

(A.F.R.)

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Judgment Reserved on. 01.08.2024

Judgement Delivered on.30.08.2024

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 356 of 2024

Appellant :- Sanjit Singh Salwan And 4 Others

Respondent :- Sardar Inderjit Singh Salwan And 2 Others

Counsel for Appellant :- Manish Goyal, Sr. Advocate, Utkarsh Birla, Aarushi Birla

Counsel for Respondent :- Navin Sinha, Sr. Advocate, Naman Agarwal, Nipun Singh, Vinayak Mithal

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

(Per: Vikas Budhwar, J)

1. Challenge in this appeal under section 37 of Arbitration and Conciliation Act, 1996 (in short A & C Act, 1996) is an order dated 24.05.2024 of the Commercial Court, Court No-II, Meerut in Arbitration Suit No. 25 of 2023 (*Sanjit Singh Salwan and Others v. Sardar Inderjit Salwan and Others*) whereby the application for interim relief filed by the appellants under Section 9 of the A & C Act, 1996 was rejected.

Facts

2. Briefly stated facts sans unnecessary details are that there happens to be a Trust by the name of Guru Tegh Bahadur Charitable Trust having its registered office at 227, West End Road, Meerut Cantt, Meerut (in short 'Trust') engaged in charitable activities since 1970. The said Trust also manages an institution by the name of Guru Tegh Bahadur Public School in Meerut, which according to the appellants has a strength of all most 1700 students who are being imparted education from Ist to XIIth classes. The Trust has original Trust Deed dated 15.10.1979 which stood amended in the year 2019. The appellants and the respondents claim to be the Trustees. Certain dispute arose between the Trustees with regard to

membership and administration of the school which occasioned filing of Original Suit No. 227 of 2022 by the respondents herein (*Guru Tegh Bahadur Public School and Others v. Sardar Sanjit Singh Salwan and Others*) before the Court of Civil Judge (Senior Division), Meerut seeking injunction against the appellants from interfering in the management and operation of the School by the respondents herein.

3. On contest the said suit came to be dismissed on 13.04.2022 on an application preferred the Appellant Nos. 1, 2 and 3 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short CPC) against which the respondents herein preferred Civil Appeal No. 16 of 2022 (*Guru Tegh Bahadur Public School and Others v. Sardar Sanjit Singh Salwan and Others*) before District Court, Meerut. It is further claimed that during the pendency of the appeal before the District Judge, Meerut, the parties took recourse to arbitration and one Sri Vipin Sodhi, an advocate at Meerut was appointed as sole arbitrator. Accordingly, an application was preferred on 07.07.2022 in the proceedings in Appeal No. 16 of 2022 in the Court of District Judge, Meerut with a prayer that since the sole arbitrator has entered into the reference and proceedings are going on, thus, the appeal be decided making it dependent upon the final award to be passed by the sole arbitrator.

4. Before the Arbitrator, the respondents herein (first party) raised 4 points, which are as under:

“Points raised by Sardar Inderjit Singh Salwan for and on behalf of First Party are as under:

(1) The other party Sandar Sanjit Singh Salwan and Smt. Mehar Salwan and Amandeep Singh Salwan were lawfully terminated from the Board of Trust of G.T.B. Charitable Trust. The meetings dated 29.09.2020, 04.07.2021 and 29.01.2022 are valid. They have no right to be reinstated in the Trust.

(ii) Other party has no right to enter upon in school building to 27, West End Road, Meerut Cantt. or 76/1, Sky Line Building, Guru Nanak Nagar, Delhi Road, Meerut, or intervene into the day to day running of the said institutions or management of the Trust and School.

(iii) Other party shall withdraw the criminal case filed against the First Party in the shape of FIR dated 26.03.2022, Case Crime No. 43 of 2022, Police Station Sadar Bazaar, Meerut, under Section 420, 467 etc. IPC as the same is on false grounds and no offence committed.

(iv) The property of S. Inderjit Singh in shape of land of Sky Line Building 76/1, Guru Nanak Nagar, Delhi Road, Meerut owned by Sardar Inderjit Singh Salwan and building owned by Sky Line Promoters Pvt Limited, Managing Director Sardar Inderjit Singh Salwan is mortgaged with Piramal Capital and Housing Finance Ltd., Mangal Panday Nagar, Meerut, having its Main Office at Noida should be allowed to be released at the earliest.”

5. The appellants (second party) also raised the following points:

“Points raised by Sardar Sanjit Singh Salwan and his family:

(i) The removal of Other Party from the Trust on 29.01.2022 should be recalled being not valid. The meeting dated 29.09.2020 and 04.07.2021 admitting new trustees Yashkaran Singh Salwan, Smt Ramanjit Kaur and Shri Ashu Jain is illegal and they be removed from post of Trustees.

(ii) The Other party has complete right to participate in the meeting of the Trust and to participate in management of the Trust and School and to see and intervene into day to day running of the said institutions, i.e., Trust and the School.

(iii) The First Party should withdraw suit No. 227 of 2022 (Guru Tegh Bahadur Public School and another v Sardar Sanjit Singh and others) now pending in the shape of Appeal No. 16 of 2022, Guru Tegh Bahadur Public School and another v Sardar Sanjit Singh and others in the Court of District Judge, Meerut.

(iv) The personal property/papers of the Other Party, Punjab Diesel, 99, Delhi Road, Meerut, mortgaged with Piramal Capital and Housing Finance Ltd. to be released.

(v) Joint signatures of Sardar Inderjit Singh Salwan and Sardar Sanjit Singh Salwan to be started in the operation of Bank accounts maintained with Punjab National Bank, 227, West End Road, Meerut Cantt. and ICICI Bank, 227, West End Road, Meerut and State Bank of India, Roorkee Road, Meerut Cantt.

(vi) School website showing details of trustees to be corrected.

6. The sole arbitrator passed an award dated 30.12.2022. Relevant extract whereof is being quoted hereinunder:

“Point no 1 of the party of First Part and Point of No 1 of Party of Other Part: *These points are pertaining to removal of Sardar Sanjit Singh Salwan, Smt Mehar Salwan and Sardar Amandeep Singh Salwan from the Trust. Sardar Inderjit Singh Salwan and others have asserted very strongly that the three cannot be re-reinstated because their acts had*

been effecting the working of the school and reputation and good will of the school. They were given thorough/lot of opportunities for rectification of their errors and acts.

On the contrary all the three Sardar Sanjit Singh Salwan and others very strongly asserted that they acted perfectly and diligently. They always acted for the betterment of the Trust and School and their removal is without any justification, reason and cause.

After considering the arguments of both the parties in the interest of the trust and families and considering the entire scenario, it is deemed proper that Sardar Sanjit Singh Salwan, Smt Mehar Salwan and Amandeep Singh Salwan to be reinstated in the Trust as trustees. They will always act for the betterment of the trust and School. Sardar Inderjit Singh Salwan to convey trust meeting at 227, West End Road, Meerut Cantt within 3 days from the date of submission of this award by both the parties before the District Judge, Meerut for reinstallation of all three parties as trustee in the Trust.

Regarding meetings dated 20.9.2020 and 4.7.2021 admitting new trustees Sardar Yashkaran Singh Salwan, Smt. Ramanjit Kaur and Shri Ashu Jain, Sardar Inderjit Singh Salwan very strongly objected to the same during proceedings and hearings and stated that said all three trustees are validly appointed shall always be trustees of the Trust and they shall not be removed. Before this tribunal no reason or because has been placed for their removal and why failed their appointments. Sardar Sanjit Singh Salwan, Smt Mehar Salwan and Amandeep Singh Salwan stated that they have every rights in the trust and in the meetings in which these three were admitted as new trustees, they were never called in the meetings. During the course of hearing Trustee Ashu Jain and Smt. Ramanjit Kaur of a mentally stated that they are not interested to continue as trustee of Trust due to personal reasons and other commitments and offered resignation. Accordingly S. Inderjit Singh accepted their resignations as Chairman and stated that matter shall be placed before Board so let it be accordingly.

Therefore, after hearing both the parties at length this Tribunal is of the opinion that Yashkaran Singh Salwan shall not be removed from the trustee of the trust. The Board of Trust in such event shall be as follows:

Sardar Inderjit Singh Salwan - President

Sardar Sanjit Singh Salwan Vice President

Smt Amarjeet Kaur Salwan - Secretary

Smt Mehar Salwan -Trustee

Shri Amandeep Singh Salwan - Trustee

Shri Yashkaran Singh Salwan - Trustee

The meeting dated 29.1.2022 is not a invalid and illegal meeting. Since Both Ashu Jain and Smt. Ramanjit Kaur have opted to resign from Trust,

so it be placed before the Board of Trustees for acceptance in the next meeting to be held as above said.

Point no 2 of the Party of First Part and Other Party: *Party of first part asserted that the other party has no right to enter upon the school building 227, West End Road, Meerut Cantt or 76/1, Guru Nanak Nagar, Sky Line Building, Delhi Road, Meerut or intervene into the running of the said institutions. The other party strongly objected to the same and stated that since they are the trustees they have every right to enter upon into the trust/school building at 227, West End Road, Meerut Cantt. Though during course of hearing the other party have clearly accepted that Sky Line Building is owned by Sardar Inderjit Singh Salwan and as the firm Sri Guru Tegh Bahadur Public School dissolved on 31.3.2021 so they have no legal right to enter upon others' property. Other party has admitted that they will not enter into the Sky Line Building 76/1, Guru Nanak Nagar, Delhi Road, Meerut and will never intervene into the functioning of school run by Sardar Inderjit Singh or by his firm M/s G.T.B Public School.*

Therefore, this Tribunal passed the award that Other Party Sardar Sanjit Singh Salwan, Smt Mehar Salwan and Amandeep Singh Salwan shall not enter into the premises 76/1, Guru Nanak Nagar, Sky Line Building, Meerut and they shall not intervene in any firm and the management, control and running of the school by Sardar Inderjit Singh Salwan under Firm Guru Tegh Bahadur Public School or under any other firm or Company formed by him in future.

It was accepted and informed by Both parties that No School Branch of trust is being run at Delhi Road, so there is no dispute.

Regarding the control and management of Guru Tegh Bahadur Charitable Trust and its school at 227, West End Road, Meerut Cantt, this Tribunal pass the following award.

The trust and the school shall be under the control and management of Sardar Inderjit Singh Salwan as Chairman of Trust and as Manager of the school for a period of six months from the date of this award. All decisions shall be taken by Sardar Inderjit Singh Salwan in the betterment of the school and trust.

Sardar Inderjit Singh Salwan and Sardar Sanjit Singh Salwan shall be the joint signatory of Bank account maintained with ICICI bank and Punjab National Bank, 227, West End Road, Meerut. P.N.B. Bank account shall be used for payment of salaries and wages, Government Liabilities, gratuity, electricity bills, telephone bills, diesel bills and Bank loan payment EMIs.

The bank account maintained with the State Bank of India Meerut Cantt shall be operated by exclusive signature of Sardar Inderjit Singh Salwan.

This arrangement for a period of six months only as above said within the period of six months Sardar Inderjit Singh Salwan will get the original paper of building 99, Delhi Road, Meerut belonging to the other party, released from the bank and accordingly on deposit of full money with the bank all other party shall resigned from the post of trustee from Guru Tegh Bahadur charitable trust and shall have no concern with the trust or school in any manner.

That if the first parties Sardar Inderjit Singh fails to get release the original paper of the other party from the bank within a period of six months as above said in that event on the expiry of six months immediately thereafter within four months, other party shall get release the original property papers of Sardar Inderjit Singh and Skyline company from the bank within the said four months period by depositing full money with the Bank. In such event and deposit of full money all the parties of the first part Shall resign from the post of trustee from the Guru Tegh Bahadur charitable trust and shall have no concern with the trust and school. The other party Sardar Sanjit Singh shall have complete control over the trust and school and shall be entitled to admit new trustees in according with the object of the trust and shall be managing that trust and the school.

That in case if both party fails to honour the judgement under the award, as per stipulated period as above said, in that event for a period of six (6) months after that, things will continue in the same fashion and both Sardar Inderjit Singh and Sardar Sanjit Singh shall continue to run the school under joint signatures and will refer the matter to this Tribunal for adjudication of all or any disputes within the said period.

Point no 3 of the First Party: *This relates to the FIR dated 26.3.2022 being Case Crime No 43 of 2022 registered with Police of Police Station Sadar Bazar, Meerut under section 420 etc IPC. Matter of FIR relates to removal of Other party from trusteeship in the meeting dated 29.1.2022. Since this Tribunal without going into minute details has passed a award for reinstate of the other parties as Trustee of the Trust, therefore, there is no reason why FIR should continue. Sardar Sanjit Singh Salwan and others are hereby directed to withdraw the said FIR by moving application and affidavit before the police of P.S. Sadar, Meerut within 7 days from the date of submission of this copy of this award in the court of District Judge, Meerut and will not pressure the said FIR and will not give or file evidence. In case any default in submission of documents before Police, the other party shall not be entitled to benefits awarded under Point two above.*

Point No 4 of First Party and Other Party: *This pertains to release of their respective property papers. This Tribunal has already passed award regarding this point in Point no 2 above which shall form part and parcel of this award.*

Point No 5 of Other Party: *This pertains that the joint signatures of Sardar Inderjit Singh Salwan and Sardar Sanjit Singh Salwan to be stered*

in the operation of Bank accounts maintained with Punjab National Bank, 227, West End Road, Meerut Cantt and ICICI Bank 227, West End Road, and State Bank of India, Roorkee Road, Meerut. This Tribunal has already passed award regarding this point in point no. 2 above, which shall form part and parcel of this award.

Point no 6 of other Party: *This relates to the Website of the School which should be corrected. Since this Tribunal has passed award regarding management and trusteeship so after submission of the copy of this award before the Court of District Judge, Meerut, Sardar Inderjit Singh Salwan shall correct the website. No other point has been raised by either of the party.*

Point No. 3 of Other Party: *This relates to withdrawal of suit and Appeal No. 16 of 2022, GTB Public School and others v S. Sanjit Singh and others pending before the Court of District Judge, Meerut. The parties are directed to file copy of this award jointly before the Court and get the appeal decided in view of award.*

This Tribunal has acted as Sole Arbitrator in this matter free of costs and has not charged any fees from either of the party.”

7. According to the appellants, in terms of the award, they filed an application along with an affidavit for withdrawal of the first information report lodged on 26.03.2022 against the respondents before the Investigating Officer of the concerned police station. A compromise application was also filed under the joint signatures of the appellants and the respondents herein before the District Judge, Meerut in Civil Appeal No.16 of 2022. The District Judge, Meerut vide order dated 27.01.2023 decided the appeal in terms of the compromise/award. It is alleged that the respondents herein did not discharge their obligations while clearing the dues with the Piramal Capital and Housing Finance Ltd, but in a malafide manner preferred an application dated 12.07.2023 before the sole Arbitrator complaining that due to non-filing of the closure report with respect to the first information report, the funds could not be arranged, creating an odd situation. The said application was contested by the appellants herein while filing their objections before the sole arbitrator. However, according to the appellants, the sole Arbitrator without serving any notice or affording any opportunity of hearing to the appellants

proceeded to pass an exparte award dated 30.10.2023. The operative portion whereof is quoted hereinunder:-

“In view of above the application and objections are disposed of. It is made clear that the Other Party Sardar Sanjit Singh Salwan and others have clearly defaulted in their obligations as required under Point no. 3 of the award and they have permanently lost their rights given to them in Point no. 2 of the award i.e. time of 4 months to release property papers and deposit money with the Bank and get period of control and management of the. Trust as well as the School First party shall continue the control and management of the Trust and school in terms of the award dated 30.12. 2022 and shall make compliance of the award within the stipulated period as and when Final Report is accepted by the Court.”

8. The appellants herein instituted proceedings under section 36 of A & C Act, 1996 for enforcement of the award dated 30.12.2022, which was registered as Execution Case No.8 of 2023. It is alleged that on the persuasion of the sole arbitrator, the appellants withdrew the Execution Case on 08.12.2023.

9. Since, repeated obstructions and hindrances were being created by the respondents in the functioning of the Trust and school, so the appellants instituted proceedings under section 9 of the A & C Act, 1996 before the Commercial Court, Meerut, which was registered as Arbitration Case No.25 of 2023 (*Sanjit Singh Salwan and Others v. Sardar Inderjit Salwan and Others*) seeking following reliefs:

“(A). That by an order of this Court in favour of the petitioners and against the opposite parties, the opposite party may be restrained from interfering in the applicants right to manage and running of the school Guru Teg Bahadur Public School, West End Road, Meerut and trust Guru Teg Bahadur Charitable, Meerut in any manner whatsoever, including but not limited to restrict their entry in Guru Teg Bahadur Public School, West End Road, Meerut premises.

(B) That the Manager State Bank of India, Meerut Cantt Branch be directed not take any school fees in Account Nos. 30195999322, 30133389047 and to change the authorized signatory in the said account from O.P.No.01 to the authorized appointed by the trust by a resolution passed by the applicant No.1 to 3.

(C) That the Manager Punjab National Bank, Sadar Branch be directed to allow the operation of the saving account No. 0318010100600013 of

Guru Tegh Bahadur Public School only with the signature of applicant Sanjeet Singh.

(D) That any other relief which this Hon'ble Court may deem fit be awarded in favour of the petitioner.”

10. On being noticed, the respondents herein preferred their objection on 11.01.2024.

11. The Appellants allege that they came to know about the award dated 30.10.2023 for the very first time when the same was filed along with the objection.

12. In the meantime, the Respondents herein approached the Arbitrator while initiating proceedings under section 17 of the A & C Act, 1996. On 21.01.2024, an order is stated to have been passed by the sole Arbitrator whereby the appellants were restrained from causing any hindrances or obstructions in the smooth operation of the school by the respondents herein.

13. Challenging the order dated 21.01.2024 passed under Section 17 of the A & C Act, 1996, the appellants preferred an Appeal under Section 37 of the A & C Act, 1996 before the Commercial Court, Meerut which came to be registered as Arbitration Appeal No.6 of 2024 (*Sanjit Singh Salwan v. Sardar Inderjit Singh Salwan and Others*). Proceedings were also initiated under section 34 of the A & C Act, 1996 for setting aside the exparte award dated 30.10.2023, which was registered as Arbitration Case No.3 of 2024 (*Sanjit Singh Salwan v. Sardar Inderjit Singh Salwan and Others*). A stay application was also filed seeking interim relief.

14. Since the order dated 21.01.2024 passed under section 17 of the A & C Act, 1996 was continuing and the interim prayer sought in the proceedings under Section 34 of the A & C Act, 1996 was not being decided, so the appellants approached this Court while filing petition under Article 227 of the Constitution of India, bearing number '4218 of 2024 (*Sanjit Singh Salwan and Others v. Sardar Inderjit Singh Salwan*

and Others)', which came to be decided on 18.04.2024 requiring the Commercial Court to decide the interim prayer of the appellants on the next date fixed i.e. 23.04.2024 and till disposal, *status quo* was directed to be maintained. Against the non-disposal of the proceedings under section 34 of the A & C Act, 1996, challenging the *exparte* award dated 30.10.2023, application under Article 227 bearing number '4221 of 2021(*Sanjit Singh Salwan and Others v. Sardar Inderjit Singh Salwan and Others*)' was preferred before this Court, which came to be decided on 18.04.2024 requiring the Commercial Court to ensure that appropriate orders are passed on the said application by 31.05.2024.

15. Thereafter on 24.05.2024, three orders came to be passed by the Commercial Court, (i) order in Arbitration Case No.25 of 2023 (*Sanjit Singh Salwan and Others v. Sardar Inderjit Salwan and Others*) rejecting the application purported under Section 9 of the A & C Act, 1996 holding that the disputes of Trust could not have been adjudicated by the arbitrator and thus, the award dated 30.12.2022 is nullity; (ii) order in Arbitration Case No.3 of 2024 (*Sanjit Singh Salwan v. Sardar Inderjit Singh Salwan and Others*) setting aside the *exparte* award dated 30.10.2023 observing that the disputes of the Trust are not arbitrable; and (iii) order in Arbitration Case No.06 of 2024 (*Sanjit Singh Salwan v. Sardar Inderjit Singh Salwan and Others*) setting aside the interim measure accorded to the respondents on 21.01.2024 on the premise that the disputes relatable to the Trust are non-arbitrable.

16. Questioning the order dated 24.05.2024 passed by the Commercial Court in Arbitration Suit No.25 of 2023 rejecting the application under Section 9 of the A & C Act, the present appeal has been preferred.

Arguments of learned counsels for the Appellants

17. Shri Manish Goyal, learned Senior Advocate assisted by Shri Utkarsh Birla and Ms. Aarushi Birla, learned counsel for the appellants has sought to argue that the order of the Commercial Court rejecting the application

under Section 9 of the A & C Act, 1996, cannot be sustained for a single moment inasmuch as the Commercial Court has misconstrued the entire controversy and adopted an incorrect approach. Elaborating the said submission, it has been submitted that it is on the insistence of the respondents herein that the matter stood referred to the arbitrator and after hearing the parties (including the respondents herein), an award came to be passed on 30.12.2022, which has attained finality, as the same has not been challenged by either of the parties in proceedings under section 34 of the A & C Act, 1996. Since the hindrances and obstacles were created by the respondents, so the appellants had to take recourse to the proceedings under section 9 of the A & C Act, 1996 for interim measure, which in all eventualities was maintainable in view of the language employed in Section 9 of the A & C Act, 1996 that, a party can invoke the said proceedings before or during the arbitral proceedings or at any time after making of the award, but before it is enforced under Section 36 of the Act, 1996.

18. Submission is that the proceedings under Section 9 of the A & C Act, 1996 was initiated in furtherance of and in order to secure and preserve the movable and the immovable properties, which was subject matter of the dispute which stood adjudicated by virtue of the award dated 30.12.2022, thus it was not open for the Commercial Court in the proceeding under Section 9 of the A & C Act, 1996 to question the jurisdiction and the competence of the Arbitrator whose award remained unchallenged.

19. Argument is that the finding recorded in the order under challenge that the arbitrator is not vested with the jurisdiction to adjudicate the disputes of the Trust in view of the express bar contained under Section 9 of the CPC is misconceived besides being out of context, particularly when the disputes stood referred by the respondents herein. It is also submitted that the disputes which were referred for arbitration does not fall within the

categories of non-arbitral disputes and Section 92 of the CPC has no application. Reference has also been made to Section 89 of the CPC so as to contend that with regard to settlement of disputes outside the Court amongst others, arbitration is also a mode for settlement of disputes.

20. While placing reliance upon the judgment in the case of **Vidya Drolia and Others v. Durga Trading Corporation, (2021) 2 SCC 1**, followed in the **Avitel Post Studioz Limited and Others Vs. HSBC PI Holdings (Mauritius) Limited (2024) 4 SCC 713**, it is contended that the case of the appellants does not come within the category of non-arbitral issues. Likewise the judgement in the case of *Vimal Kishore Shah and Others v. Jayesh Dinesh Shah and Others, (2016) 8 SCC 788* is distinguishable, particularly when, in the said case, the Trust in question was governed under the provisions of Trust Act, 1882. Reliance has been placed upon the judgment in the case of *Chairman Madappa v. M.N. Mahanthadevaru and Others, 1965 SCC Online SC 99*, *Sugra Bibi v. Hazi Kummua Mia, 1968 SCC Online SC 99*, and *Narain Sahai Aggarwal v. Smt. Santosh Rani, 1997 SCC Online Del 575* so as to contend that it is not necessary that all the disputes of the Trust are to be governed under Section 92 of the CPC, as there happens to be certain disputes, which do not fall within the parameters envisaged under Section 92 of the CPC. While deriving force from the judgment in the case of **Deccan Paper Mills Company Limited v. Regency Mahavir Properties and Others, (2021) 4 SCC 786**, it is contended that besides the Civil Courts, the arbitrator has the competence to grant relief of specific performance and the rights so settled therein is judgment *in personam* and not *in rem*. Reference has also been made to the judgment in the case of *Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, (2024) 6 SCC 1*, so as to further contend that the Arbitration Act is a special law under the Contract Act and the same has primacy over the Stamp Act as well as the Registration Act.

21. It is thus prayed that the order of the Commercial Court rejecting the application under Section 9 of the A & C Act, 1996 be set aside and the appeal be allowed in toto.

Arguments of learned counsels for the Respondents

22. Countering the submission, learned Senior Counsel for the respondents Sri Navin Sinha, assisted by Sri Nipun Singh, Sri Vinayak Mitthal and Sri Naman Agarwal has submitted that the order of the Commercial Court rejecting the application under Section 9 of the A&C Act, 1996 does not call for any interference. It is submitted that after passing of the award dated 30.12.2022 by the sole arbitrator, the Execution Case No.8 of 2023 came to be filed by the appellants on 23.11.2023 under Section 36 of the A & C Act, 1996, however, the same stood withdrawn by the appellants on 08.12.2023. Thus, once the Execution Case stood withdrawn, and no liberty whatsoever, was accorded, then the proceedings under Section 9 of the A & C Act, 1996 was not maintainable.

23. Submission is that Section 9 of the A & C Act, 1996 though provides for interim measures by the Court, however, it is restricted to certain contingencies and once an award came to be passed and an execution application also got filed and thereafter withdrawn without any liberty, then the collateral proceedings in the garb and guise of Section 9 of the A & C Act, 1996 is nothing but an attempt to get the award enforced which is not maintainable in the eyes of law.

24. It is further submitted that the disputes which were referred to and adjudicated by the Arbitrator are non-arbitral beyond the competence of Arbitrator inasmuch as essentially the dispute was regarding removal and appointing of new Trustee as also regarding management of the Trust, for which the only recourse available to the aggrieved party is to invoke Section 92 of the CPC. Argument is that though Section 9 of A & C Act, 1996 provides for interim measures by the Courts, however, the same is

restricted only to three contingencies, namely, (i) before, (ii) during the arbitration proceeding, (iii) at any time before making of the award, (iv) but before it is enforced in accordance with Section 36, therefore, once the award became enforceable and rather it was put to enforcement at the instance of the appellants while filing an execution case and the same stood withdrawn, then the application under Section 9 by no eventualities would be maintained.

25. It is also contended that the basic reason attributable for withdrawing of the execution case was on account of objection raised by the respondents herein that the court-fees on the subject matter of the dispute referred to and decided in the award was liable to be paid by the appellants, but in order to wriggle out from the same, the execution application stood withdrawn and in the garb and in the guise of application under Section 9 of A & C Act, 1996, the award is being sought to be executed which is not permissible in the eyes of law. Reliance has been placed upon the judgment of the Bombay High Court in the case of *Centrint Pharmaceuticals India Pvt. Ltd. Vs. Hindustan Antibiotics Ltd. (2019) SCC Online Bom 1614*.

26. In nutshell, it is also submitted that the subject matter of dispute referred for arbitration and which was subject matter of award is clearly non-arbitrable as it pertains to the disputes of a public charity/ trust and thus, the only option available to the appellants was to take recourse to the proceedings under Section 92 of the CPC.

27. Argument is that though it was the respondents herein on whose insistence the matter stood referred to arbitration, but the same will not clothe the arbitrator with jurisdiction to adjudicate upon the dispute relatable to public charities particularly when, by the consent of the parties jurisdiction cannot be conferred.

28. It is also submitted that a bird's eye to the dispute adjudicated would reveal that Section 92 of the CPC stands applicable to the said dispute,

and the same is not within the competence and jurisdiction of the arbitrator. It is accordingly, prayed that the appeal be dismissed in toto.

Analysis

29. We have given thoughtful consideration to the arguments of parties and perused the records carefully.

30. Before embarking an enquiry upon the tenability of the arguments of the rival parties, it would be apposite to extract provisions of Section 92 of the CPC:

“Public charities

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the 2 [leave of the Court], may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree:

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

3 [(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property];

d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863), 4 [or by any corresponding law in force in 5 [the territories which, immediately before the 1st November, 1956, were comprised in

Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

6[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely :

(a) where the original purposes of the trust, in whole or in part,

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or; where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, of

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.”

31. Section 92 of CPC deals with the disputes of public charities/Trust created for public purpose or charitable or religious nature, wherein a complete procedure has been laid down for taking legal action. In order to attract the provisions of Section 92 of Code of Civil Procedure, three conditions have to be satisfied namely (i) The trust if created for charitable or religious nature; (ii) there was a breach of trust, or a direction of Court is necessary in the administration of said Trust; (iii)The relief claimed is one or the other of the reliefs enumerated in Sub-Section

(1) of Section 92 of CPC. Further Sub-Section (2) of Section 92 provides with a non-obstante clause that no suit claiming any of the reliefs specified in Sub-Section (1) of Section 92 shall be initiated in respect of any of the Trust as referred thereto except in conformity with the provisions of Sub-Section (1) of Section 92.

32. To begin with, we are required to determine whether the Trust in question is a private or a public trust answering the definition of public charities. The appellants herein in Memo of Appeal in Ground no.D have come up with a stand that the Trust is a public charitable Trust. Ground No.D of the Memo of Appeal is reproduced hereinunder:-

“D. Because the Trust is a public and charitable trust, which is operating the school under the name of ‘Guru Tegh Bahadur public School’. Therefore, the provisions of the Indian Trusts Act, 1882, do not apply to the present Trust. The learned Commercial Court lost sight of the fact that the Trust is not private in nature. It has nowhere been pleaded or argued by either party that the Indian Trusts Act, 1882, governs the Guru Tegh Bahadur Charitable Trust, nor has it been registered under the said Act.”

33. The distinction between private and a public trust came up for consideration in the case of ***Devki Nandan Vs. Murlidhar and others***, AIR 1957 (SC) 133, wherein the following was observed:-

“The distinction between a private and a public trust is that whereas the former the beneficiaries are specific individuals, in the latter, the general public or class thereof.”

34. Admittedly as per original trust deed dated 15.10.1979, and amended Trust Deed of the year 2019, Guru Tegh Bahadur Charitable Trust is a Charitable Trust as the name suggests, is engaged in charitable activities in the field of education. Thus, the Trust answers the definition of a Public Trust.

35. The bone of contention between the rival parties is whether the dispute is arbitrable, so as to invest the arbitrator the jurisdiction to decide the disputes of a Trust in the wake of the provisions of Section 92 of CPC. To test the said submission, we are required to have a quick survey of the disputes, which was referred to for arbitration and the nature of the award

itself and the submission of the learned counsel for the appellants that once the respondents herein got referred the dispute relatable to the Trust for arbitration, then they cannot object that the dispute was not arbitrable.

36. According to the respondents herein, who were termed as 'first parties' in the arbitration, Sardar Sanjeet Singh Salwan (appellant no.1), Sri Mehar Salwan (appellant no.2) and Sri Amardeep Singh Salwan (Appellant no.3) were lawfully terminated from the board of Trust of Guru Tegh Bahadur Charitable Trust and the meetings dated 29.09.2020, 04.07.2021, 29.01.2022 was valid. On the other hand, the point raised by the appellants herein (second party) was that their removal from the Trust on 29.01.2022 was illegal being invalid and the meeting held on 29.09.2020 and 04.07.2021 admitting new Trustees Yash Karan Singh Salwan, Smt. Ramanjeet Kaur and Anshul Jain is illegal and they are liable to be removed from the office of the Trustees.

37. The arbitrator proceeded to hold and directed that Sardar Sanjeet Singh Salwan (appellant no.1), Smt. Mehar Singh Salwan (appellant no.3) and Amandeep Singh Salwan (appellant no.2) are to be reinstated as Trustees and as regards the meeting convened on 29.09.2020 and 04.07.2021, the arbitrator after hearing the parties had directed that Yash Karan Singh Salwan shall not be removed as a Trustee of the Trust and further directions were issued for constitution of the members of the Board of Trust. Certainly, the said dispute was beyond the scope of arbitration, particularly when the disputes relatable to removing any trustee and appointing a new trustee falls within the disputes categorized under Section 92 of CPC.

38. Point nos. 2, 3, 4 and 5 raised by the respondents herein (first party) before the sole arbitrator is with regard to the issue that the appellants (other party) had no right to enter the school building or to intervene in the day-to-day running of said institution and Management of the said Trust of the School. The appellants herein (other party) claimed absolute right to participate in the meeting of the Trust and to participate in the

management of the Trust and the school and to intervene into the day-to-day running of the institution, trust and the school. The arbitrator proceeded to hold and direct that initially for a period of six months from the date of passing of the award, the bank account of the Trust and the School shall be operated under the joint signatures of Sardar Inderjeet Singh Salwan and Sardar Sanjeet Singh Salwan and the former would get released the papers of the property in question from the bank and in case Sri Sardar Inderjeet Singh Salwan fails to get the original papers released from the bank, then the other party Sardar Sanjeet Singh Salwan shall have complete control over the Trust and the school. The determination made in point nos. 2 to 5 in the award is indicative of the fact that the arbitrator has decided a non-arbitrable dispute which is subject matter of Section 92 of CPC, being issues of the management of the Trust which is clearly barred in the eyes of law.

39. As regards the direction of the Arbitrator requiring the appellants herein not to pursue and withdraw the first information report dated 26.02.2022 being Case Crime No.43 of 2022 lodged against the respondents before P.S. Sadar Bazar, Meerut under Section 420 IPC and also not to give or file evidence before the criminal courts is also beyond the scope of arbitration being non-arbitrable. The position might have been different, in case parties would have approached the arbitrator expressing their sweet will that they would not pursue the criminal case, but such type of blanket directions could not have been issued by the Arbitrator. Hence the Arbitrator has exceeded its jurisdiction while passing an award on a subject, which is non-arbitrable.

40. Further once FIR came to be lodged by the appellant against the respondents herein and the investigation stood commenced, then it transforms into a dispute in rem rather in personam, particularly when the offence committed is not only against the informant, but also against the State. The reliance placed upon the judgment in the case of *A. Ayyasamy (supra)* and *Avitel Post Studioz Ltd. (supra)* is wholly misplaced,

particularly when in the said decision, the issue involved was that mere allegation of fraud and forgery would not exclude arbitration and it was held that the issue of fraud or forgery was quite complex and they denude the arbitrator to adjudicate the said issues. Here in the present case, the issue is not of fraud or forgery, but it is in relation to criminal proceedings lodged against the respondents herein.

41. In **Vidya Drolia (supra)**, the Hon'ble Apex Court had laid down the four fold test in order to determine as to whether the dispute is arbitrable or not. It was observed as under:-

“76. In view of the above discussion, we would like to propound a four-fold test for determining when the subject matter of a dispute in an arbitration agreement is not arbitrable:

76.1. (1) when cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

76.2. (2) when cause of action and subject matter of the dispute affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;

76.3. (3) when cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and

76.4. (4) when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

76.5. These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject matter is non-arbitrable. Only when the answer is affirmative that the subject matter of the dispute would be non-arbitrable.”

42. Plainly and simply, the disputes, which were adjudicated and which became the part and the parcel of the award falls within the purview and the rigours of Section 92 of the CPC, as it is beyond shadow of doubt that the award touches the issue of removal and induction of members of the Trust and also directions for management of the Trust.

43. Our view also stands fortified from Sub-Section (2) of Section 92 of CPC, which provides that no suits claiming any of the reliefs specified in Sub-Section (1) are to be instituted in respect of any Trust as referred to

except in conformity with the provisions of Sub-section (1) of Section 92 of CPC. As regards the argument raised by learned Senior Counsel for the appellants that since the appellant-Trust is a public trust and it is not covered under the Trust Act 1882, therefore, the judgment in the case of *Vimal Kishore Sahai (supra)* would not be applicable and would not make much relevance, particularly when Section 92 itself provides for modality and forum for adjudication of the dispute relatable to the Trust.

44. Much emphasis had been laid upon Section 89 of the CPC so as to suggest that the same deals with the settlement of dispute outside the Court and amongst others, one of the mode is arbitration. It is contended that the said provision came to be inserted by virtue of Act No.46 of 1999, w.e.f. 01.07.2002, thus it would dilute the rigours of Section 92 of CPC, as it would be open for the parties to get adjudicated the disputes of the Trust through arbitration. The said contention cannot be accepted for the simple reason that Section 89 provides for settlement of disputes outside the Court either through arbitration, conciliation, mediation or judicial settlement including settlement through Lok Adalat, however, it is subject to the disputes which would not fall under the said category. Section 89 does not override Section 92, particularly when Section 92 CPC exclusively deals with the dispute relating to Trust.

45. Though a feeble attempt was made by learned Senior Counsel for the appellants, while relying upon the judgments in the case **Chairman Madappa (supra)** and **Narain Sahai Aggarwal (supra)** while contending that it is not a hard and fast rule that all the disputes relating to or incidental to a Trust are to be dealt in terms of Section 92, as there are certain disputes, which though is of a Trust are beyond the scope of Section 92 of CPC. So far as the judgment in the case of *Chairman Madappa (supra)* is concerned, the same would not be of any aid or assistance to the appellants, particularly when in the said case, the dispute was relatable to disposal of a cattles for increasing the income of a Trust and it was held that for incidental trivial issues, no permission under

Section 92 was required. However, in the present case in hand, the disputes are regarding the induction and removal of Trustees and also management, which obviously is within the purview of Section 92 of CPC. The judgment in the case of *Narain Sahai Agarwal* (supra) is also not applicable, as the said judgment also does not deal with the issue, which is engaging in the present proceeding.

46. As regards the submission of the learned Senior Counsel for the appellants that the respondents herein are estopped from raising the question of the competence of the arbitrator to adjudicate the disputes of the Trust is concerned, the same is neither here nor there. The Hon'ble Apex Court in the case of *New Moga Transport Compay Ltd. Vs. United India Insurance Company Ltd.*, (2004) 4 SCC 677 had the occasion to consider the issue whether by consent, acquiescence or waiver at the end of any party can create a jurisdiction. It was observed as under:-

“By a long series of decisions it has been held that where two Courts or more have under the CPC jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in any one of such Courts is not contrary to public policy and in no way contravenes Section 28 of the Indian Contract Act, 1872. Therefore, if on the facts of a given case more than one Court has jurisdiction, parties by their consent may limit the jurisdiction to one of the two Courts. But by an agreement parties cannot confer jurisdiction to a Court which otherwise does not have jurisdiction to deal with a matter. (See *Hakam Singh v. M/s. Gammon (India) Ltd.* (AIR 1971 SC 740) and *M/s. Shriram City Union Finance Corporation Ltd. v. Rama Mishra* (AIR 2002 SC 2402).”

47. The judgment in the case of *Interplay Between Arbitration Agreements* (supra) is also of no help, particularly when the question poised before the Hon'ble Supreme Court was with regard to a situation where the arbitration agreement was insufficiently stamped. The Hon'ble Apex Court came to the conclusion that an arbitration agreement being a special agreement, would prevail over the Contract Act, 1872 as well as Stamp Act, 1899. With regard to the judgment in the case of *Deccan Paper Mills Company Limited* (supra), there is no quarrel to the proposition that the Arbitrator is also vested with a right to grant relief of specific performance same as Civil Courts and the adjudication so done is *in personam* and not *in rem*. What is understandable in the present case is

that the issues which were referred to and adjudicated by the Arbitrator were the issues, which were triable by the Courts of law as per Section 92 of the CPC.

48. Interestingly, the issue that the dispute is not arbitrable also stands noticed in the order dated 24.05.2024 in Arbitration Case No.3 of 2024 while setting aside the award dated 30.10.2023 and Arbitration Case No.6 of 2024 wherein the interim relief granted to the respondents on 21.01.2024 in the proceeding under Section 17 of the A & C Act, 1996 was set aside.

49. The question regarding the maintainability of the proceedings under Section 9 of the A & C Act, 1996 is not being addressed by this Court in the present proceeding, particularly when the dispute relatable to the Trust itself was not arbitrable and the arbitrator had no competence to adjudicate the same.

50. Viewing the case from the four-corners of law, we are of the firm opinion that the order dated 29.05.2024 of the Commercial Court rejecting the proceedings under Section 9 of the A & C Act, 1996 cannot be said to be suffering from any illegality or infirmity, warranting interference in the present proceedings.

51. The appeal is accordingly dismissed.

Order Date:-30.08.2024

N.S. Rathour

(Vikas Budhwar, J)

(Arun Bhansali, CJ)