

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU  
DATED THIS THE 24<sup>TH</sup> DAY OF JULY, 2024**

**PRESENT**

**THE HON'BLE MRS JUSTICE ANU SIVARAMAN**

**AND**

**THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE  
MISCELLANEOUS FIRST APPEAL NO. 2978 OF 2024 (AA)**

**BETWEEN:**

M/S DEVTREE CORP. LLP.  
A LIMITED LIABILITY PARTNERSHIP  
A COMPANY REGISTERED UNDER THE  
COMPANIES ACT,  
HAVING REGD. OFFICE AT 1140,  
SECTOR -15B, SECTOR 15  
CHANDIGARH 160015  
REPRESENTED BY MR. ANAND KULKARNI

...APPELLANT

(BY SRI. UDAY HOLLA, SENIOR COUNSEL FOR  
SRI. HIRAN KRISHNASWAMY, ADV.)

**AND:**

M/S BHUMIKA NORTH GARDENIA,  
A PARTNERSHIP FIRM HAVING  
OFFICE AT NO.435, BALAJI GOKULA,  
4<sup>TH</sup> D MAIN, 12<sup>TH</sup> CROSS, WOC ROAD,  
MAHALAKSHMIPURA, B'LORE - 86  
REP. BY R ASHWATHAPPA

...RESPONDENT

(BY SRI. C.K.NANDA KUMAR, SENIOR COUNSEL A/W  
SRI. SUSHAL TIWARI, ADV. FOR C/RESPONDENT)

THIS MFA IS FILED U/S 37(1)(b) OF THE  
ARBITRATION AND CONCILIATION ACT, 1996, PRAYING  
TO QUASH AND SET ASIDE THE IMPUGNED ORDER  
DT.15.04.2024 IN AA NO.15002/2024 ON THE FILE OF THE

V ADDL. DISTRICT JUDGE, SESSION JUDGE, BENGALURU RURAL, SITTING AT DEVANAHALLI, ALLOWING THE PETITION FILED U/SEC. 9 OF ARBITRATION AND CONCILIATION ACT, 1996.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 10<sup>TH</sup> JULY, 2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANANT RAMANATH HEGDE J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS JUSTICE ANU SIVARAMAN  
AND  
HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

### **CAV JUDGMENT**

(PER: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE)

The following questions have come up for consideration in this appeal:

- (a) Whether a person who is not a party to the arbitration agreement, and purchases the property from a person who is a party to the agreement, is bound by the arbitration clause that is binding on his vendors?
- (b) Whether a person who purchases the property which is the subject matter of a proceeding under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'Act of 1996') is bound by the principle of *lis pendens*?

2. The appellant Company which is the respondent in Section 9 proceeding under the Act of 1996 and against which an interim order is passed, is in appeal on the premise that Section 9 proceeding is not maintainable against it as it is not a party to the arbitration agreement.

3. The respondent in this appeal, which is the applicant in Section 9 proceeding is defending the impugned order. Respondent contends that the appellant is "claiming through or under a party" who is bound by the arbitration agreement and alleged purchase by the appellant is during the pendency of Section 9 proceeding, as such the appellant is amenable to the jurisdiction under the Act of 1996.

4. Certain relevant facts noticed from the pleadings are as under:

- On 16.10.2020, the respondent entered into a registered agreement to purchase certain immovable properties with the owners.

- Out of Rs.16,14,37,500/-, the sale consideration amount, Rs.80.00 lakhs is claimed to have been paid as advance.
- On 03.02.2023, the vendors issued a notice to the respondent, cancelling the agreement for sale dated 16.10.2020, and also informed that Rs.80.00 lakhs received towards advance consideration amount is repaid to the present respondent.
- On 04.03.2023, the respondent issued a reply to the notice dated 03.02.2023, insisting on the specific performance of the agreement for sale.
- On 17.05.2023, the appellant takes out a paper publication expressing its intention to purchase the properties.
- On 31.07.2023, the respondent filed an application under Section 9 of the Act of 1996, seeking interim measures against the vendors.  
(In this proceeding only the present

respondent and owners are parties, and the appellant is not a party)

- 02.11.2023, respondent initiated proceedings under Section 21 of the Act of 1996 against the vendors.
- On 28.11.2023, Section 9 application is heard and reserved for orders.
- On 20.12.2023, the appellant purchased the properties from vendors of the respondent.
- On 02.01.2024, Section 9 Court passed an order against the vendors restraining them from alienating the schedule properties.
- On 27.01.2024, the respondent filed a Section 9 application against the appellant (*pendente lite* purchaser) and in terms of the impugned order dated 15.04.2024, Section 9 Court restrained the appellant from alienating the properties.

5. Sri Udaya Holla, the learned Senior counsel urged that Section 9 application is not maintainable on the following grounds:

- Under Section 7 of the Act of 1996, the arbitration agreement to be valid, must be in writing and signed by the parties. The appellant is not a party to the agreement dated 16.10.2020 and, as such is not bound by the arbitration clause in the agreement dated 16.10.2020.
- Section 2(1)(h) of Act of 1996 defines the expression "Party" as a party to an arbitration agreement and the appellant is not a party to the agreement.
- The order in an earlier proceeding by the Court under Section 9 of the Act of 1996, against the appellant's vendors does not bind the appellant as Section 52 of the Transfer of Property Act, 1882(for short "Act of 1882) does not apply to Section 9 proceeding.

- The appellant has acquired an independent title over the properties under the sale deed dated 20.12.2023 and the appellant not being a party to the agreement dated 16.10.2020, cannot be subjected to the jurisdiction under the Act of 1996.
- Even on merits, the respondent having received entire advance consideration of the agreement resulting in cancellation of the agreement for sale, cannot maintain a claim for specific performance. Thus, no case is made out to grant interim measures.

6. Learned Senior counsel Sri C.K. Nandakumar, appearing for the respondent raised the following contentions:-

- The registered agreement for sale dated 16.10.2020 in specific terms declares that the agreement binds the legal representatives, assignees, and the successors of the vendors. The appellant does not have any independent

right than what was possessed by its vendors. Since the appellant is claiming through the vendors who were bound by the valid arbitration agreement, Section 9 application is maintainable against the appellant.

- The appellant had the notice of the agreement dated 16.10.2020 and the arbitration clause in the agreement, as the agreement is duly registered.
- The appellant claims to have purchased the properties during the pendency of Section 9 proceedings. The appellant is bound by an earlier order passed against the vendors as the doctrine of *lis pendens* applies. Thus, the appellant cannot take a stand contrary to the earlier order which binds the appellant.
- Section 8(1) of the Act of 1996, recognises “any person claiming through or under him”. Thus, the appellant is bound by the arbitration clause which is binding on the vendors.



**Regarding question (a)**

7. Both learned Senior counsel appearing for the appellant and the respondent heavily relied on the judgment of the Hon'ble Apex Court in ***Cox and Kings Limited Vs SAP India Private Limited and Another***<sup>1</sup>. Said judgment is delivered by the Constitution Bench of the Hon'ble Apex Court to consider whether the phrase "claiming through or under" in Section 8 would include, the "Group of Companies" doctrine, and whether the "Group of Companies Doctrine" as expounded in ***Chloro Controls India(P) Ltd. Vs Severn Trent Water Purification Inc.***<sup>2</sup>, is a valid law.

8. The Hon'ble Apex Court in the said case, also answered two more incidental questions of significance as can be easily noticed in paragraph No.17 of the judgment extracted below:

***17. The arguments advanced by the advocates on both sides of the aisle indicate that this Constitution Bench has been primarily called***

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<sup>1</sup> (2024) 4 SCC 1

<sup>2</sup> (2013)1 SCC 641

*upon to determine the validity of the Group of Companies doctrine in Indian arbitration jurisprudence. However, there are other broad ancillary issues which have been raised by the learned counsel. These include : (i) **whether the Arbitration Act allows joinder of a non-signatory as a party to an arbitration agreement; and, (ii) whether Section 7 of the Arbitration Act allows for determination of an intention to arbitrate on the basis of the conduct of the parties.** This Bench will address the issues arising out of the order of reference as well as the abovementioned ancillary issues in due course.*

(emphasis supplied)

Thus, some of the principles expounded in the said judgment will have a bearing on the outcome of this appeal. The conclusions in **Cox and Kings** supra, relevant to the present case, in paragraphs No.170.1, 170.2 170.3, 170.9, and 230.4 are extracted below.

**170.1.** *The definition of "parties" under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both the signatory as well as non-signatory parties;*

**170.2.** *Conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement;*

**170.3.** *The requirement of a written arbitration agreement under Section 7 does not exclude the possibility of binding non-signatory parties;*

**170.9.** *The persons "claiming through or under" can only assert a right in a derivative capacity;*

**230.4.** *The expression "claiming through or under" in Sections 8 and 45 is intended to provide a derivative right; and it does not enable a non-signatory to become a party to the arbitration agreement. The decision in Chloro Controls tracing the Group of Companies doctrine through the phrase "claiming through or under" in Sections 8 and 45 is erroneous. The expression "party" in Section 2(1)(h) and Section 7 is distinct from "persons claiming through or under them". This answers the remaining questions referred to the Constitution Bench.*

9. In terms of paragraph No.170.1 referred to above, it is concluded that the definition of "party" under Section 2(1)(h) read with Section 7 of the Act, 1996, includes both signatories as well as a non-signatory party. In paragraph No.170.2, it is concluded that the conduct of a non-signatory party could be an indicator to be bound by the agreement. In paragraph No.170.3, it is held that the requirement of a written arbitration agreement does not exclude the possibility not the non-signatory being bound by the arbitration clause.

10. Paragraph No.170.9 speaks about the limitations of a person who seeks to assert his right as a person "claiming through or under" the agreement. It is relevant to note that said paragraph recognises the derivative right of a signatory to the arbitration agreement.

11. Paragraph No.230.4 also concurs with the view in the paragraph discussed supra.

12. This being the position, the contention that as per the law laid down in ***Cox and Kings*** supra, only a party who has signed the arbitration agreement can be a party to the arbitration proceeding or Section 9 proceeding is not acceptable. If a non-signatory to the arbitration agreement is "claiming through or under" the party to the arbitration agreement or if he has a derivative right under a party to the agreement, then such party is bound by the arbitration clause.

13. Even assuming that the law laid down in ***Cox and Kings*** supra, is confined to the "Group of Companies" doctrine, and has no application to the

case on hand, de horse the law in **Cox and Kings** supra, for reasons discussed below, the respondent is entitled to enforce the arbitration clause in the agreement dated 16.10.2020 against the purchaser from his vendors, as Section 8 (1) of the Act of 1996 provides for it.

14. At this juncture, it is necessary to refer to Section 8 (1) of the Act of 1996.

**8. Power to refer parties to arbitration where there is an arbitration agreement.-**

*(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, **if a party to the arbitration agreement or any person claiming through or under him**, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*

15. On a reading of Section 8(1) extracted above, it is evident that not only a party to the arbitration agreement but also a person claiming through or under a party can apply to refer the matter

to arbitration if a proceeding is brought before judicial authority. This provision expressly recognises the right of the “party or anyone claiming through or under him” to the agreement to seek the resolution of a dispute through arbitration. If a party or a person claiming through or under a party to an arbitration agreement can apply to refer the matter to arbitration, the converse also applies, i.e., anyone claiming through or under the party to the arbitration agreement can be subjected to the jurisdiction of the Arbitral Tribunal.

16. The agreement dated 16.10.2020 contains a binding arbitration clause. The appellant/purchaser being the assignee, steps into the shoes of the vendors of the agreement dated 16.10.2020, and takes the properties from vendors with all rights and obligations attached to them. The transferee is not bound by the obligations only if the person in whose favour the obligations exist, agrees to waive such

obligations. No such waiver is claimed or asserted by the appellant.

17. During the course of the hearing, an important question was posed by my esteemed sister as to what would be the consequence in case, the proceeding to enforce the obligations under the agreement dated 16.10.2020 against the vendors, ends in an award in favour of the respondent. The learned Senior counsel for the appellant submitted that such an award does not bind the appellant. Said contention is not tenable. Since the sale transaction in favour of the appellant during the pendency of Section 9 proceeding is subject to the outcome of Section 9 proceeding, and said proceeding being a step-in-aid to the proceeding to be initiated before the Arbitral Tribunal, the appellant who is a *pendente lite* purchaser during Section 9 proceeding cannot be permitted to say the award does not bind him. Accepting such contention in effect amounts to unilateral termination of the 'arbitration agreement'

and consequently renders the award of the Tribunal as unenforceable. It will also defeat the very object behind Section 8 of the Act of 1996.

18. For the reasons assigned above, this Court is of the view that the appellant Company being a person who is not a party to the arbitration agreement, and being the purchaser of the properties from a person who is a party to the arbitration agreement, is bound by the arbitration clause binding on its vendor. It is not open to the appellant to contend that the arbitration agreement which is binding on its vendors is not binding on the appellant on a specious plea that it is not a signatory to the arbitration agreement.

**Regarding question (b)**

19. Admittedly, the appellant purchased the properties when the vendors were parties in a pending (earlier) proceeding, under Section 9. The question is whether the transaction is hit by the *lis pendens* principle.

Section 52 of the Act of 1882 reads as under:



**52. Transfer of property pending suit relating thereto.**—During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

*Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order, has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

20. The doctrine of *lis pendens* is based on a sound public policy. It applies in a situation where the right over an immovable property is directly or substantially in question in a suit or proceeding which is not collusive. In such a situation, if any transfer of

immovable property which is the subject matter of the suit or proceeding takes place, such transfer shall not affect any decree or order to be made in the said suit or proceeding.

21. The contention that Section 9 proceeding under the Act of 1996 is not a suit, hence Section 52 of the Act of 1882 has no application, cannot be accepted. The 'proceeding' under Section 9 of the Act of 1996 (not being collusive) involving a direct or substantial question relating to an immovable property satisfies all the requirements of Section 52 of the Act of 1882. Thus, the "proceeding" under Section 52 of the Act of 1882, applies to a proceeding under Section 9 of the Act of 1996, if such proceeding involves a direct or substantial question relating to a right in an immovable property.

22. The *lis pendens* doctrine envisaged under Section 52 of the Act of 1882 is based on public policy. Under the said doctrine, the transfer of property involved in a suit or proceeding is not altogether

barred. However, the transfer of property, if takes place, will not affect the outcome of the suit or the proceeding and any such transfer will be subject to the outcome of the suit or proceeding.

23. In addition, it is also to be noticed that the agreement between the respondent and its vendors is duly registered in the office of the Sub-registrar. The agreement for sale between the respondent and vendors is deemed to be within the knowledge of the appellant in view of Section 3 of the Act of 1882. The said agreement specifically provides that the agreement binds the assignees and the successors. In the instant case, the appellant claims to have purchased the properties during the pendency of Section 9 proceeding.

24. For the reasons recorded, this Court is of the view that the appellant is bound by the result of Section 9 proceeding as the doctrine of *lis pendens* applies to Section 9 proceeding under the Act of 1996 as well.

25. Learned Senior counsel for the appellant urged that on merits, the respondent is not entitled to an interim order as he has received the advance consideration amount from the vendors and the agreement for sale ceases to exist or atleast, he cannot enforce it.

26. It is relevant to note that the earlier Section 9 proceeding in AA.No.15001/2023 against the vendors initiated by the present respondent has attained finality. The interim measure is granted in favour of the respondent in said AA.No.15001/2023 is operating against the vendors. Since the vendors claim to have sold the properties to the appellant during the pendency of Section 9 proceeding in AA.No.15001/2023, the appellant-Company having stepped into the shoes of its vendors is bound by the said interim measure passed against its vendors.

27. Though it is urged by the learned Senior counsel appearing for the appellant that the respondent has surrendered his claim over the

properties by receiving Rs.80,00,000/- paid towards advance, the said contention cannot be considered at this stage for the simple reason that the vendors of the appellant have already suffered an interim order in earlier Section 9 proceeding. The said order has attained finality and will be operative as indicated in the said order. Since, the appellant is claiming under his vendors who have already suffered an interim order in respect of the same properties, the appellant being the *pendente lite* purchaser, cannot be heard to oppose the application under Section 9.

28. The remedy for the appellant is to seek appropriate measures before the Arbitral Tribunal as the arbitration agreement signed by the vendors of the appellant binds the appellant as well.

29. It is urged by the learned Senior counsel appearing for the appellant by placing reliance on the judgment of the Kerala High Court in ***SHONEY SANIL Vs Coastal Foundations (P) Ltd & Ors.***<sup>3</sup> to contend

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<sup>3</sup> 2006 SCC ONLINE KER 38

that the purchaser is not bound by the arbitration clause in the prior agreement between his vendor and third party.

30. In the said case, the Kerala High Court has taken a view that the auction purchaser is not a party to the agreement, as such, he is not bound by the arbitration clause. It is relevant to note that in the said judgment, the Kerala High Court has also opined that a Section 9 application can be filed against a party to the arbitration agreement and at best against any person claiming under him. Admittedly, the appellant is a person claiming under the original vendor who had entered into an agreement for sale with the respondent.

31. The judgment in ***BRAHMAPUTRA REALTORS (P) LTD. vs G G TRANSPORT (P) LTD.***<sup>4</sup> rendered by the Gauhati High Court does not come to the aid of the appellant as can be noticed from the facts of the said case that three persons who are not

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<sup>4</sup> (2013)6 GAUHATI LAW REPORTS 14

parties to any of the agreements were made parties to the proceeding under Section 9 of the Act of 1996. In that case, admittedly three persons did not claim under the parties to the agreement. Whereas the appellant is claiming under the party to the agreement and also a *pendente lite* purchaser.

32. In **SHONEY SANIL, BRAHMAPUTRA REALTORS, supra** and **VIJAY ARAVIND JARIWALA Vs UMANG JATIN GANDHI<sup>5</sup>**, the agreements in question were prior to the 2016 amendment to Section 8 (1) of the Act of 1996. In the case on hand, the agreement is dated 16.10.2020, after the amendment to Section 8(1) of the Act of 1996 which incorporated the expression "party or anyone claiming through or under him". Thus, the cases relied on by the appellant are easily distinguishable.

33. In the case of **MASHREQ BANK PSC Vs INDIAN OVERSEAS BANK AND OTHERS<sup>6</sup>**, the parties were not claiming under a party to the

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<sup>5</sup> 2022 SCC ONLINE GUJ 2648

<sup>6</sup> 2021 SCC ONLINE GUJ 2678

arbitration agreement. Moreover, the judgments cited on behalf of the appellant were rendered before **Cox and Kings** supra.

34. This Court has also perused the reasons assigned in the impugned order. Section 9 Court has concluded that the appellant being the purchaser of the properties from a party who had already entered into an agreement for sale with the respondent, cannot be termed as a third party. This Court finds no error in the said reasoning. However, it is noticed that the interim restraint order is passed till the conclusion of the arbitral proceeding.

35. The learned Senior counsel for the appellant during the course of the hearing submitted that the appellant has moved an application to implead itself as a party to the petition under Section 11 of the Act of 1996, where the respondent is seeking constitution of the Arbitral Tribunal. Learned Senior counsel for the respondent submitted that the respondent has



objection for the appellant to be a party to the arbitration proceeding. This Court has noticed that Section 9 Court has granted interim measure till the conclusion of proceedings before the Arbitral Tribunal.

36. Under the circumstances narrated above, this Court deems it appropriate to restrict the operation of the interim restraint order for 45 days from the date of service of notice on the parties to the proceeding by the Arbitral Tribunal.

37. The parties are entitled to move for appropriate interim measure before the Arbitral Tribunal. The finding and observations made in this order are only confined to the interim application and same is not binding on the Tribunal. All contentions on merit, including whether arbitration clause is binding on the appellant are kept open to be decided by the Tribunal.

38. Hence the following:

**ORDER**

- (i) The appeal is allowed-in-part modifying the interim measure dated 15.04.2024, in A.A.No. 15002/2024 before V Additional District Judge Bengaluru Rural.
- (ii) The interim measure dated 15.04.2024, in AA No. 15002/2024 shall remain in force for 45 days from the date of receipt of notice issued by the Arbitral Tribunal on the parties to the proceeding before the Arbitral Tribunal or till any interim measures/orders passed by the Arbitral Tribunal on an application by either of the parties, whichever is earlier.
- (iii) The Arbitral Tribunal shall pass appropriate orders on interim measures if any, sought by the parties to the proceeding, keeping in mind the observations made in paragraph No.37.
- (iv) No order as to cost.

**Sd/-  
(ANU SIVARAMAN)  
JUDGE**

**Sd/-  
(ANANT RAMANATH HEGDE)  
JUDGE**

chs/brn