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Case Comment: A. Ayyasamy v A. Paramasivam & Ors

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INTRODUCTION

In India, disputes relating to Arbitration have always been light of debate. Arbitration laws and agreements are not taken earnestly and people try to find different ways to escape this process and thereby increasing the workload on the judicial system. The government and judiciary over time have tried to make the process of arbitration a much more feasible option but their efforts seem to have been bearing no fruit. There is a continuous clash of opinions regarding the extent of judicial intervention and jurisdiction of the arbitral tribunals and the judiciary has not yet been able to resolve this key problem. In the present case, we are dealing with the issue of arbitrability of the subject matter 'fraud'. As the Arbitration Act of India, 1996¹ does not specify any category as non-arbitrable different courts have time and now tried to interpret the issues that fall under this category considering its nature.

¹ Arbitration and Conciliation Act 1996

FACTS

The appellant and his brothers along with their father entered into a partnership deed for the management of Hotel Arunagiri. The bank accounts of the Hotel were taken care of by their father. After his demise, the eldest brother A. Ayyasamy (Appellant) took over the administration of the hotel and all the respondents had agreed to the same. They mutually agreed to some terms regarding the management of the Hotel Arunagiri which included that all the collection of the hotel should be deposited into the hotel's bank account the very next day. Secondly, only around Rs. 15000/- to be kept in cash for emergencies in the hotel. Respondents claimed that the appellant didn't comply with any of the above terms and misappropriated a cheque worth Rs. 10,00,050/- for his son without the consent of the other partners. It was further alleged that the appellant even refused to show the account books of the hotel when insisted by the Respondents. The appellant also alleged that his wife's younger brother had misappropriated some funds and claimed that funds were related to Hotel Arunagiri, though such claims were later denied by the appellant and the other partners. The present dispute when appealed before the trial court and Madras High Court was rejected, courts upheld that the present dispute falls within the exception of serious allegations of fraud and that such complex matters can only be adjudicated by civil courts. Therefore, the present appeal was made before the Supreme Court by the appellants under section 8 of the Act.²

LEGAL ISSUES

- Whether the disputes related to fraud are capable of being adjudicated through arbitration.
- Is a mere allegation of fraud by one of the parties to the agreement amount to excluding the matter from being decided by arbitration?

² *Ibid*

OBSERVATIONS OF THE COURT

The Supreme Court in its years of judicial pronouncement has laid down the precedent that the intervention of the judiciary in matters where the arbitration clause is clear and precise would be limited so that the purpose of enacting the Arbitration and Conciliation is preserved. It should be noted that the interference of the court at the initial stage of the dispute distracts the party from going into that arbitration process. Even if there are objections to the validity of the agreement or the existence of the Arbitration agreement itself the parties don't have the liberty to move before the courts without first going through the process of arbitration wherein these objections are to be first raised before the arbitral tribunal and that arbitral tribunal will be having complete jurisdiction to decide on the dispute. Any party who is not in favor of such jurisdiction of the arbitral tribunal has to wait until the tribunal passes its final award and only then the aggrieved party can move to the court for adjudication of the matter. In the present case, the dispute is regarding whether the subject matter of fraud can be decided by the arbitral tribunal. Well as there are no clear provisions in the act³ stating any matters as non-arbitrable but in the course of several years courts have held that certain disputes of serious criminal nature are non-arbitrable and can only be adjudicated by the court. According to *Booz-Allen and Hamilton Inc. v SBI Home Finance Ltd*⁴. The Hon'ble Supreme Court had differentiated some categories as non-arbitrable matters

- Disputes related to criminal offenses;
- Matrimonial and disputes relating to judicial separation;
- Matters of Guardianship;
- Insolvency and winding up;
- Testamentary matters; and
- Eviction and Tenancy matter.

Fraud was one such matter which is considered to be a non-arbitrable dispute. However, the question that arises before the court that does the mere allegation of fraud by one of the parties

³ *Ibid*

⁴ *Booz -Allen and Hamilton Inc. v SBI Home Finance Ltd* (2011) 5 SCC 532

to the agreement amount to excluding the matter from being decided by arbitration. Before deciding on the present issue supreme court slid into discussing the differentiation between the subject matters that can be decided by a private and a public forum. In *Booz -Allen and Hamilton Inc. v SBI Home Finance Ltd*⁵ it was held that matters where the rights and interests of particular individuals are concerned those matters can be decided by the private forums whereas rights that are exercisable against the world have to be decided by the public forum. The rule laid down in the aforementioned case was not rigid but rather a step towards laying down a precedent to be followed by the courts in matters where the disputes are more concerning public nature and can be better decided by the public forum. It is well within the knowledge that there is no clear distinction between the disputes which are termed arbitrable and non-arbitrable but there are specific categories according to which if the dispute is public it should be adjudicated by the public forum. The jurisdiction of the court after the party has referred their dispute under Section 8⁶, is to focus on whether its jurisdiction has been ousted⁷. The inquiry of the court should be to determine whether the nature of the dispute is such that it cannot be adjudicated by a private forum and whether a public forum would be in a better position to adjudicate. So while dealing with a dispute that has allegations of fraud by one of the parties the court should first determine whether the allegations are serious in nature and whether in the normal course, they may constitute a criminal offense. The courts need to carefully analyze whether a particular dispute is so complicated and would need a comprehensive set of evidence for deciding the matter that only a public forum/courts would be a viable option for adjudication. In *Swiss Timing Ltd v Organising Committee*,⁸ it was held that there is a distinction between cases where there are mere allegations of fraud and cases including Fraud simpliciter. The former has serious allegations of fraud that fall under the category of non-arbitrable dispute whereas Fraud simpliciter is mere allegations of fraud that are alleged and used as an escape route to nullify the process of arbitration. The courts while dealing with section 8 of the act⁹ can determine the seriousness of fraud by the application of the following twin test, to determine whether 1) the

⁵ *Ibid*

⁶ Arbitration and Conciliation Act 1996, s 8

⁷ *A. Ayyasamy v A. Paramasivam & Ors* (2016) 10 SCC 386

⁸ *Swiss Timing Ltd v Organising committee* (2014) 6 SCC 677

⁹ Arbitration and Conciliation Act 1996, s 8

allegations of fraud are such that it permeates the entire contract, including the provision of arbitration clause agreement or; 2) Allegation of fraud is regarding the internal matters of the entities where such matters can be adjudicated by the Arbitrator through Arbitration process¹⁰. The Supreme Court further mentioned the case of *N. Radhakrishnan*¹¹ and its misreading done by its lower court wherein the issue was about serious criminal wrongdoings, misappropriation of funds, and malpractices by the respondent. Such types of cases need the assistance of a civil court keeping in mind the presence of voluminous evidence to establish such claims. The burden in such cases lies with the party that claims that there is serious fraud committed by the other party and they have to establish that their dispute is not arbitrable under the law. It is a judicial duty to carefully inspect if the objections raised on grounds of fraud are true or mere allegations to escape the arbitration proceedings.

DECISION OF THE BENCH

In the present case, the allegations of fraud are against the appellant for having signed a cheque of Rs 10,00,000/- in the name of Hotel Arunagiri without receiving the consent of other parties of the partnership firm for fulfilling his own needs. This matter is concerning to the accounts that can be easily looked into by the arbitrator and does not require judicial intervention for the adjudication. Another major allegation by the respondents was about the C.B.I. raid at the appellant's brother-in-law's house where officers retrieved an amount of Rs. 45 lakhs which were claimed to be of Hotel Arunagiri. In response to this, the respondent alleged that the money did not belong to Hotel Arunagiri. The court from the abovementioned had concluded that the present dispute is not so serious and can be taken up by the arbitrator. Further, the court also stated that the previous courts have committed an error in dismissing the petition under section 8 of the Arbitration Act¹². Reversing their judgment, the following appeal was allowed and the present dispute was referred to arbitration.

¹⁰ Amit Jajoo et al., 'Demystifying the Arbitrability of Fraud' (*SCC Online Blog*, 28 November 2020) <<https://www.scconline.com/blog/post/2020/11/28/demystifying-the-arbitrability-of-fraud/>> accessed 21 March 2023

¹¹ *N. Radhakrishnan v Maestro Engineers & Ors* (2010) 1 SCC 72

¹² Arbitration and Conciliation Act 1956, s 8

CONCLUSION/ANALYSIS

The supreme court in recent judgments has heavily relied on A. Ayyasamy case to determine the seriousness of the allegations of fraud and thereby the jurisdiction of the court/tribunal. Although these are pivotal steps towards pro-arbitration it should be noted that the role of the judiciary here is not completely wiped out. This case demonstrates yet again the necessity of effective provisions in the Arbitration Act that are required for proper adjudication. The need for proper provisions is creating a hassle to adjudicate matters solely by depending on judicial precedents. In the following context, the Law Commission in its 246¹³ law report had tried to resolve the issue by proposing an amendment to the existing arbitration act which proposed to insert the provision under section 16 of the Act¹⁴ by expanding the scope of the tribunal to make an award despite the presence of allegations of fraud. The non-adoption of the recommendations forwarded by the law commission has not left many options but to rely on the precedents of the courts which are unable to resist the parties from moving to civil courts for adjudication.¹⁵ The interference of courts is inescapable keeping in mind it is needed to determine the prima facie case if the parties refer the dispute under the Arbitration Act alleging the conduct of fraud.¹⁶ Nevertheless, the question of the arbitrability of matters and the amount of judicial intervention in disputes is still left unanswered.

¹³ Law Commission, *Amendments to the Arbitration and Conciliation Act 1996* (Law Com No 246, 2014) paras 50-51

¹⁴ Arbitration and Conciliation Act 1996, s 16

¹⁵ Amit Jajoo (n 10)

¹⁶ *Ibid*