

[2011] 6 S.C.R. 1165

KHIVRAJ MOTORS

v.

THE GUANELLIAN SOCIETY
(Civil Appeal No. 4926 of 2011)

JULY 04, 2011

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Arbitration and Conciliation Act, 1996 – s. 11 – Application under, for appointment of arbitrator – Joint Development Agreement (JDA) in respect of land/property in question between appellant (as developer) and President of respondent Society (as owner of the property) – Power of Attorney executed by the President of the Society in favour of the appellant – Resolution by respondent Society that President was not authorized to deal with property, thus, JDA and Power of Attorney were null and void – Application filed by respondent Society u/s. 11 for appointment of arbitrator to resolve the dispute – Allowed by High Court – Maintainability of the application filed by respondent society u/s. 11 – Held: The application was maintainable as the appellant and the respondent in the application u/s. 11 were parties to the JDA containing a provision for settlement of disputes arising out of the agreement by arbitration – Arbitration agreement was an independent agreement incorporated and rolled into JDA – President did not execute JDA or the power of attorney in his individual capacity – The executant was the respondent Society represented by its President – Respondent Society is the first party under the JDA and not the President – Arbitrator entitled to examine the validity and binding nature of JDA.

Appellant as developer of the property/land in question and 'AJ', President of respondent society as the owner thereof, allegedly entered into a Joint Development Agreement for development of the said

A land. Clause 18 of the agreement provided for settlement
of disputes arising out of the said agreement by
arbitration. 'AJ', President of the respondent Society
executed a power of Attorney in favour of the appellant
in connection with the development of the property. The
B respondent Society passed a resolution that the
Managing Committee of the Society did not authorize its
President to deal with the property and, therefore, the
Joint Development Agreement and general power of
attorney executed by him were null and void and not
C binding on the Society. The respondent Society filed an
application under Section 11 of the Arbitration and
Conciliation Act, 1996 for appointment of an arbitrator for
resolution of the disputes between the Society and the
appellant. The application was allowed holding that the
D Joint Development Agreement was executed between
the respondent Society and the appellant and 'AJ' had
signed the said agreement, only in his capacity as the
President of the Society and not in his individual
capacity. Therefore, the appellant filed the instant appeal.

E Dismissing the appeal, the Court

HELD: 1.1 'AJ' has neither executed the Joint
Development Agreement nor the power of attorney in his
individual capacity and the executant is the respondent
F Society represented by its President 'AJ'. Thus, the
respondent Society is the first party under the Joint
Development Agreement and not 'AJ'. If 'AJ' was
executing the Joint Development Agreement in his
personal capacity, there was no need for him to describe
himself as the "President of the respondent Society" and
G sign the document for and on behalf of the respondent
Society, as its President. Therefore, the application under
Section 11 of the Arbitration and Conciliation Act, 1996
filed by the Society was maintainable as the petitioner
H were parties to the Joint Development Agreement

containing a provision (Clause 18) for settlement of disputes arising out of the agreement by arbitration. [Paras 8 and 9] [1171-B-H] A

1.2 The respondent Society no doubt contended that the contract was concluded with unconscionable and unfair terms and that the Managing Committee of the Society had not authorized its President 'AJ' to enter into any such Joint Development Agreement. These allegations no doubt relate to the validity of the Joint Development Agreement, but would have no bearing on the validity of the arbitration agreement (Clause 18 of the agreement), which is an independent agreement incorporated and rolled into the Joint Development Agreement. The Arbitrator would examine the validity and binding nature of the Joint Development Agreement. There is nothing in the claims and contentions of the Society which excludes the operation of the arbitration agreement or necessitates rejection of the request for appointment of an arbitrator. Since arbitration has been delayed for one and a half years on account of the pendency of SLP, the Arbitrator is requested to proceed with the matter expeditiously. [Paras 10 and 11] [1172-A-E] B
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CIVIL APPELALTE JURISDICTION : Civil Appeal No. 4926 of 2011. F

From the Judgment & Order dated 26.10.2009 of the High Court of Karantaka in Civil Miscellaneous Petition No. 55 of 2009.

Dushyant Dave, Shweta Bharti, Ahanthem Henry, Amit, Pawan, Suraj G. Raj, Vishnu Anand, Vineet Dwivedi for the Appellant. G

Ajesh Kumar, Jaikriti S. Jadeja, Madhusmita Bora, Balaji Srinivasan for the Respondent. H

A The Judgment of the Court was delivered by

R.V.RAVEENDRAN, J. 1. Leave granted. Heard.

2. The appellant alleges that a joint development agreement dated 18.2.2007 was entered into between “Father A. John Bosco, President, The Gaunellian Society” as the owner, and the appellant as the developer, in regard to three acres of land and that clause 18 of the said agreement provided for settlement of disputes arising out of the said agreement by arbitration. It is further alleged by the appellant that on 20.2.2007, the said Father A. John Bosco, President, The Guanellian Society, executed a power of Attorney in favour of the appellant in connection with the development of the said property with power to enter into agreements of sale and also to transfer and convey an extent of 70% undivided share in the said property.

3. The Gaunellian Society, (‘Society’ for short) the respondent herein, at its Extraordinary Meeting held on 10.1.2008, passed a resolution that the Managing Committee of the Society had not authorized its President to deal with the property and therefore the joint development agreement and general power of attorney executed by him were null and void and not binding on the Society. On 17.4.2009 the respondent Society filed an application under section 11 of the Arbitration and Conciliation Act, 1996 (‘Act’ for short) for appointment of an arbitrator for resolution of the disputes between the Society and the appellant.

4. The appellant resisted the said petition alleging that the application by the Society was not maintainable for the following reasons :

- (a) the lands was purchased and owned by Father A. John Bosco, in his individual capacity and not as the President of the Society;
- (b) Father A. John Bosco entered into the joint

development agreement in respect of the property in his individual capacity and not as the President of the Society. A

- (c) Though the joint development agreement contained a provision for arbitration, as the respondent society was not a party to the joint development agreement containing the arbitration agreement, the petition under section 11 by the Society was not maintainable. B

5. A designate of the Chief Justice of the Karnataka High Court by order dated 26.10.2009 allowed the said application and appointed a retired District Judge as the sole arbitrator. The High Court held that the joint development agreement was executed between the Society and the appellant and that Father A. John Bosco had signed the said agreement, only in his capacity as the President of the Society and not in his individual capacity and therefore the application under section 11 of the Act by the Society was maintainable. C D

6. The said order is contested by the appellant, inter alia, on the following grounds : E

(i) The joint development agreement was entered into between Father A. John Bosco, as the owner of the property and the appellant, as developer. As the Society was not a party to the joint development agreement, there is no privity of contract between the Society and the appellant. The arbitration clause in the said agreement could not therefore be invoked by the Society for resolving any dispute relating to the joint development agreement. F

(ii) Even if the Society is a party to the joint development agreement, as the Society had alleged that the appellant had adopted unfair means and exercised undue influence over Father A. John Bosco to get the joint development agreement executed by him, it would not be appropriate G H

A for an arbitral tribunal, a private forum, to adjudicate upon such serious allegations. The civil court alone should decide such serious allegations so that the appellant could vindicate itself.

B The appellant also attempted to raise several other contentions relating to title and merits of the dispute, which are wholly alien to the scope of the proceedings under Section 11 of the Act and therefore need not be considered.

C 7. In the special leave petition, the appellant specifically contended that the Society was not a signatory or party to the joint development agreement. Though, a typed copy of the joint development agreement is produced as an annexure to the special leave petition, it did not show who signed the joint development agreement as owner of the property. In view of the said averment in the special leave petition, this Court directed notice on the petition on 15.2.2010. The respondent society has produced alongwith its counter, a photocopy of the registered joint development agreement dated 18.2.2007 and the registered power of attorney dated 28.2.2007 executed in favour of the appellant. The appellant does not dispute the correctness of the said copies produced by the respondent society.

F 8. An examination of the photocopy of the joint development agreement shows clearly that it was not executed by Father A. John Bosco in his individual capacity. The document describes 'Father A. John Bosco, President, Gaunellian Society' as the first party or the owner. The signature of the first party/ owner on each page of the document is as under:

G "For The Gaunellian Society
[Sd/- Fr. A. John Bosco]
President"

H The said agreement is also signed by Mr. Pushpchand Chordia as the power of attorney holder of the partners of the appellant.

There are only the said two signatories to the agreement, that is the Society represented by its President and the appellant represented by its Attorney Holder. Fr. A. John Bosco has not executed the joint development agreement in his personal capacity. The power of attorney is also executed by the Society. Thus the respondent Society is the first party under the joint development agreement and not Father A. John Bosco. We may also note that if Father A. John Bosco was executing the joint development agreement in his personal capacity, there was no need for him to describe himself as the "President of the Gaunellian Society" and sign the document for and on behalf of the Gaunellian Society, as its President. Therefore the application under section 11 of the Act filed by the Society against the respondent was maintainable as the petitioner and the respondent in the application under section 11 were parties to the joint development agreement containing a provision (Clause 18) for settlement of disputes arising out of the agreement by arbitration.

9. The appellant has raised a contention that the owner of the property is not the Society and that Father A. John Bosco in his personal capacity was the owner and that he had entered into a joint development agreement and executed a power of attorney in his personal capacity in favour of the appellant. But as noticed above, Father A. John Bosco has neither executed the joint development agreement nor the power of attorney in his individual capacity and the executant is "The Gaunellian Society" represented by its President Father A. John Bosco. If the contention of the appellant that the owner is Father A. John Bosco, and not "The Gaunellian Society", is taken to its logical conclusion, the effect would be that there is no joint development agreement or power of attorney by the owner of the property in favour of the respondent and the joint development agreement and the power of attorney signed by a party who is not by the owner would be worthless papers. Be that as it may. We have referred to this aspect only to show the absurdity of the contention raised by the appellant.

A 10. The respondent Society has no doubt contended that
 the contract was concluded with unconscionable and unfair
 terms and that the Managing Committee of the Society had not
 authorized its President — Father A. John, Bosco to enter into
 any such joint development agreement. These allegations no
 B doubt relate to the validity of the joint development agreement,
 but will have no bearing on the validity of the arbitration
 agreement (Clause 18 of the agreement), which is an
 independent agreement incorporated and rolled into the joint
 development agreement. The Arbitrator will examine the validity
 C and binding nature of the joint development agreement. There
 is nothing in the claims and contentions of the Society which
 excludes the operation of the arbitration agreement or
 necessitates rejection of the request for appointment of an
 arbitrator.

D 11. The appeal is therefore dismissed with costs of
 Rs.25,000/- payable by the appellant to the respondent. We find
 that the arbitration has been delayed for nearly one and a half
 years on account of the pendency of this special leave petition.
 We therefore request the Arbitrator to proceed with the matter
 E expeditiously.

12. We make it clear that what we have considered is the
 limited question as to who is the executant of the agreement.
 We have not pronounced upon the question whether Father
 F A. John Bosco was authorized to execute such a joint
 development agreement. Nor have we considered the
 contentions relating to the title to the property.

NJ.

Appeal dismissed.