



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

(106)

ARB-154-2017 (O&M)
Date of decision:- 19.11.2024

Akhil Mitra Bhanot and another

... Petitioners

Versus

Bling Entertainment Solutions Limited

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Hemant Saini, Advocate and
Mrs. Neha, Advocate for the petitioners.

Mr. Paul S. Saini, Advocate for the respondent.

SUVIR SEHGAL, J. (ORAL)

CM-3893-CII-2022

1. Since CM-7012-CII-2012 for bringing on record the legal representatives of respondent No.2 has already been allowed by this Court vide order dated 24.10.2024, therefore, present application with the same prayer, has become infructuous and is dismissed as such.

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2. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act") read with Scheme for Appointment of Arbitrators by the Chief Justice of Punjab and Haryana High Court, 2003.

3. Counsel for the petitioners submits that a Rights Agreement dated 02.09.2013, Annexure P-1, was entered into between Mrs. Rama Bhanot, Mr. Akhil Mitra Bhanot-petitioner No.1 & Mr. Aneesh Mitra Bhanot, petitioner No.2, on the one side and the respondent on the other side,



whereby a movie based on the life of Ms. Neerja Bhanot, sister of the petitioners, who died during the hijack of Pan Am Flight PA 73, was to be produced. Counsel states that Mrs. Rama Bhanot unfortunately expired on 05.02.2015 and all the rights vested in her by virtue of agreement, Annexure P-1, devolved upon the petitioners. By making a reference to the agreement, Annexure P-1, counsel asserts that besides the consideration agreed upon, respondent had to make some additional payment under the agreement and when it failed to fulfill the commitment, petitioners served a legal notice dated 25.03.2017, Annexure P-3, whereby they invoked the Arbitration Clause and proposed the names of three former Judges of this Court as Arbitrators. Counsel submits that by its response dated 11.04.2017, Annexure P-4, respondent did not agree to the named Arbitrators and instead proposed another name, which is not acceptable.

4. Upon notice, petition has been contested by the respondent by filing a reply, resisting the petition on the ground that Mrs. Rama Bhanot has not been impleaded as a party. Another objection has been taken that the respondent had entered into an agreement with M/s Fox Star Studios India Pvt. Ltd. (for short "M/s Fox Star"), which is a necessary party to the instant petition. By referring to the petition, counsel for the respondent asserts that as the petitioners have alleged a criminal conspiracy, matter is not arbitrable in view of the judgment of the Supreme Court in **A. Ayyasamy Versus A. Paramasivam and others, (2016) 10 SCC 386**. Counsel submits that the petitioners have approached the print and social media, defamed the respondent and as the agreement is un-stamped, Arbitration Clause cannot be invoked.



5. I have heard counsel for the parties and considered their respective submissions.

6. The respondent has not disputed that Mrs. Rama Bhanot had died prior to the filing of the petition. There is a specific averment in the petition that both the petitioners, out of which one has expired during the pendency of the instant petition, are her legal representatives and the rights flowing from the agreement, Annexure P-1, are vested in them. In so far as the objection regarding non-impleadment of M/s Fox Star is concerned, respondent has not been able to show that M/s Fox Star had entered into any agreement with the petitioners. Petitioners have no concern with the agreement, if any, of M/s Fox Star with the respondent. This Court is, therefore, of the view that M/s Fox Star is not a necessary party to the instant petition.

7. The judgment in *A. Ayyasamy's case (supra)* relied upon by the counsel for the respondent, came up for consideration in a subsequent judgment of the Supreme Court in *Avitel Post Studioz Limited and others Versus HSBC PI Holdings (Mauritius) Limited, (2021) 4 SCC 713* and it was held as under:-

“34. In a recent judgment reported as *Rashid Raza (supra)*, this Court referred to *Sikri, J.'s* judgment in *Ayyasamy (supra)* and then held:

“4. The principles of law laid down in this appeal make a distinction between serious allegations of forgery/fabrication in support of the plea of fraud as opposed to “simple allegations”. Two working tests laid down in para 25 are: (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain.”



35. *After these judgments, it is clear that “serious allegations of fraud” arise only if either of the two tests laid down are satisfied, and not otherwise. The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have been met in cases in which allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or malafide conduct, thus necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain.”*

8. The twin test laid down by the Supreme Court is not satisfied. Mere dubiety of criminal conspiracy would not make the dispute non-arbitrable.

9. Coming to the last submission of the counsel for the respondent, it deserves to be noticed that the issue of non-stamping of the agreement has been settled by the Supreme Court in **In Re: Interplay Between Arbitration Agreements Under The Arbitration And Conciliation Act 1996 and The Indian Stamp Act 1899 (SC) (Constitution Bench), 2024 AIR (Supreme Court) 1**. Supreme Court has held that inadequately stamped agreements are enforceable and objection regarding stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. As a result, all the objections raised by the respondent are rejected and the prayer made in the petition deserves acceptance.

10. Accordingly, petition is allowed. Mr. Justice (Retd.) Raj Mohan Singh, a former Judge of the Madhya Pradesh High Court, resident of House No. 283, Sector 21-A, Chandigarh, Mobile No. 8558809931, is nominated



as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions.

11. Parties are directed to appear before the learned Arbitrator on date, time and place fixed and communicated by the learned Arbitrator at his convenience.

12. Parties will be at liberty to raise all claims, counter claims, defences, pleas etc. before the learned Arbitrator.

13. Needless to mention that all the questions arising between the parties in this matter will remain open for determination in the arbitral proceedings and any observation hereinabove made will not be binding on the learned Arbitrator.

14. A request letter alongwith a copy of the order be sent to Mr. Justice (Retd.) Raj Mohan Singh.

15. Pending application, if any, stands disposed of.

(SUVIR SEHGAL)
JUDGE

19.11.2024

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No