

Invocation of Arbitration Clause Post Compromise Decree

written by Priyanka Ajjannavar | September 16, 2019

The bench consisting of Justice R. Banumati and Justice A.S. Bopanna of Hon'ble Supreme Court of India in judgment dated 30th July 2019, in the matter of *Zenith Drugs & Allied Agencies Pvt. Ltd. v. Nicholas Primal India Pvt. Ltd.*[1] held that "since there is no arbitration clause relating to the dispute, hence plea could be decided only by the Civil Court, without invoking the Arbitration clause under the agreement".

FACTS

The Zenith Drugs & Allied Agencies

Pvt. Ltd ("Appellant Company") is a company involved in various types of agency businesses including the business of clearing and forwarding agents, freight contractors, etc.

Rhone Poulenc India

Limited (RPIL) vide agreement dated 01.05.1997 appointed the Appellant Company

as its clearing and forwarding agent wherein clause No. 17 of the said agreement contained a clause on arbitration.

The Appellant Company filed a title suit *inter alia* praying for a

declaration that the contract between the Appellant Company and RPIL (who was defendant

no. 1 in the title suit), is valid. In the said suit,

the parties have compromised the matter. Thereafter,

Nicholas Primal India Pvt.

Ltd ("Respondent Company") refused

to honour the terms and conditions of the compromise decree. Therefore, the Appellant

Company had filed a title execution case for execution of the compromise decree along with

application under Section 151 Civil Procedure Code, 1908 ("CPC"), asking for setting aside/recalling of compromise decree on the ground that the compromise

decree was obtained by the Appellant Company through false inducement and misrepresentation and the same is vitiated on account of fraud. Relying upon clause 17 of

the agreement, the Respondent Company filed an application under Section 8 of The Arbitration and Conciliation Act, 1996 ("Act"), for referring the parties to arbitration in money suit. The same was rejected by the Trial Court.

When the Respondent Company approached the High Court, the Hon'ble

Court allowed the petition and referred it to arbitration. Aggrieved by the said order of the High Court, the Appellant Company challenged the same before

the Hon'ble Supreme Court of India.

ISSUES

The Hon'ble Supreme Court considered

the following Questions of Law and Facts:

- Whether the High Court was right in referring the parties to the arbitration or not?
- Whether the appellant is right in contending that the dispute

raised in the Money Suit is not covered by the arbitration clause and cannot be referred to arbitration or not?

SUBMISSIONS

The learned counsel for the Appellant

Company contended that compromise decree was in full and final settlement of the dispute between the parties. Hence, the same is outside the scope of the arbitration clause. Placing reliance upon *Yogi Agarwal v. Inspiration Clothes & U and Ors.*[2] and *Sukanya*

Holdings (P) Ltd. v. Jayesh H. Pandya and Anr.[3],

learned counsel for the Appellant Company submitted that in order to refer the parties to arbitration, the dispute must fall within the

purview of which the parties have agreed to refer to arbitration.

On the other hand, learned

counsel for the Respondent Company submitted that the compromise deed was obtained by the Appellant Company through false inducement and by practicing fraud upon the Respondent Company. The Respondent Company would not have agreed

for a compromise deed, if the fraud perpetrated by the Appellant Company was known to the Respondent Company.

It was further submitted by the

learned counsel for the Respondent Company that clause 17 of the agreement dated 01.05.1997 covers all the disputes including "any dispute arising between

the parties". Placing

reliance upon *Swiss Timing v. Commonwealth Games*[4], the learned counsel submitted that shutting out the

arbitration at the initial stage would destroy the very purpose for which the parties had entered into the arbitration agreement.

It was further

submitted that when there is a clause for arbitration in the agreement, it is mandatory for the Civil Court to refer the disputes to arbitration.

JUDGEMENT

The

Hon'ble Supreme Court, placing

reliance on *A. Ayyasamy v. A. Paramasivam and Ors*[5] observed that while dealing with

Section 8 of the Act, if the court finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are very complicated then it becomes absolutely essential

that such complex issues can be decided only by the Civil Court on the appreciation of the evidence.

There

is no arbitration clause relating to the dispute between the parties in not appointing the Appellant Company as a stockist

and the claim of compensation towards loss of goodwill and reputation. The High

Court erred in proceeding under the footing that the dispute falls within the

ambit of the agreement dated 01.05.1997 and that the Appellant Company - plaintiff admits the existence of the arbitration clause and the impugned judgment is liable to be set aside.

As

a result, the impugned order of the Hon'ble High Court is set aside. The money suit

shall stand restored to the Trial Court and the Trial Court shall proceed with

the matter in accordance with law.

CONCLUSION

Having considered the facts and binding precedent, the

Hon'ble Supreme Court has rightly observed that complex questions of fraud and

where fraud is alleged against the arbitration provision itself or is of such a

nature that pervades the entire contract, meaning thereby in those cases where

fraud goes to the validity of the contract itself, such issues are complex in nature and can be decided only by the Civil Court on appreciation of the voluminous evidence that needs to be produced and tried before a Civil Court.

Furthermore,

when there is no arbitration clause in the compromise

deed relating to the dispute between the parties, the matter can only be adjudicated by the Civil Court, reference of the arbitration clause of the earlier agreement cannot be made.

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- [1] Civil appeal no. 4430 /2009
 - [2] (2009) 1 SCC 372
 - [3] (2003) 5 SCC 531
 - [4] (2014) 6 SCC 677
 - [5] (2016) 10 SCC 386

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