

M/S Avinash Hitech City 2 Society vs Boddu Manikya Malini on 6 September, 2019

Equivalent citations: AIR 2019 SUPREME COURT 4142, 2019 (8) SCC 666, AIRONLINE 2019 SC 985, (2019) 12 SCALE 149, (2019) 136 ALL LR 678, (2019) 202 ALLINDCAS 15, (2019) 2 WLC(SC)CVL 730, (2019) 3 CURCC 581, (2019) 5 ARBILR 401, (2019) 7 MAD LJ 103, (2020) 1 ANDHLD 32, 2020 (1) KCCR SN 13 (SC)

Author: M. R. Shah

Bench: M. R. Shah, Arun Mishra

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7047-7049 OF 2019
[Arising out of SLP (Civil) Nos. 4213-4215 of 2019]

M/s Avinash Hitech City 2 Society & Ors.

.. Appellants

Versus

Boddu Manikya Malini & Anr. Etc.

.. Respondents

JUDGMENT

M. R. Shah, J.

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 22.11.2018 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in C.M.A. Nos. 1257, 1379 and 1380 of 2017 by which the High Court has dismissed the said appeals and has confirmed the order passed by the learned Principal District Judge, Ranga Reddy rejecting applications under Section 8 of the Arbitration and Conciliation Act, 1996 filed by the appellants herein and has refused to refer the dispute between the parties to the

Arbitrator, the original applicants have preferred the present appeals.

3. The facts leading to the present appeals in nutshell are as under:

3.1 That the original landowners of the land admeasuring 25 acres and 68 cents in aggregate forming part of Survey Nos. 30, 34, 35 and 38 situated at Gachibowli Village, Serilingampally, Rangareddy District executed 17 development agreements cum power of attorney in favour of one Phoenix Infocity Private Limited for developing an integrated complex comprising of residential units, commercial and office spaces and service apartments on the project land. Subsequently, the owners constituted themselves into three societies registered under the Andhra Pradesh Societies Registration Act, 2001, namely Avinash Hitech City 2 Society (appellant no. 1), Ganga Hitech City 2 Society and Vignesh Hitech City 2 Society. That the said societies applied for and were granted co-developer status in respect of the SEZ Project. It appears that thereafter the parties to each of the Development Agreements executed Supplementary Development Agreements to their respective Development Agreement. That, in terms of the Development Agreements and the Supplementary Development Agreements, the constructed space in the proposed buildings were to be shared in the ratio of 37.5 : 62.5 between the owners and the developer. Accordingly, the developer was allotted 11 commercial complexes and the owners were allotted 4 commercial complexes. It seems that the respondents are the owners who have been allotted a share in building H1B and also are the members of the appellant no. 1 Society. It appears that, thereafter, an Addendum to the Supplementary Development Agreement was executed by inter alia the appellants and the respondents (excluding the lessee, HCL Technologies Limited) on 12.03.2010. Clause 19 of the Addendum provides for the mechanism to resolve the dispute between the parties (which shall be dealt with hereinbelow).

Clause 13 of the Addendum is with respect to the collection of lease rents in respect of the extends leased out in a given building earmarked as the share of the owners till the completion. Clause 16 empowers the societies to determine and collect monthly maintenance charges from the owners and Clause 18 provides that the owners are liable to pay the proportionate share of common expenses for upkeep and maintenance to the societies.

3.2 A cold shell of building H1B was completed by the developer and appellant no. 1 Society converted the same to warm shell by setting up the air conditioning facilities, backup generators and backup power implementation, building management system implementation, electrical works and civil works and the funds for the same were raised by appellant no. 1 Society by way of bank loans. Thereafter, various spaces in building H1B were leased out to HCL Technologies Ltd. and the rents were collected by appellant no. 1 Society.

3.3 That, thereafter, the respondents filed a petition under Section 23 of the Andhra Pradesh Societies Registration Act, 2001 (for short 'the Societies Registration Act') before the Principal District Judge, Ranga Reddy District making an allegation that their purported share in the rentals

were not being paid to them and prayed for a direction to appellant no. 1 Society to produce the entire accounts for the rental amounts received by it from the tenants along with audit reports and minute books from 2011 to 2015. The respondents also prayed that appellant no. 1 Society be directed to pay amounts already due to the respondents, being their purported share in the rental amounts. That, thereafter another petition was filed by the respondents praying that the Court split appellant no. 1 Society into two different societies claiming to have “lost all faith and confidence on the integrity” of the executive committee of appellant no. 1 Society and claiming that their interest could no longer be protected by appellant no. 1 Society. That, thereafter, third application was filed by the respondents before the learned District Judge under Section 23 of the Societies Registration Act and prayed for a mandatory injunction against the appellants herein directing them to inter alia distribute the rents purportedly received by appellant no. 1 Society. 3.4 In the light of the arbitration Clause 19 of the Addendum, the appellants filed petitions under Section 8 of the Arbitration and Conciliation Act, 1996 seeking the appointment of an arbitrator in accordance with Clause 19 of the Addendum. All the three applications came to be dismissed by the learned District Judge on the ground that the disputes between the parties in the petition under Section 23 of the Societies Registration Act are not covered under Clause 19 of the Addendum.

3.5 Aggrieved by the order of the learned District Judge dismissing the application under Section 8 of the Arbitration and Conciliation Act, the appellants herein preferred three separate appeals before the High Court. By the impugned common judgment and order dated 22.11.2018, the High Court has dismissed the said appeals. Hence, the present appeals.

4. Shri Jayant Bhushan, learned Senior Advocate appearing on behalf of the appellants has vehemently submitted that, in the facts and circumstances of the case, the High Court has materially erred in dismissing the appeals and confirming the order passed by the learned District Judge dismissing the applications filed under Section 8 of the Arbitration and Conciliation Act, 1996. It is vehemently submitted by Shri Jayant Bhushan, learned Senior Advocate appearing on behalf of the appellants that the High Court has failed to appreciate Clause 19 of the Addendum to the Supplementary Development Agreement dated 12.03.2010 in proper perspective while dismissing the applications of the appellants under Section 8 of the Arbitration and Conciliation Act, 1996.

4.1 It is vehemently submitted by the learned Senior Advocate appearing on behalf of the appellants that the dispute between the appellants and the respondents is the quantum of the share claimed by the respondents in the lease rents collected by appellant no. 1 Society. It is submitted that the respondents are claiming their share in the rent collected by appellant no. 1 Society relying upon the relevant provisions of the Development Agreements and the Supplementary Development Agreements and the Addendum. It is submitted that, therefore, the dispute can be said to be arising out of the agreements executed between the parties and the Addendum. It is submitted that, therefore, Clause 19 of the Addendum shall be squarely applicable. It is further submitted that Clause 19 of the Addendum is very clear and, as per Clause 19, any dispute between the owners, including the dispute relating to the Addendum and all questions relating to its interpretation shall be construed in accordance with the laws of India. It further provides that, except as otherwise specifically provided in the Agreement, in the event of any dispute or difference arising among the parties out of, in connection with or relating to this agreement, shall be governed by Clause 19 of the

Addendum and Sub-clauses (a) to (g) of Clause 19 shall be applicable. It is submitted that therefore the dispute between the parties for which the respondents filed the application under Section 23 of the Societies Registration Act before the District Judge shall be squarely covered within Clause 19 and therefore the High Court ought to have allowed the appeals and ought to have referred the dispute to Arbitrator as per Clause 19 of the Addendum.

4.2 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that the High Court has materially erred in observing and holding that in the event of any dispute which involves two or more owners of the space in the same building only, Clause 19 shall be applicable.

4.3 It is vehemently submitted by Shri Jayant Bhushan, learned Senior Advocate for the appellants that appellant no.1 Society is a co-developer and has received the rent as per Clause 13 of the Agreement. It is submitted that in any case when the respondents are claiming their share in the rent collected and received by the appellant and the dispute is sharing of the rent of the space rented, certainly Clause 19 of the Addendum shall be applicable.

4.4 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that the High Court has materially erred in considering Sub-clause (e) of Clause 19 of the Addendum only and has materially erred in not considering the entire Clause 19 of the Addendum and the intention of the parties to the Agreement/Addendum.

4.5 Making the above submissions, it is prayed to allow the present appeals and quash and set aside the impugned common judgment and order passed by the High Court and consequently allow the three applications filed under Section 8 of the Arbitration and Conciliation Act and refer the dispute between the parties for which the respondents filed an application under Section 23 of the Societies Registration Act to Arbitration.

5. Shri Joy Basu, learned Senior Advocate appearing on behalf of the contesting respondents has opposed the present appeals and has supported the impugned common judgment and order passed by the High Court.

5.1 It is vehemently submitted by the learned Senior Advocate appearing on behalf of the respondents that, in the facts and circumstances of the case and considering the relevant sub-clauses of Clause 19 of the Addendum, the High Court has rightly not interfered with the order passed by the learned District Judge while not referring the dispute to Arbitration and not appointing the Arbitrator.

5.2 It is vehemently submitted by learned Senior Advocate appearing on behalf of the respondents that on fair reading of Clause 19 of the Addendum, only the disputes and differences arising between the Owners [Sub-clause (c) of Clause 19]; the dispute which involves two or more societies or owners who are the members of the different societies [Sub-clause (d) of Clause 19]; or the dispute which involves two or more owners of the space in the same building [Sub-clause (e) of Clause 19], are required to be referred to Arbitration and to the Arbitral Tribunal comprising of the sole arbitrator. It is submitted that, in the present case, the dispute between the respondents and the appellants cannot be said to be between the owners or between the two or more societies. It is

submitted that even the opening part of Clause 19 specifically refers to any dispute between the owners. It is submitted that therefore the High Court has rightly observed and held that the dispute between the respondents and the appellants shall not fall in any of the Sub-clauses of Clause

19. It is submitted that no error has been committed by the High Court and the learned District Judge.

5.3 Making the above submissions, it is prayed to dismiss the present appeals.

6. We have heard the learned counsel appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the dispute between the parties for which the respondents have initiated proceedings under Section 23 of the Societies Registration Act is with respect to sharing of the rent of the leased space. It is required to be noted that appellant no. 1 Society claims to be the co-developer. It cannot be disputed and it is not in dispute that owners, societies and developers are the parties to the Development Agreements, Supplementary Development Agreements and the Addendum. According to appellant no. 1 co-developer, after execution of the Development Agreements, Supplementary Development Agreements and the Addendum, a cold shell in building H1B was completed by the developer and appellant no. 1 Society (as co-developer), converted the same to warm shell by setting up the air conditioning facilities, backup generators and backup power implementation, building management system implementation, electrical works and civil works and the funds for the same were raised by appellant no. 1 Society by way of bank loans. That, thereafter, various spaces in building H1B were leased out to HCL Technologies Limited and one other and they recovered the rent from the lessee. As per Clause 13 of the Addendum/Agreement which sets out that the societies would be the “sole authorities” to collect/receive the lease rents in respect of the extends leased out in a given building earmarked as the share of the owners in the completion and pool the entire revenue generated from each of the buildings by way of lease rents and distribute the same to the owners, pro-rata to their respective shares in the building space in the project after addressing the liabilities towards loans. Therefore, the dispute between the respondents and the appellants with respect to the sharing of the rent with respect to the leased space can be said to be related to the Addendum and/or in connection with or relating to the Addendum.

7. Clause 19 of the Addendum, which is the arbitration clause and provides how to settle the dispute between the parties, reads as under:

“The owners agree that any dispute between the Owners, including the dispute relating to this Addendum and all questions relating to its interpretation shall be construed in accordance with the laws of India, without reference to its principles of conflicts of law. Except as otherwise specifically provided in this Agreement, the following provisions apply in the event of any dispute or difference arising among the Parties out of, in connection with or relating to the Agreement (The ‘Dispute’).

(a) The Dispute shall be deemed to have occurred, when one Party serves on the other Party/ies a notice stating the nature of the Dispute (‘Notice of Dispute’).

(b) The Parties hereto agree that they will use all reasonable efforts to resolve among themselves, any Dispute between them through negotiations.

(c) Any Dispute and differences whatsoever arising between the Owners which could not be resolved by Parties through negotiations, within a period of thirty (30) days from the service of the Notice of Dispute, the same shall be referred to and shall finally be settled by arbitration in accordance with the (Indian) Arbitration and Conciliation Act, 1996, and all the proceedings shall be conducted in English and a daily transcript in English shall be prepared.

(d) In the event of any dispute which involves two or more Societies or Owners who are the members of two different Societies, the arbitral tribunal shall comprise of three or more arbitrators. In such a situation, each party to the dispute shall appoint one arbitrator, who shall be from the office bearers of their respective Societies and the two or more arbitrators so appointed shall appoint a presiding arbitrator, who shall be one of the office bearers of the Hitech City Owners Welfare Association (HOWA) and the Chairman of the arbitral tribunal;

and the venue of arbitration shall be in Hyderabad, India.

(e) In the event of any dispute which involves two or more Owners of the space in the same building, the arbitral tribunal shall comprise of the said arbitrator. In such a situation, each party to the dispute shall refer the matter to the office bearers of their respective Society which shall be the arbitral tribunal; and the venue of arbitration shall be in Hyderabad, India.

(f) The Parties are debarred from exercising any right or filing any application to any court or tribunal having jurisdiction in connection with matters involving substantial questions of law arising during any arbitration.

(g) The Parties hereby submit to the Arbitrator's award and the award shall be enforceable in any competent court of law." 7.1 On reading Clause 19 of the Addendum as a whole, it appears that in the event of dispute or difference among the parties out of, in connection with or relating to the agreement, the same shall be referred to arbitration. However, sub-clauses

(c), (d) and (e) provide for different procedure in the event of any disputes and differences between the owners; between two or more societies or owners who are the members of two different societies and between two or more owners of the space in the same building. Sub-clause (c) of Clause 19 provides that any disputes or differences whatsoever arising between owners, which could not be resolved by the parties through negotiations, within a period of 30 days from the service of the notice of dispute, the same shall be referred to and shall finally be settled by the arbitration in accordance with the (Indian) Arbitration and Conciliation Act, 1996. Sub-clause (d) of Clause 19 provides that in the event of any dispute which involves two or more societies or owners who are the members of two different societies, the arbitral tribunal shall comprise of three or more arbitrators. It further provides, "who shall be appointed as a presiding arbitrator; who shall be the Chairman of

the arbitral tribunal and the venue of the arbitration”. Sub-clause (e) of Clause 19 provides that in the event of any dispute which involves two or more owners of the space in the same building, the arbitral tribunal shall comprise of the sole arbitrator and, in such a situation, each party to the dispute shall refer the matter to the office bearers of their respective Society which shall be the arbitral tribunal and the venue of arbitration shall be in Hyderabad.

7.2 As observed hereinabove, Clause 19 shall be applicable in the event of any dispute and difference arising among the parties out of, in connection with or relating to the agreement. As observed hereinabove, the developers, owners, societies and the original owners and even subsequent societies formed are parties to the agreement and the Addendum. It is also required to be noted and, as observed hereinabove, the dispute is with respect to sharing of the rent of the leased space and it can be said that the respondents are also claiming the share relying upon the Development Agreements; Supplementary Development Agreements and the Addendum. Therefore, the dispute can be said to in connection with or relating to the Agreements also. 7.3 Considering the above facts and circumstances, both the High Court and the learned District Judge have committed grave error in not referring the dispute between the appellants and the respondents to the arbitration. We are of the opinion that Clause 19 of the Addendum to the Supplementary Development Agreement shall be squarely applicable and therefore the disputes between the respondents and the appellants for which the respondents initiated proceedings under the Societies Registration Act, are required to be referred to the Arbitration and/or to the Arbitral Tribunal.

8. In view of the above and for the reasons stated above, all these appeals are allowed. The impugned common judgment and order dated 22.11.2018 passed by the High Court in C.M.A. Nos. 1257, 1379 and 1380 of 2017 is hereby quashed and set aside. The order passed by the learned District Judge rejecting the applications submitted by the appellants under Section 8 of the Arbitration and Conciliation Act, 1996 are also hereby quashed and set aside. Consequently, the applications submitted by the appellants under Section 8 of the Arbitration and Conciliation Act, 1996 are hereby allowed and the disputes between the respondents and the appellants are hereby directed to be referred to the Arbitration. No costs.

.....J.
(ARUN MISHRA)

New Delhi
September 6, 2019

.....J.
(M. R. SHAH)