DECREETAL ORDER

IN THE COURT OF THE XVI ADDITIONAL DISTRICT AND SESSIONS JUDGE-CUM-XVI ADDITIONAL METROPOLITAN SESSIONS JUDGE
RANGA REDDY DISTRICT:: AT MALKAJGIRI

PRESENT: Sri T. Venkateswara Reddy,
XVI Additional District and Sessions
Judge-Cum-XVI Additional Metropolitan
Sessions Judge, R.R. District, at Malkajgiri.

DATED THIS THE 12th DAY OF MAY, 2017

I.A. No.623 OF 2015
In
O.S. No.634 OF 2015

BETWEEN:

1. L.Rajeshwar Rao, S/o.L.Anand Rao,
aged 47 years, Occ: Business,

2. L. Santhosh Rao, S/o.L.Rajeshwar Rao,
aged 23 years,
Both R/o. Flat No.D2, Second Floor,
Susheel Residency, West Marredpally,
Secunderabad-26.

...Petitioners/ Respondents 1 & 2.

AND

1. Greenwood Builders, Rep. By its Partner Mr. Soham Modi,
S/o. Satish Modi, aged 46 years,

2. Greed Wood Lake Side (Hyderabad), LLP,
Rep. By its partner Soham Modi,
S/o. Satish Modi,

Both having office at 5-4-187/3&4, Soham Mansion,
M.G. Road, Secunderabad.

3. D.Sridhar.
4. K.V. Pavan Kumar.
5. Smt. M.Renuka.
6. M.Ram Gopal.
7. M.Krishna.
8. Ritesh Kumar.
9. A. Chenkesh.
10. Smt. G. Damayanthi.

(Respondents 3 to 10 are not necessary parties to this petition)

... Respondents/Defendants

Claim: This Petition filed under section 8 of the arbitration and conciliation Act, 1996 to refer the parties to Arbitration without further proceedings in the suit.

Petition Presented on : 22.07.2015
Petition Numbered on : 22.07.2015
Date of Decreetal order : 12.05.2017

A Court fees of Rs.2/- paid.

This petition is coming before me on this day for final disposal in the presence of M/s. M.Sreedhara Murthy, Advocate for the Petitioner/plaintiff and Sri.C.Balagopal, advocate for the Respondents 1 and 2 and upon hearing the arguments and upon perusing the material papers on record, the matter having stood over for consideration till this day, this court doth ordered and Decreetal order as follows:

I) That the petition of the petitioner be and the same is hereby allowed as prayed for.

II) That the parties are directed to bear their costs involved in this petition.

Given under my hand and the seal of the court on this the 12th day of May, 2017.

T. Venkaliswara Reddy
XVI Additional District & Sessions
Judge-Cum-XVI Additional Metropolitan
Sessions Judge, R.R. District at Malkajgiri.

COST OF THE PETITION

			For Petitioner	For Respondents
1.	Stamp on petition	Rs.	2-00	-
2.	Stamp on vakalath	Rs.	2-00	2-00
3.	Stamp on process	Rs.	80-00	
		Rs.	83-00	2-00

T. Venkaliswara Reddy
XVI Additional District & Sessions
Judge-Cum-XVI Additional Metropolitan
Sessions Judge, R.R. District at Malkajgiri.

XVI ADJ
Court of X Metropolitan Magistrate
Cyberabad at Malkajgiri
C. A. No 2258/12 Date 19/5/12
Application Filed on
Charges Called on 5/7/12
Charges Disposed on 5/7/12
Reciept No: 36
Copy made Ready on 5/7/12
Copy Delivered on 5/7/12
Chief Administrative Officer
XVI ADJ Court, Cyberabad
Malkajgiri, R.R. Dist.
XVI Addl Dist. & Session Judge
Cyberabad, Malkajgiri, R.R. Dist

Read By:
Compared By:
Certified to be Xerox True Copy
Chief Administrative Officer
XVI ADJ Court, Cyberabad
Malkajgiri, R.R. Dist.

IN THE COURT OF THE XVI ADDITIONAL DISTRICT AND SESSIONS JUDGE'S COURT-CUM-XVI ADDITIONAL METROPOLITAN SESSIONS JUDGE'S COURT RANGA REDDY DISTRICT :: AT MALKAJGIRI

PRESENT: SRI. T. VENKATESWARA REDDY,
XVI ADDITIONAL DISTRICT & SESSIONS
JUDGE, R.R. DISTRICT AT MALKAJGIRI

DATED THIS THE 12th DAY OF MAY, 2017

I.A.623 of 2015

in

O.S. 634 of 2015

Between:

1. L.Rajeshwar Rao S/o. L.Anand Rao,
Aged 47 years, Occ: Business,

2. L.Santhosh Rao, S/o. L.Rajeshwar Rao,
Aged 23 years,

Both R/o. Flat No. D2, Second floor,
Susheel Residency, West Marredpally,
Secunderabad-26.

..Petitioners/Respondents 1 & 2.

AND

1. Greenwood Builders,
Rep. by its Partner Mr. Soham Modi,
S/o. Satish Modi, aged 46 years,

2. Green Wood Lake Side (Hyderabad), LLP,
Rep. by its Partner Soham Modi,
S/o. Satish Modi,

Both having office at 5-4-187/3&4,Soham Mansion,
M.G.Road, Secunderabad.

3. D.Sridhar.
4. K.V.Pavan Kumar.
5. Smt. M.Renuka.
6. M.Ram Gopal.
7. M.Krishna.
8. Ritesh Kumar.
9. A.Chenkesh.
10. Smt. G.Damayanthi.

(Respondents 3 to 10 are not necessary parties
to this petition)

... Respondents.

This matter is coming before me for hearing on 11.4.2017 in the presence of M/s.M.Sreedhar Murthy, Advocate for the petitioners and C.Balagopal, Advocate for the respondents 1 and 2 and on hearing the arguments and upon perusing the material on record, and the matter having stood over for consideration till this day, this court delivered the following:

ORDER

This is the petition filed by the petitioners/defendants 1 and 2 under Section 8 of Arbitration and Conciliation Act to refer the parties to Arbitration without further proceeding with the suit.

2. The petitioner No.1 filed his affidavit in support of this petition alleging that the petitioner No.2 is the son of the petitioner No.1. The respondents 1 and 2 herein are the plaintiffs and the respondents 3 to 10 are the defendants 3 to 10 and the petitioners are the defendants 1 and 2 in the suit. The plaintiffs filed the suit on the basis of Memorandum of Understanding dated 23.5.2013 and supplementary Memorandum of Understanding dated 17.9.2014 which is in continuation of original Memorandum of Understanding. As per Clause No. 56 of the Memorandum of Understanding dated 23.5.2014 it is agreed between the parties in connection with the Memorandum of Understanding that the disputes shall be decided through arbitration of two Arbitrators one should be appointed by the owners and the other should be appointed by the Developers and that two Arbitrators appointing umpire and the proceedings will be in Hyderabad and the provisions of Arbitration by conciliation Act 1996 shall be applicable. Hence it is the obligation on the part of the petitioners to invoke the clause of Arbitration if at all they believe that any Arbitral issue to be adjudicated by the Arbitrator. This court has no jurisdiction to entertain the suit. It is just and necessary that the parties to the proceedings be referred to Arbitrator without proceeding further in the matter.

3. The respondents 1 and 2 filed the counter alleging that the petition is not maintainable. The petitioners themselves cannot claim to answer for themselves and also for respondents 3 to 10 who are the defendants in the suit. The defendants 3 to 10 in the suit have not choosen to come forward to contest the claim of the plaintiffs. In view of this and in view of various other factors it is not necessarily essential to refer the matter to Arbitration. Complicated questions of law and facts are to be determined by the Civil Court. The civil court never loses its jurisdiction. Since all the parties to the agreement have not come forward with a prayer for reference to Arbitration, the petition is liable to be dismissed.

It is mentioned in the petition that the respondents 3 to 10 are not necessary parties.

4. Heard the arguments submitted by both side counsel. Apart from submitting the oral arguments the plaintiffs filed the written arguments.

5. Now, the points that arise for determination are:

1) Whether the parties to the suit to be referred to Arbitrator as prayed for.

2) To what relief.

6. **Point No.1:**

The petitioners herein are the defendants 1 and 2, the respondents 1 and 2 herein are the plaintiffs and the respondents 3 to 10 herein are the defendants 3 to 10 in O.S. 634/2015. For the sake of convenience the parties are herein after referred to as arrayed in O.S. 634/2015.

The counsel who filed the present petition on behalf of defendants 1 and 2 has also filed vakalat for the defendants 4 to 10 in this suit. In view of this, petition cannot be rejected on the ground that all the defendants have not come forward for referring the matter to Arbitration. The suit summons are not served for the defendant No.3 as the defendant No.3 went to America.

The plaintiffs filed the suit for recovery of Rs.1,63,92,622/- from the defendants on the basis of Memorandum of Understanding dated 23.5.2013 and supplementary Memorandum of Understanding dated 17.9.2014 alleging that it is impossible to perform the Memorandum of Understanding due to latches on the part of the defendants and as such the plaintiffs have no other option but to cancel the Memorandum of Understanding. With this the plaintiffs asked in the suit for refund of security deposit and amount spent by the plaintiffs.

As seen from the plaint pleadings it is clear that the suit of the plaintiffs is based on Memorandum of Understanding entered between the plaintiffs and the defendants dated 23.5.2013 and supplementary Memorandum of Understanding dated 17.9.2014. The main contention of the plaintiff in the suit is that as per

Clause 52 of Memorandum of Understanding dated 23.5.2013 the plaintiffs are entitled for refund of security deposit.

The defendants 1 and 2 filed original Memorandum of Understandings dated 5.4.2013, 23.5.2013 and supplementary Memorandum of Understanding dated 17.9.2014. In view of this, this petition cannot be rejected on the ground that the defendants 1 and 2 have not filed Memorandum of Understanding along with this petition.

The defendants 1 and 2 relied on the following decisions in support of their contention that in view of Arbitration Clause in Memorandum of Understanding the parties are to be referred to Arbitration.

(1) The Decision of the Hon'ble Supreme Court in Hindustan Petroleum Corporation Ltd., Vs. M/s. Pinkcity Midway Petroleums reported in AIR 2003 Supreme Court 2881.

In the above decision their Lordship held that "the language of Section 8 is peremptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. Therefore, it is clear that if, as contended by a party in an agreement between the parties before the Civil Court, there is a clause for arbitration, it is mandatory for the Civil Court to refer the dispute to an arbitrator."

(2) The Decision of the Hon'ble High Court of A.P. in Loyala School rep. by its Principal, Hyderabad Vs. Megha Kumar and another reported in 2010 (1) ALT 556 (D.B.).

In the above decision their Lordship held that "it is well settled that in view of the case law noted herein above, it may be taken as well settled that every judicial authority has a mandatory duty to refer the dispute arising between the contracting parties to arbitration and to discontinue the suit or proceeding when once an application under Section 8 of the Act is filed because after making a reference to

arbitration nothing remains to be decided in original action. At that stage the Court or judicial authority is not required to decide whether the denial of obligations or mutual duties by the other party or refusal of other party to accept the obligations, disentitles from seeking arbitration. If the parties have alteraead their jural relationship allegedly due to subsequent modification of their status, even then the arbitration clause would not cease to have effect. We may also add that a Court or judicial authority should entertain an application under Section 8(1) of the Act seeking arbitration only when such application is accompanied by original agreement or a duly certified copy thereof."

(3) The Decision of the Hon'ble High Court of A.P. in Impact Metals Ltd., Medak and another Vs. MSR India Ltd., Hyderabad and others reported in 2017(2) ALD 266 (DB).

In the above decisions their Lordship held that "when the dispute raised by the plaintiffs in the suit is an Arbitral dispute the suit is not maintainable."

Coming to the present case the plaintiffs are not disputing the Memorandum of Understanding entered between the plaintiffs and the defendants dated 25.3.2013. In fact the suit of the plaintiffs is based on Clause No.~~52~~ 56 and it is mentioned in the plaint with regard to the cause of action for filing the suit as follows:

"Cause of Action":

"The cause of action for the suit arose on 23.5.2013 the date on which the defendants and the plaintiffs have entered into MOU and on 17.9.2014 the date on which the supplementary MOU was entered upon by the plaintiffs and the defendants and on 15.6.2015 when the notice was given to the defendants through the plaintiffs counsel and on all such dates when the terms and conditions of the MOU are not fulfilled by the defendants"

Clause No. 56 of Memorandum of Understanding dated 23.5.2013 is as follows:

"All the disputes or differences between the Owners and the Developers arising out of, or in connection with, this understanding shall be decided through arbitration of two arbitrators; one to be appointed by the Owners and the other to be appointed by the Developer and the two arbitrators appointing the third arbitrator. The venue of the arbitration proceedings shall be Hyderabad and the provisions of Arbitration and Conciliation Act, 1996, shall be applicable to such proceedings. Law courts in Hyderabad shall alone have exclusive jurisdiction over all matters arising out of, or in connection with this understanding to the exclusion of all other law courts."

In view of above clause it is very clear that the dispute in the suit is an Arbitral dispute and there is an Arbitration Clause in Memorandum of Understanding dated 23.5.2013 for settlement of dispute between owners and developers through Arbitration.

In view of above mentioned decisions relied on by the defendants 1 and 2 it is very clear that the judicial authority has a mandatory duty to refer the dispute arising between the contracting parties through Arbitration and to discontinue the suit or proceeding when once in application under Section 8 of the Arbitration and Conciliation Act because after making a reference through arbitration nothing remains to be decided in original action.

In view of the allegations mentioned in the plaint and in view of Arbitration Clause in Memorandum of Understanding dated 23.5.2013, it is held that the entire dispute raised by the plaintiffs is an Arbitral dispute within the meaning of Clause 56 of Memorandum of Understanding dated 23.5.2013 entered between the plaintiffs and the defendants and therefore, the suit is not maintainable.

In view of above all reasons the request of the defendants 1 and 2 for reference of the dispute for Arbitration Act, under section 8 of Arbitration and Conciliation Act is considered and this point is answered in favour of the defendants 1 and 2.

XVI Addl Dist. & Session Judge

7. **Point No.2:**

In view of my findings on point No.1, the petition is to be allowed.

8. In the result, the petition is allowed as prayed for. In the circumstances of the case the parties are directed to bear their costs involved in this petition.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 12th day of May, 2017.

T. Venkateswarlu
XVI Additional District & Sessions
Judge-Cum-XVI Additional Metropolitan
Sessions Judge, R.R. District at Malkajgiri.

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Read By:
Compared By:
Certified to be Xerox True Copy

Chief Administrative Officer
XVI ADJ Court, Cyberabad
Malkajgiri, R.R. Dist

In the Court of ~~X Metropolitan Magistrate~~ XVI ADJ
Cyberabad at Malkajgiri
C.A. No 2258 Date 12
Application Filed on 19/5/17
Charges Called on 5/7/17
Charges Deposited on 5/7/17
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Copy Delivered on 5/7/17

Chief Administrative Officer
XVI ADJ Court, Cyberabad
Malkajgiri, R.R. Dist

XVI Addl Dist. & Session Judge