VBHC, Mumbai Value Homes Pvt. Ltd. Vs Laxman Bhoir and Others

Court: Bombay High Court

Date of Decision: July 3, 2015

Acts Referred: Arbitration and Conciliation Act, 1996 - Section 16, 16(1)(a), 7, 8
Bombay Inferior Villages Watans Abolition Act, 1958 - Section 5(3)(b)
Civil Procedure Code, 1908 (CPC) - Section 115
Constitution of India, 1950 - Article 227
Contract Act, 1872 - Section 10, 13, 14, 17, 18
Specific Relief Act, 1963 - Section 34

Citation: (2015) 4 ABR 811 : (2015) 6 ALLMR 155 : (2016) 1 ARBLR 228 : (2016) 1 BomCR 799 : (2015) 6 MhLj 385

Hon'ble Judges: R.G. Ketkar, J

Bench: Single Bench

Advocate: Virag Tulzapurkar, Senior Advocate, Simil Purohit, Swapnil Khatri and Arnar Nagalia i/b Wadia Ghandy and Co., for the Appellant; Deepak C. Natu and Sunita S. Ghone, Advocates for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.G. Ketkar, J
Heard Mr. Tulzapurkar, learned senior counsel for the petitioner and Mr. Deepak Natu, learned counsel for respondent

Nos. 1 to 3 at length. Mr. Tulzapurkar orally applies for deleting the names of respondent Nos. 4 and 5 as no relief is claimed against them. On the

Motion made by Mr. Tulzapurkar, leave to delete respondent Nos. 4 and 5 is granted. Amendment shall be carried out forthwith. Mr. Natu raised

preliminary objection that having regard to the prayers made in Application at Exhibit-19, the Petition instituted under Article 227 is not

maintainable and the petitioner has to invoke revisional jurisdiction under Section 115 of C.P.C. In view thereof, leave to convert this Petition into

Civil Revision Application is granted. Amendment shall be carried out forthwith.

2. Rule. Mr. Natu waives service on behalf of the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and

the Petition is taken up finally.

3. By this Petition under Article 227 of the Constitution of India, original defendant No. 1 has challenged the Judgment and order dated 20.8.2014

passed by the learned Second Joint Civil Judge, Senior Division, Kalyan below Exhibit 19 in special Civil Suit No. 73 of 2014. By that order, the

learned trial Judge rejected the application filed by the petitioner under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, ""Act"")

for referring dispute to arbitration. The parties shall, hereinafter, be referred to as per their status in the trial Court. The relevant and material facts,

giving rise to filing of the present Petition, briefly stated, are as under.

4. Respondent Nos. 1 to 3, hereinafter referred to as "plaintiffs", instituted suit for declaration that the registered Agreements of Sale dated

12.11.2010 and 17.2.2011 executed by the plaintiffs in favour of the petitioner-defendant No. 1 in respect of Survey No. 29, Hissa No. 4,

admeasuring H-0-R-27-00, Survey No. 29, Hissa No. 8 (out of), H-0-R-08-00 and Survey No. 29, Hissa No. 9B, H-0-R-06-05, situate at

village Vadavali, Taluka Kalyan, Dist. Thane admeasuring 4146.05 sq. meters (for short, "suit property") are sham, bogus, illegal, void and not

binding on the plaintiffs and may be cancelled with further declaration that the same may be quashed and set aside under Section 34 of the Specific

Relief Act, 1963. The plaintiffs also sought perpetual injunction against the defendant not to invade in the peaceful possession in respect of the suit

property. In the agreement of sale dated 12.11.2010, there is a specific clause, namely, clause No. 29. Clause 29 lays down that in case there

being any dispute with respect to the suit property by and between the parties, then for resolving the said dispute under the provisions of the Act,

an Arbitrator shall be appointed by consent of both the parties and the said dispute shall be resolved through Arbitrator. During the pendency of

the suit, defendant No. 1 filed application under Section 8 of the Act praying that the matter may be referred to arbitration and the suit may be

disposed of.

5. The plaintiffs resisted the application by filing detailed reply dated 25.6.2015. By the impugned order, the learned trial Judge rejected the

application. It is against this decision, defendant No. 1 has instituted the present Petition.

6. In support of this Petition, Mr. Tulzapurkar submitted that in the agreement of sale dated 12.11.2010, there is an arbitration clause. Clause 29

reads as under:

29. First Party and Second Party herein admits that in case of dispute between the parties, shall be settled by arbitrator with the consent of both

parties under the provisions of the Arbitration and Conciliation Act, 1996 which is agreed by both parties.

He submitted that the learned trial Judge rejected the application only on the ground that the averments of the Plaint disclosed that the plaintiffs are

alleging commission of fraud by defendant No. 1. The plaintiffs are questioning legality of documents of agreement of sale which contains

arbitration clause. The learned trial Judge held that when entire document is put into doubt, such type of dispute cannot be left to the decision of the

arbitration. When agreement itself is in question, and the declaration, cancellation in respect of the said agreement is sought, such type of dispute

cannot be termed as arbitrable dispute.

7. Mr. Tulzapurkar submitted that without considering averments regarding alleged fraud, the learned trial Judge has rejected the application. He

submitted that it depends upon the nature of allegations of fraud made in the suit. He submitted that if the subject matter of the dispute has

imminently civil profit, men it may not be proper to conclude that subject matter of dispute is incapable of settlement by arbitration merely because

fraud has been alleged as one of the grounds for questioning the contract. As a general rule, it cannot be said that the moment allegations of fraud

are made in the context of a contract, subject matter of the dispute is rendered incapable of resolution by arbitration. In support of his submissions,

he relied upon following decisions:-

1. HSBC PI Holdings (Mauritius) Limited v. Avitel Post Studioz Limited and Ors., Arbitration petition No. 1062 of 2012 decided on 6.12.2013

(Coram : R.D. Dhanuka, J.);

2. Avitel Post Studioz Ltd. and Ors. v. HSBC PI Holdings (Mauritius) Ltd., Appeal No. 196 of 2014 in Arbitration Petition No. 1062 of 2012,

decided on 31.7.2014 (Coram : Mohit S. Shah, C.J. & M.S. Sonak, J.) which upheld the decision of learned single Judge at Sr. No. 1;

3. Lotus Refineries Private Limited v. National Spot exchange Limited, Notice of Motion (L) No. 2036 of 2013 in Suit (L) No. 870 of 2013

decided on 10.9.2014 (Coram: S.J. Kathawalla, J.);

4. N. Radhakrishnan Vs. Maestro Engineers and Others, (2010) 1 CompLJ 154 : (2010) 2 CTC 327 : (2009) 13 JT 491(1) : (2009) 13 SCALE

403 : (2010) 1 SCC 72 : (2009) 15 SCR 371 : (2009) 10 UJ 4831 : (2010) AIRSCW 331 : (2009) 7 Supreme 80 ;

5. Swiss Timing Limited Vs. Organising Committee, Commonwealth Games 2010, (2014) AIRSCW 4958 : (2014) 7 JT 574 : (2014) 7 SCALE

515 : (2014) 6 SCC 677 ;

6. P. Anand Gajapathi Raju and Others Vs. P.V.G. Raju (Died) and Others, AIR 2000 SC 1886 : (2000) 4 JT 590 : (2000) 3 SCALE 330 :

(2000) 4 SCC 539 : (2000) 2 SCR 684 : (2000) 2 UJ 1138 : (2000) AIRSCW 1489 : (2000) 3 Supreme 464 .

8. On the other hand, Mr. Natu supported the impugned order. He submitted that the suit properties are khalsa lands as is evident from extract of

village Form No. 8A. He relied upon the second proviso to Section 5(3)(b) of the Bombay Inferiorlages Watans Abolition Act, 1958 as also

Section 4 of the Maharashtra Pragana And Kulkarni Watans (Abolition. He further submitted that mandate of Section 7 of the Act has to be

complied. Mr. Natu further submitted that allegations of fraud are of serious nature requiring leading of evidence by the parties. Arbitrator will not

be in a position to decide a complicated matter involving various questions and issues raised in the suit. For all these reasons, he submitted that the

learned trial Judge was fully justified in dismissing the application. In support of this submission, he relied upon decision of the Apex Court in the

case of Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd. and Others, AIR 2011 SC 2507 : (2011) 2 ARBLR 155 : (2011) 5 JT 198 :

(2011) 5 SCALE 147 : (2011) 5 SCC 532 : (2011) 2 UJ 1472 : (2011) AIRSCW 3089 .

9. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. While

dismissing the application, the learned trial Judge has noted in paragraph 3 that execution of the agreement as well as existence of clause 29 relating

to the decision of the dispute between the parties by the arbitration is not in dispute. The learned trial Judge has further observed in paragraph 6

that the averments in the Plaint disclose that the plaintiff is alleging fraud by the defendants. The plaintiff is questioning legality of documents of

agreements of sale which contains arbitration clause. When the entire document is put into doubt, such type of disputes cannot be left to the

decision of arbitration. Mr. Tulzapurkar submitted that the learned trial Judge failed to consider Section 16(1)(a) of the Act which lays down that

the arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration

agreement, and for that purpose (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other

terms of the contract.

10. Merely because the allegations of fraud are made, it will not preclude civil court from referring the parties to the arbitration unless those

allegations are examined. In the case of HSBC PI Holdings (Mauritius) Limited (supra), the learned single Judge has considered the decisions of

the Apex Court as also various High Courts. In paragraph 83, the decision of the Apex Court in the case of N. Radhakrishnan Vs. Maestro

Engineers and Others, (2010) 1 CompLJ 154 : (2010) 2 CTC 327 : (2009) 13 JT 491(1) : (2009) 13 SCALE 403 : (2010) 1 SCC 72 : (2009)

15 SCR 371 : (2009) 10 UJ 4831 : (2010) AIRSCW 331 : (2009) 7 Supreme 80 was considered. In that case, after considering the submissions

advanced on behalf of the respondents that when a case involves substantially questions relating to facts where detailed evidences are needed to be

produced by either parties and serious allegations pertaining to malpractices were made, it was held that the matter must be tried in a court and

Arbitrator could not be competent to deal with such matter which involves elaborate production of evidence to establish fraud and criminal

misappropriation.

11. In paragraph 84, the learned single Judge considered the decision of Calcutta High Court in the case of Ram Kishan Mimani v. Goverdhan

Das Mimani, Arbitration Petition No. 126 of 2010 decided on 7.4.2010, wherein decision of the Apex Court in the case of N. Radhakrishnan was

considered. It was observed that N. Radhakrishnan has to be read to imply that an exception may be made to general rule when it appears to

Court that a matter involving serious charges with heavy documentary and oral evidence may not be referred to arbitration notwithstanding the

dispute being covered thereby. It was held that even if serious allegations of fraud or malpractices have been made and it is only the exceptional

cases which are required to be retained in Court and not sent to arbitration on the reasoning contained in N. Radhakrishnan case that ""it cannot be

properly dealt with by the arbitrator"".

12. In paragraph 85, the learned single Judge accepted the submission made on behalf of the petitioner that the case of N. Radhakrishnan Vs.

Maestro Engineers and Others, (2010) 1 CompLJ 154 : (2010) 2 CTC 327 : (2009) 13 JT 491(1) : (2009) 13 SCALE 403 : (2010) 1 SCC 72 :

(2009) 15 SCR 371 : (2009) 10 UJ 4831 : (2010) AIRSCW 331 : (2009) 7 Supreme 80 is not an authority on the proposition that as soon as

allegations of fraud are made by any party, no such matter can be referred to arbitration at all. The learned single Judge concurred with the view

taken by Calcutta High Court.

13. In paragraph 88, the learned single Judge dealt with the decision of the Apex Court in Booz Allen and Hamilton Inc. Vs. SBI Home Finance

Ltd. and Others, AIR 2011 SC 2507 : (2011) 2 ARBLR 155 : (2011) 5 JT 198 : (2011) 5 SCALE 147 : (2011) 5 SCC 532 : (2011) 2 UJ

1472 : (2011) AIRSCW 3089 and observed that the decision has carved out category of disputes which are not arbitral, i.e. such as disputes

relating to rights and liability giving rise to or arising out of criminal offences, matrimonial disputes, child custody, guardianship matters, insolvency

and winding up matters, testamentary matters, eviction or tenancy matters. The learned single Judge observed that the Court has to decide whether

such allegations made by the party can be referred to arbitration or it would be more appropriate and convenient to decide such allegations by the

Court itself though arbitration agreement exists.

14. The decision of the learned single Judge was upheld by the Division Bench in Avitel Post Studioz Ltd. (supra). After considering various

decisions, the Division Bench observed in paragraphs 30, 31 and 33 thus:

30. Having considered the aforesaid submissions and having perused the decisions as aforesaid, we are of the opinion, that said judgments do not

lay down any general or peremptory rule that allegations of fraud, in all cases, are incapable of settlement by arbitration under the law of India.

There is a real though subtle difference between ''suitability'' and ''arbitrability'' in the context of subject matter of disputes. In order to be conscious

of this difference, regard shall have to be had to the nature of allegations, the context in which the same are made and the ultimate relief which is

being applied for on basis of such allegations. If the subject matter of dispute has an eminently civil profile, then it may not be proper to conclude

that the subject matter of dispute is incapable of settlement by arbitration, merely because fraud or misrepresentation as defined under Sections 17

and 18 of the Indian Contract Act, 1872 may have been alleged as one of the grounds for questioning the contract.

31. In the context of provisions of Contract Act 1872, fraud and misrepresentation are some of the well accepted grounds for questioning validity

of a contract by the entity, upon whom the same are alleged to have been practiced. Section 10 of the Contract Act, 1872 provides that all

agreements are contracts, if they are made by free consent of the parties, competent to contract, for lawful consideration, with lawful object which

is not expressly declared to be void. Therefore, "free consent" is one of the essential ingredients for a valid contract under the Contract Act.

Section 13 of the Contract Act provides that two or more persons are said to consent, when they agree upon the same thing in the same sense.

Section 14 of the Contract Act provides that a consent is said to be ''free'' when it is not caused, inter alia by ''fraud'' as defined under section 17

or ''misrepresentation'' as defined under section 18 of the Contract Act. Sections 17 and 18 of the Contract Act define in great details, the

expressions "fraud" and ''misrepresentation''. The principle difference between fraud and misrepresentation is that in cases of fraud the person who

makes the representation does not himself believe it to be true, whilst in cases of misrepresentation, the person himself believes it to be true. Thus,

''fraud'' and ''misrepresentation'' as defined under sections 17 and 18 of the Contract Act are well accepted grounds which would vitiate ''free

consent'' and consequently the contract itself. Therefore, as a general rule, it cannot be said that the moment allegations of fraud and

misrepresentation are made in the context of a contract, the subject matter of the dispute is rendered incapable of resolution by arbitration.

33. In paragraph 23 of the decision in N. Radhakrishnan Vs. Maestro Engineers and Others, (2010) 1 CompLJ 154 : (2010) 2 CTC 327 :

(2009) 13 JT 491(1) : (2009) 13 SCALE 403 : (2010) 1 SCC 72 : (2009) 15 SCR 371 : (2009) 10 UJ 4831 : (2010) AIRSCW 331 : (2009) 7

Supreme 80 , the Supreme Court has held that the facts of the said case do not warrant the matter to be tried and decided by the arbitrator, rather,

for furtherance of justice, it should be tried in a court of law which would be more competent and have the means to decide such complicated

matters involving various questions and issues raised in the dispute. Similarly, in paragraph 26, the Supreme Court after noticing the allegation

made, has held that the disputes cannot be "properly" dealt with by the arbitrator. It does appear therefore, that the Supreme Court was

concerned with the issue of "suitability" rather than "arbitrability" of the disputes.

15. In paragraph 34, the Division Bench considered the decision of the Apex Court in Swiss Timing Limited Vs. Organising Committee,

Commonwealth Games 2010, (2014) AIRSCW 4958 : (2014) 7 JT 574 : (2014) 7 SCALE 515 : (2014) 6 SCC 677 , wherein after analysing

the decision of N. Radhakrishnan case it was held that N. Radhakrishnan Judgment is "per incuriam" on two grounds. Firstly, decision in Hindustan

Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums, AIR 2003 SC 2881 : (2003) 2 ARBLR 666 : (2003) 4 CompLJ 311 : (2003) 3 CTC

438 : (2003) 6 JT 1 : (2003) 135 PLR 746 : (2003) 5 SCALE 402 : (2003) 6 SCC 503 : (2003) 46 SCL 337 : (2003) 2 UJ 1299 : (2003)

AIRSCW 3558 , though was referred, was not distinguished and also not followed. The decision in P. Anand Gajapathi Raju and Others Vs.

P.V.G. Raju (Died) and Others, AIR 2000 SC 1886 : (2000) 4 JT 590 : (2000) 3 SCALE 330 : (2000) 4 SCC 539 : (2000) 2 SCR 684 :

(2000) 2 UJ 1138 : (2000) AIRSCW 1489 : (2000) 3 Supreme 464 was not even brought to the notice. Secondly, the provision contained in

Section 16 of the Act was also not brought to the notice of the Court.

16. In the case of Lotus Refineries Pvt. Ltd. (supra), the learned single Judge also considered the decision of HSBC v. Avitel (supra). In para 109,

it was observed thus:

109. In this context, it seems to me that the rationale underlying decisions like N. Radhakrishnan is that Indian courts may refuse to refer a matter

to arbitration under Section 8 of the Act, if satisfied that there is a sufficient reason why the matter should not be referred to arbitration. In my view,

there would be sufficient reason, in a dispute involving allegations of fraud, only where a detailed investigation of the fraud as a whole is required to

decide the dispute between the parties. The reason is that such an investigation may involve the interests and concerns of third parties to the

dispute, or of the general public, which cannot be represented in the private process of arbitration. Again, if an investigating authority is in the midst

of an investigation at the time of a dispute, and it is expected that certain directions may have to be issued to such authority as regards the

investigation, in order to resolve the dispute between the parties and/or decide the question of fraud, it would be sufficient reason for the Court to

refuse to refer the matter to arbitration, bearing in mind that the arbitral tribunal would not have the power to issue such directions to an

investigating authority. It is pertinent to mention in this context that in a recent decision of the Hon''ble Supreme Court in Swiss Timing Limited Vs.

Organising Committee, Commonwealth Games 2010, (2014) AIRSCW 4958 : (2014) 7 JT 574 : (2014) 7 SCALE 515 : (2014) 6 SCC 677 ,

the Hon''ble Court observed that there is no inherent risk to the parties in permitting arbitration to proceed, even with criminal proceedings running

simultaneously.

17. In the light of the principles laid down in the above decisions and with the assistance of learned counsel appearing for the parties, I have

carefully perused the averments made by the plaintiff in the suit as regards fraud. In paragraphs 13, 14 and 16, the plaintiff has alleged thus:

13. The plaintiffs further state that inspite of the aforesaid visits paid by the plaintiff Nos. 1 and 2 to the office of the defendants to fulfill the

condition of Annexure ''H'' (Colly), the defendants have miserably failed to comply with the terms and conditions of the Annexure ''H'' (Colly),

therefore, in view of the aforesaid facts, it is evident that the defendants are not interested to go ahead with the suit lands and violated the terms and

conditions which they agreed with an intention to create a fraud on the plaintiffs knowing fully well that the suit lands were purchased from the

plaintiffs in the year 2011 under the Agreement to Sale at Annexure ''H'' (Colly) at a dustbin throw price that too not paid in time, therefore, the

plaintiffs have suffered irreparable loss and injury which cannot be compensated in terms of money. ...''''.

14. .....It is further submitted that the Agreement to Sale executed by defendants with the plaintiffs is not binding on the plaintiffs because the

defendants have miserably failed to follow the terms and conditions as mentioned in Annexure ''H'' (Colly) at the time of execution of Annexure

''H'' (Colly) the same was executed on 12.11.2010 and the document was registered on 17.2.2011 that means after a gap of two months, it is

important to note here that the defendants are not in a position to comply the terms and conditions as set out in the Agreement to Sale at Annexure

''H'' (Colly) as the cheques given by them at Annexure ''11'' and ''13'' was bounced, this clearly shows that they are not financially sound and to

create fraud on the plaintiffs, they have executed an Agreement to Sale at Annexure ''H'' (Colly) and failed to pay proper consideration within time

and therefore they have committed a breach of contract and therefore the plaintiffs have no option but to file the present suit for cancellation of

Annexure ''H'' (colly) so that the defendants should not create any third party interest in respect of the suit lands, the defendants have violated the

terms and conditions of Agreement to Sale at Annexure ''H'' (Colly), therefore they are not entitled to take benefits in view of non-followance of

terms and conditions of Annexure ''H'' (Colly), therefore, Agreement to Sale executed between the plaintiffs and defendants being illegal, void ab-

initio and therefore the same is liable to be declared as not binding on the plaintiffs, therefore the same are liable to be declared as null and void,

not binding, cancelled and liable to be quashed and set aside.

16. .....it is further submitted that the Agreement to Sale at Annexure ''H'' (Colly) executed by defendants and are not binding on the plaintiffs

because the defendant No. 4 for and on behalf of defendant No. 3 and defendant No. 6 for and on behalf of defendant No. 5 are being party to

the document i.e. the Agreement to Sale at Annexure ''H'' (Colly) have miserably failed to provide any documentary evidence viz. Income Tax

registration Certificate, Banking details, authorization letter, Partnership Certificate in respect of defendant Nos. 5 and 6 as to whether it is really

registered or not under the provisions of The Indian Partnership Act, 1932, certified copy of the resolution, if any, whether the Partnership firm is

still in existence or it is dissolved by an order of the Court or by the Will of the Partners, Income Tax Returns, other necessary details authorizing

these defendants to enter as a confirming party, it is also important to note here that the resolution submitted by defendant No. 2 for and on behalf

of defendant No. 1 at Annexure ""H"" (Colly), the kind attention of this Hon''ble Court is invited towards internal page Nos. 27 and 28 which is

being a certified copy of defendant No. 1''s company resolution, however, at the last page i.e. at internal page No. 28, there is no date mentioned

as to when it was certified by the Company Secretary, the certified copy of resolution book of the company i.e. defendant No. 1 is not produced,

the documentary evidence categorically suggests that the defendants have created a fraud on the plaintiffs by executing an Agreement to Sale at a

dustbin throw price, it is also important to note here that the role of defendant Nos. 3 to 6 is not mentioned or there is no documentary evidence

and/or Memorandum of Understanding or any type of mutual agreement executed between them as to why these persons were brought at the time

of execution of Agreement to Sale at Annexure "H" (Colly) and what are their shares in respect of development of suit lands in future. From the

conduct of the defendants it may be revealed that the defendants might have developed a modus operandi to execute an Agreement to Sale at a

dustbin throw price and by registering it on payment of half of the consideration and then in future after waiting for 3 to 4 years, the same land can

be sold out at a higher price so that they may gain higher profits by paying less to the plaintiffs, the defendants knowing fully well that the plaintiffs

being rustic villagers, they were fooled and misguided, misrepresented and fraud has been created upon them which is a violation of mandate of the

Indian Contract Act, 1872 and the Transfer of Property Act, 1882.

Perusal of the averments clearly shows that all these allegations are relating to nonpayment of the balance consideration by defendants 1 to 3. It is

not in dispute that total consideration agreed between the parties as 42 Lakhs and that the plaintiffs have received Rs. 28,55,200/- (almost 2/3rd).

The plaintiffs have not paid remaining consideration of Rs. 13,44,800/-. Thus, the main grievance of the plaintiffs is breach of contract. The other

grievance is that the defendants have allegedly purchased the suit property at a throwaway price. Perusal of the entire plaint shows that the subject

matter of the dispute has imminently civil profile as held by the Division Bench in the case of Avitel Post Studioz Ltd. In my opinion, having regard

to the nature of the allegations of fraud made by the plaintiffs in the suit, it does not involve serious charges requiring parties to lead heavy

documentary and oral evidence. Applying the tests laid down in the above Judgments as also in the light of the decisions of the Apex Court in the

case of P. Anand Gajapathi Raju and Others Vs. P.V.G. Raju (Died) and Others, AIR 2000 SC 1886 : (2000) 4 JT 590 : (2000) 3 SCALE 330

: (2000) 4 SCC 539 : (2000) 2 SCR 684 : (2000) 2 UJ 1138 : (2000) AIRSCW 1489 : (2000) 3 Supreme 464 , in my opinion, the learned trial

Judge committed serious error in dismissing the application without examining the allegations of fraud made in the Plaint. The impugned order,

therefore, cannot be sustained and deserves to be set aside. Hence, Civil Revision Application is allowed. The impugned order is set aside and the

application at Exh. 19 is allowed. The suit is disposed of and the matter is referred to arbitration in terms of clause 29 of the Agreement of Sale

dated 12.11.2010. In the circumstances of the case, there shall be no order as to costs.