other respondents

to cause loss to the petitioner and respondents No. 1 and 4. Hence, it is contended that since the very agreement is disputed, Clause relating to the

arbitration in such agreement is also disputed and the question of appointing an Arbitrator would not arise.

4. In the light of the rival contentions, I have heard the learned counsel for the parties and perused the petition papers. Learned counsel for the

petitioner would rely upon the decision of the Hon"ble Supreme Court in the case of India Household and Healthcare Ltd. Vs. LG Household and

Healthcare Ltd., to contend that the Hon"ble Supreme Court has laid down that in a circumstance where the agreement itself is disputed also, the

Arbitrator would have to enter upon the reference and decide that question as well. Hence, it is contended that the contention put forth by the

respondents cannot be accepted in the instant petition but would have to be allowed to be decided by the Arbitrator.

5. Learned counsel for respondents No. 1 and 4 on the other hand would refer to the decision of the Hon"ble Supreme Court in the case of Bharat

Rasiklal Ashra Vs. Gautam Rasiklal Ashra and Another, . In that regard, the Hon"ble Supreme Court has held that where the very existence of

agreement is contended as having been vitiated by fraud, the Chief Justice or Designated Judge would have to decide upon that question also

before reference.

6. Having noticed the decisions rendered by the Hon"ble Supreme Court in the above referred cases, all that has been stated by the Hon"ble

Supreme Court is that the Chief Justice or the Designated Judge while considering an application for appointment of an Arbitrator shall not enter

upon to decide the dispute between the parties, but the same is to be decided by the Arbitrator. Even in cases where serious dispute is raised with

regard to the very existence of the agreement or the same being created by fraud, the Judge considering the petition would have to prima facie

satisfy about the existence or otherwise and thereafter leave it to the Arbitrator to conclude on that issue as well.

7. If these aspects of the matter are kept in view, the agreement relied upon by the petitioner is produced at Annexure-A. Learned counsel for the

respondents would contend that the stamp paper has been purchased in the name of Cunningham properties, but the name of the petitioner has

been inserted there to and agreement is created. It is also the contention of respondents No. 1 and 4 that the parties have not signed the

agreement. When a contention with regard to non-execution of the agreement by the respondents is taken up, the matter would require recording

of evidence in that regard to come to the conclusion as to whether the agreement is valid or not. The said exercise in any event cannot be taken up

in a petition which is filed u/s 11 of the Arbitration and Conciliation Act.

8. However, as held by the Hon"ble Supreme Court, this Court will have to prima facie satisfy itself in that regard. Therefore, in such circumstance,

I have for my prima facie satisfaction, compared the vakalathnama filed by the respondents with the alleged agreement. Respondents No. 1 and 4

have filed a separate vakalath while the other respondents have filed their common vakalath. What is to be noticed is that the signature of

respondent No. 4 is found in Kannada in the vakalath filed on behalf of respondents No. 2, 3 and 5, while the signature of respondent No. 4 is

again found in English in the vakalath filed on behalf of respondents No. 1.

9. In that context, a perusal of the agreement dated 25.03.2009 would indicate that the signature of respondent No. 4 is affixed in Kannada. If the

signatures of respondents found in the said agreement are compared with the signature affixed in vakalath keeping in view the provision u/s 73 of

the Evidence Act, prima facie it would appear to be similar. However, the law is well settled that the person who attempts to forge a signature will

always make his efforts to make it appear similar. Therefore, this conclusion is only prima facie for the purpose of indicating that this aspect of the

matter will also have to be considered by the Arbitrator. Hence, in the present circumstance, I am of the opinion that the petition cannot be

dismissed only because the respondents have taken up a contention that the agreement is forged. Therefore, I am of the opinion that since the said

agreement contains an Arbitration Clause, the matter would have to be referred to an Arbitrator and all questions including the validity of the

agreement be allowed to be decided by the Arbitrator. Having arrived at the above conclusion, the question would be as to who would be the

appropriate Arbitrator to be appointed. In that circumstance, since there is a serious dispute with regard to the agreement the Arbitrator as

suggested by the petitioner in its letter dated 23.04.2011 need not be accepted. I am of the opinion that it would be appropriate to appoint an

Arbitrator whose name is suggested by this Court. Accordingly, Sri Kukkaje Ramakrishna Bhat, Retired District and Sessions Judge, F-113, SC,

4th Floor, Central Chambers, 2nd main road, Gandhinagar, Bangalore-560009, is appointed to be the Sole Arbitrator to decide upon the dispute

between the parties herein. All questions are left open to be considered by the Arbitrator. The Arbitrator shall now enter upon the reference,

decide the terms of arbitration and conclude the proceedings in accordance with law. The petitioner shall file claim statement before the Arbitrator

who shall thereafter notify the respondents and conclude the matter.

The petition stands disposed of in the above terms. No costs.