[2025] 5 S.C.R. 1199 : 2025 INSC 687

K. Mangayarkarasi & Anr.
v.
N.J. Sundaresan & Anr.

(SLP (C) No. 13012 of 2025)

09 May 2025

[J.B. Pardiwala* and R. Mahadevan, JJ.]

Issue for Consideration

Can a trademark infringement suit be referred to arbitration if the defendant questions its maintainability on the ground of existence of an arbitration agreement between the parties and seeks a reference under Section 8 of the Arbitration and Conciliation Act, 1996 ("Act").

Headnotes†

Arbitration and Conciliation Act, 1996 – s.8 – Not all trademark disputes are non-arbitrable; those concerning contractual rights can be arbitrated – Petitioners filed a commercial suit against Respondents seeking permanent injunction in relation to trademark "SRI ANGANNAN BIRIYANI HOTEL/ABM SRI ANGANNAN HOTEL/ any other name format signifying the term ANGANNAN" – Respondents filed an Application under Section 8 of the Act and sought reference to arbitration on the basis of two assignment deeds containing an arbitration clause – Petitioners disputed execution of the said deeds on the ground of fraud – The commercial court allowed the said application holding that the subject matter of suit was arbitrable and the basis of Respondents' claim was not rooted in Trade Marks Act, 1999 ("TM Act") but in the said assignment deeds – Being aggrieved, Petitioners filed civil revision application in the High Court which came to be dismissed *inter-alia* on the ground that mere allegation of fraud is insufficient to refuse reference to arbitration and such an allegation must have an implication in public domain – Challenged in the Special Leave Petition:

Held: When arbitrability of a dispute is opposed on the ground of fraud, Courts must examine whether mere allegation of fraud warrants exclusion of such disputes from the realm of arbitration and such a challenge can be adjudicated by the arbitral tribunal in terms of Section 16 of the Act – Reliance placed on *A. Ayyasamy v. A.Paramasivam & Ors. (2016) 10 SCC 386* and

* Author

Kvaerner Cementation India Ltd. v. Bajranglal Agarwal and Anr., (2012) 5 SCC 214. [Paras 8, 9]

The "arbitrability" of a dispute depends on following three aspects: (i) capability of a dispute being adjudicated and settled by arbitration; (ii) if the dispute was covered by the arbitration agreement; and (iii) if the parties had referred the disputes to arbitration – All these factors are required to be determined keeping in mind the express or implicit exclusion of certain categories of cases from the domain of arbitration (private fora) as a matter of public policy – Such excluded cases largely are those which relate to action *in rem* which are reserved for adjudication by public fora (*Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. & Ors., (2011) 5 SCC 532)* – It cannot be held that all disputes related trademark are non-arbitrable, such as those related to *in personam* rights (*Vidya Drolia v. Durga Trading Corporation reported in (2021) 2 SCC 1*) – Arbitral Tribunal enjoys a wider jurisdiction under Section 16 of the Act and even cases where a contract stood discharged by way of a full and final settlement, can be referred to arbitration if such a settlement is vitiated by fraud, coercion or undue influence (*SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754, National Insurance Company Limited v. Boghara Polyfab Private Ltd., (2009) 1 SCC 267*). [Paras 10-13]

The post 2015 amendment judgments to the Act, such as *Mayavati Trading Private Limited v. Pradyut Deb Burman, (2019) 8 SCC 714* and *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act, 1899*, *2023 INSC 1066* provide that at the stage of application under Section 8 of the Act, the court should take an approach that focuses on bestowing jurisdiction over the Arbitral Tribunal, and ousts their own jurisdiction – If jurisdiction is ousted, whether it's in terms of statutory framework (wherever applicable) is to be examined – As long as there exists an arbitration agreement, the courts must adopt an enabling approach and refer the parties to the arbitration – As the dispute is held to be *in personem*, and not *in rem,* the dispute is arbitrable in nature, and the Special Leave Petition is dismissed. [Paras 14-17]

Case Law Cited

Kvaerner Cementation India Ltd. v. Bajranglal Agarwal and Anr. **(2012) 5 SCC 214;** *A. Ayyasamy v. A. Paramasivam & Ors.* **[2016] 11 SCR 521 : (2016) 10 SCC 386;** *Booz Allen and Hamilton Inc. v. SBI Home Finance Limited & Ors.* **[2011] 7 SCR 310 : (2011) 5**

SCC 532; *Vidya Drolia v. Durga Trading Corporation* **[2020] 11 SCR 1001 : (2021) 2 SCC 1;** *SBI General Insurance Co. Ltd. v. Krish Spinning* **[2024] 7 SCR 840 : 2024 SCC OnLine SC 1754;** *National Insurance Company Limited v. Boghara Polyfab Private Limited* **[2008] 13 SCR 638 : (2009) 1 SCC 267;** *Mayavati Trading Private Limited v. Pradyut Deb Burman* **(2019) 8 SCC 714;** *In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act, 1899,* **2023 INSC 1066 : [2023] 15 SCR 1081 – relied on.**

List of Acts

Arbitration and Conciliation Act, 1996; Trade Marks Act, 1999.

List of Keywords

Arbitration; Fraud; Trademark infringement; Passing off; Contract; Agreement; Section 16; Jurisdiction; Section 8 application; Arbitrability; Ouster of jurisdiction.

Case Arising From

EXTRAORDINARY APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 13012 of 2025

From the Judgment and Order dated 09.01.2025 of the High Court of Judicature at Madras in CRP No. 1272 of 2024

Appearances for Parties

Advs. for the Petitioners:
V. Prakash, Sr. Adv., Aneesh Renganathan, Ms. Swadha Gupta, Karan Dang, Vishwam Mishra, Prabhat Kumar.

Judgment / Order of the Supreme Court

Order

J.B. Pardiwala, J.

1. This petition arises from the judgment and order passed by the High Court of Judicature at Madras dated 09.01.2025 in C.R.P. No. 1272 of 2024 by which the Civil Revision Petition filed by the petitioners herein (original plaintiffs) came to be rejected thereby affirming the order passed by the Commercial Court (District Judge

Cadre), Coimbatore allowing application filed by the respondents herein (original defendants) under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') and referring the parties to arbitration.

2. It appears from the materials on record that the petitioners herein instituted a suit being C.O.S. No. 147 of 2023 in the Commercial Court seeking following reliefs:-

> *"(i) Permanent injunction restraining Defendant No. 1, by himself, partners, business successors, servants, agents, representatives and every other person claiming through Defendant No. 1 to offer, sell, open any other shop with the same name or for any other purpose using the plaintiff No. 1 mark in Application No. 3440505 of "SRI ANGANNAN BIRIYANI HOTEL" or "ABM SRI ANGANNAN HOTEL" or any other name format signifying the term ANGANNAN.*
>
> *(ii) Permanent injunction restraining the Defendant No. 1 by himself, partners, successors in business, servants, agents, representatives and every other person claiming through the Defendant No. 1 from using or associating himself with the mark in Application No. 3440505 of "SRI ANGANNAN BIRIYANI HOTEL" OR "ABH SRI ANGANNAN HOTEL" or any other term ANGANAN in any kind of social media platform or any other media platform until the court passes further orders.*
>
> *(iii) to pay for damages of Rs. 20,00,000 /- (Rupees Twenty Lakhs only) for the loss that the Plaintiffs had incurred due to the use of the Trademark in Application No. 6440505 of "SRI ANGANNAN BIRIYANI HOTEL" and pass any other order that this Hon'ble Court may deem fit and thus render justice.*
>
> *(iv) For costs of the suit.*
>
> *(v) and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render Justice."*

3. The defendants appeared before the Commercial Court and preferred application under Section 8 of the Arbitration and Conciliation (Amendment) Act, 2019 stating as under:-

"APPLICATION FILED UNDER SECTION 8 OF THE ARBITRATION AND CONCILIATION AMENDMENT ACT, 2019

I. Petitioner/1st Defendant

N. J. Sundaresan S/o Jagadeeswaran, Hindu, aged about 45 years, residing at Flat No. 69, Sai Gangotri Apts., N.S.R. Road, Sai Baba Colony, Coimbatore 641 025.

The address for service of the Petitioner is same as above and in care of his counsel Mr. P.R. Ramakrishnan / Advocate, "Ram Prasad , No. 2, Ramar Koil Street, Ram Nagar, Coimbatore - 641 009.

II. Respondents/ Plaintiffs

1. Mrs. K. Mangayarkarasi, W/o. Late Mr. N. Kadiravadivei, Hindu, aged about 77 years, residing at A2/1, Sree Annapporna Apartments, Bharathi Park, 1st cross, Saibaba Colony, Coimbatore- 641011 Presently residing at No. 153, Lakshmi Mills Colony, Coimbatore South, Pappanaickenpalayam, Coimbatore - 541037.

2. Mrs. K. M. Shredevi, D/o Late N. Kathiravadivel, Hindu, aged about 48 Years, residing at Flat #503, Kanakadhara's Landmark Apts., Virat Nagar Colony, Saket Road, Kapra, Hyderabad - 500 062,

Both Rep. by their Power Agent Mrs. Jaishree S, W /o. Mr. Sandeep, Residing at 153, Lakshmi Mills Colony, Pappanaickenpalayam, Coimbatore - 641 037.

III. Respondent/2nd Defendant

3. Mrs. Manonmani Angannan D/o Late N. Kathlravadivel, Hindu, aged about 50 years, residing at 4 704 Antebeilum lane, Mansfield, 75063, Texas, USA.

The address for service of the Respondent is same as above. FOR THE REASONS stated in the accompanying affidavit, the petitioner prays that this Honorable Court may be pleased to refer the parties to Arbitration and thus render justice.

LIST OF DOCUMENTS

1. 20.09.2017	*Deed of Assignment of Trade Marks (Original)*
2. 14.10.2019	*Deed of Assignment of Trade Marks (Original)"*

4. The Commercial Court vide order dated 06.02.2024 allowed the Section 8 application filed by the respondents herein holding as under:-

> *"15. Right in rem or Right in personam:- Applying the said principle of law, this court has to consider the facts of the case on hand. The petitioner has referred Ex.P1 and Ex.P2 Deed of Assignment of Trade Marks dated 14.10.2019 and dated 20.09.2017 respectively, which contain Arbitration Clauses. The petitioner claims right through the said Assignment deeds. The respondents contended in the counter that they signed in a blank stamp paper, which was fabricated as Assignment deeds and in Ex. R8 Legal Notice, they claimed that the petitioner fraudulently included his name in the Assignment deeds and obtained signature of the 1st respondent in the Assignment deeds. Further, the respondents stated in the plaint cause of action that the signature of the 1st respondent was forged by the petitioner. The respondents 1 and 2 filed the suit for permanent injunction in respect of trade mark and not suit for declaration of any trade mark. The said suit is filed for the reliefs against infringement and passing off, which by their very nature would fall within the jurisdiction of the arbitrator. The right that is asserted by the petitioner is not a right that emanates from the Trademark Act, but a right that emanates from Ex.P1 and Ex.P2 Assignment deeds. The assignment of a trademark is by a contract and not by a statutory act. It does not involve any exercise of sovereign functions of the State. It cannot be said that the disputes are not arbitrable. Further, no relief has been prayed for declaration to set aside the said Assignment deeds.*
>
> *16. The counsel for respondents contended that the dispute pertained to the scope of trade mark registration and thus,*

any decision on the same would operate in rem as it would confer an absolute right on the winning party. However, this court feels that that firstly, the dispute was addressed, more or less exclusively, around two contractual arrangements, namely. Assignment deeds. Secondly, the remedy is sought not on the ground that the petitioner is using deceptively similar trade marks, but rather that the right to use the trade mark was deliberated on a different family group. Thirdly, even if there was any reliance on provisions of the Trade Marks Act, 1999, the "essential infraction" as alleged was not of provisions of the Trade Marks Act, 1999, but of the provisions of the agreements. Thus, this court is of the view that any effective adjudication of the disputes would be dreadful without reference to the two assignment deeds. On the question of arbitrability of IPR disputes, the court finds that the dispute in the present case does not be in connection with the grant or registration of trade marks, and was therefore not affected by the concern identified in Vidya Drolia or Ayyasamy cases. Further, there was no connection of sovereign functions, and as it did not fall under any of the categories of disputes excepted by the Hon'ble Supreme Court of India in Vidya Drolia.

17. Non Signatory can be party to Arbitration:- Admittedly, the petitioner and respondents 1 and 2 are parties to the said documents, but the 3rd respondent is not party to the said documents. The respondents also produced the copies of the same documents as Ex.R2 and Ex.R3. Further, the 1st respondent also executed Ex.R4 Copy Gift Deed dated 13.10.2020 and Ex.R5 Copy of Gift Deed dated 31.01.2023 in favour of the respondents 2 and 3. Ex.R6 Letter of Registrar. Ex.R5 and Ex.R5 reveal that the applications were filed on 02.03.2023 and 15.05.2023 for transfer of changes in the Trade mark. Ex.R8 to Ex.R15 are documents to show the legal action taken against the petitioner. Ex.R16 is the Power of Attorney deed. Ex.A17 State of Account. Thus, the right, title and interest of the 1st interest has been transferred in favour of the respondents 2 and 3 and they are successors or legal representatives of the said 1st respondent through Gift deeds. When the

1st and 2nd respondents are parties to the disputed Assignment deeds, the 3rd respondent also become party to the said Assignment deeds, who derived 50% right of the 1st respondent. She cannot claim that she is non signatory of Ex.P1 and Ex.P2 = Ex.R2 and Ex.R3. Admittedly, no pleading in the counter of the respondents in respect of non signatory of the 3rd respondent. Further, Sec.8 of Arbitration and Conciliation Act says that "…if a party to the arbitration agreement or any person claiming through or under him...." Thus, this court feels that even though, the 3rd respondent is not a party to the Assignment deeds, in the absence of any pleadings, in view of the Gift deed and sailing with the other respondents and successor/ legal representative of the 1st respondent, she can also be subjected to arbitration proceedings.

18. Thus, it is clear that the disputed assignment deeds have to be analyzed in the present suit and the present suit is filed based on the said assignment deeds and subsequent events between the parties. Considering all aspects this Court is of the view that when the disputed assignment deeds have to be analyzed in view of the clause No. 15 regarding Arbitration Clause, this Court has no jurisdiction and such, the parties have to be directed to resolve their dispute before the Arbitral Tribunal.

19. In the result, this application is allowed. No costs."

5. The petitioners being dissatisfied with the order passed by the Commercial Court referred to above challenged the same before the High Court by way of a civil revision application. The High Court rejected the revision application vide the impugned judgment holding as under:-

"18. It is not in dispute that the 1st Petitioner/Plaintiff is the Proprietrix of the Trademark, after her father Late Angannan, who died in 1986. The 1st Petitioner's husband, Kathirvadivel took over the business in 1984, after the death of Angannanm and till he died in 1990, he was assisted by his brother, Jagadeeswaran in the business till he died in 2019. The 1st Respondent, Sundaresan, is the son of Jagadeeswaran. Mangayarkarasi had a son,

Muralidharan. He died leaving behind two daughters namely, Jaishree and Sreemathi. Jaishree represents the Petitioners, as power agent in this proceeding. The two daughters of Mangayarkarasi are Manonmani, who is the 2nd Respondent and Sreedevi, who is the 2nd Petitioner.

19. On perusal of the records it is seen that the Petitioners / Plaintiffs filed a Suit in C.O.S. No. l47 of 2023 before the Commercial Court (District Judge Cadre), Coimbatore, for permanent injunction, restraining the defendants from interfering or using the Plaintiff's Trademark of "Sri Angannan Briyani Hotel" and to pay damages of Rs.20,00,000/- for the loss that the plaintiffs incurred due to the use of the Trademark. Pending Suit, the 1st Respondent / 1st Defendant filed an Application in I.A.No.9 of 2023, praying to refer the parties to Arbitration, which was allowed by the Commercial Court, District Judge, Coimbatore. Aggrieved over the same, the Petitioners are before this Court with the present Civil Revision Petition.

20. On perusal of Clause 15 of "Deed of Assignment of Trade Marks", dated 20.09.2017 and 14.10.2019, it is seen that in the event of any dispute between the parties, parties agreed to get such issues resolved. through Arbitration and in the event of not finding a resolution through Arbitration, the Court having jurisdiction in Coimbatore to the exclusion of all other Courts. The Clause 15 of "Deed of Assignment of Trade Marks", dated 14.10.2019, contains Arbitration Clause, which reads as follows:-

Arbitration Clause, which reads as follows:-

> *15. "Dispute Resolution"*
>
> *"In the event of any dispute, difference or claim arising between the Parties under or in connection with this Agreement, parties agree to get such issues and disputes resolved first through CONCILIATION failing which by ARBITRATION and in the event of not finding a resolution through arbitration, the Court having jurisdiction in Coimbatore to the exclusion of all other Courts."*

21. Section 8 of the Arbitration and Conciliation Act, 1996 reads as under:-

> *"8. Power to refer parties to arbitration where there is an arbitration agreement.-*
>
> *(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*
>
> *(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof;*
>
> *Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.*
>
> *(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."*

22. The suit has been filed by the Petitioners / Plaintiffs by suppressing the Arbitration Clause. The right of the

Respondents emanates out of the agreement between the parties. When there is a valid contract between the parties providing for Arbitration, all claims including enforceability can only be adjudicated before an Arbitrator. Though the Petitioners disputed the execution of the agreement, the existence of the agreement is not disputed. An Arbitration Clause which forms a part of the Agreement shall be treated as an agreement independent of the other terms of the Contract. Further, the Arbitral Tribunal has power to decide on any objections with respect to the existence of validity of the agreement when there is an Arbitration Clause. The petitioners and Respondents having signed in the 'Assignment Deed of Trademark', which contains the Clause regarding settlement of dispute through arbitration, the Court below is right in referring the matter to the Arbitral Tribunal.

23. As regards the contention of the petitioners that the Assignment Deed is brought fraudulently and therefore, when fraud is pleaded, the matter cannot be referred to Arbitration is concerned, no doubt, mere plea of fraud is insufficient to avoid an arbitration proceedings. The contention of the petitioners that the 1st Petitioner was misled to signing blank papers and the 1st Respondent filled up the same by including his name and the 1st Respondent has forged a fabricated deed as an irrevocable deed, cannot be countenanced for the simple reason that the 1st Petitioner wanted to assign the fabricated deed as an irrevocable deed, cannot be countenanced for the simple reason that the 1st Petitioner wanted to assign the Trademark is not in dispute and the signatures not disputed. Once 1st Petitioner admitted her signatures and the document ex facie shows that it has been properly executed and the 1st Petitioner is also a party to the document and the Assignment Deed is duly executed and attested by a Notary Public, prima facie the contention of the Petitioners cannot be accepted. Further, the 1st Petitioner/K. Mangayarkarasi and the 2nd Petitioner Sreedevi and her Husband Ajith received several payments from, the 1st Respondent periodically, which is evident from the statement of extract of the payments made

by the 1st Respondent from 19.03.2021 to 23.02.2023.

24. The allegation of fraud must have some implication in public domain to oust jurisdiction of arbitration. If an allegation of fraud exists directly between the parties concerned, the same will not be termed to be of serious nature of fraud and hence would not be barred for arbitration. At this juncture, it is worthwhile to refer the decision of the Hon'ble Apex Court in Sushma Shivkumar Daga case (cited supra). Further, relying on a earlier Judgment of the Apex Court in Rashid Raza's case (cited supra) the Supreme Court holds that two parties in an Agreement. The first is that the plea perneats the entire contract option of the arbitration agreement rendering it void or secondly whether the allegation of fraud touches upon the internal affairs of the parties inter se having no implication in the public domain. The allegation must have some implication in public domain to oust jurisdiction of arbitration. If an allegation of fraud exists directly between the parties concerned, the same will not be termed to be of serious nature of fraud and hence would not be barred for arbitration. Further, the Apex Court in the Judgment in Deccan Paper Mills's case (cited supra) held that where the suit is inter parties with no public domain, fraud as laid down in the case of Avitech Past Studioz Ltd (cited supra)) is not applicable. Where rectification of instrument under Section 31 of the Specific Relief Act is strictly action inter parties or by person who obtained derivative title from parties, such action is in personam and the dispute is arbitrable.

25. The Law laid down by the Apex Court in the aforesaid Judgments squarely apply to the case on hand. Admittedly, the dispute between the parties arise out of a contract of assignment. There is no public cause involved in this dispute. The question involved is one between the parties arise out of a contract of assignment. There is no public cause involved in this dispute. The question involved is one arising under the contract of assignment and its validity and binding nature and what is the effect of several payment received by the assignor from the 1st

Respondent, as assignee/on various dates, which are matters to be considered by the Arbitral Tribunal and this is undoubtedly covered by the arbitration clause. The right claimed by the 1st Respondent is contractual as assignee of a Trademark. Disputes raised by the Petitioners is that there was no intention to assign the trademark and that too irrevocably to the 1st Respondent, but at the same time, the assignment in favour of the 2nd Petitioner is accepted. This renders the position of the Petitioners very week insofar as the merits of the claim are concerned. This despite is arbitrable and factual issues as also validity of the assignment and rights flowing from it can be decided by the Arbitral Tribunal. Further, the Suit is filed for the reliefs against the infringement and passing off, which by their very nature would fall within the jurisdiction of the Arbitrator. The right that is asserted by the 1st Respondent is not a right that emanates from the Trademark Act, but a right that emanates from the Assignment Deeds. The Assignment of a trademark is by a contract and not by a statutory act.

26. As regards the contention of the Petitioners that disputes involved in use of trademark is not arbitrable is concerned, the Petitioners rely on a passing reference in Ayyasamy's case (cited supra), where the Apex Court held that where there are allegations of fraud and such allegations are merely alleged, it may not be necessary to nullify the effect of arbitration agreement between the parties and such issues can be determined by the Arbitral Tribunal. This judgment supports the plea of the 1st Respondent, who wants the dispute to be referred to Arbitration. Though fraud was pleaded in that proceeding, the Supreme Court concluded that mere allegation of fraud was not sufficient to detract from the obligations of the parties to submit their disputes to arbitration. Moreover, non-arbitrable disputes dealt with in Booz Allen's case and Vidya Doha's case. In Booz Allen's case, the Apex Court dealt with the disputes, which are arbitrable and which non-arbitrable. This is clarified by a Three Judge Bench Decision of the Apex Court in Vidya Doha's case.

> *In view of the foregoing reasons, this Court is not inclined to interfere with the findings of the Court below.*
>
> *27. In the result, the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petitions are also dismissed. However, there shall he no order as to costs."*

6. In such circumstances referred to above, the petitioners are before this Court with the present petition.

7. Heard Mr. V. Prakash, the learned senior counsel appearing for the petitioners.

8. The law on the subject is no longer *res integra*. When the arbitral tribunal is constituted at the instance of one of the parties and other party takes up the position that such proceedings are not valid in law then what is the court expected to do in law has been explained very succinctly by this Court in ***Kvaerner Cementation India Ltd. v. Bajranglal Agarwal and Anr***. reported in **(2012) 5 SCC 214**, as under:-

> *"3. There cannot be any dispute that in the absence of any arbitration clause in the agreement, no dispute could be referred for arbitration to an Arbitral Tribunal. But, bearing in mind the very object with which the Arbitration and Conciliation Act, 1996 has been enacted and the provisions thereof contained in Section 16 conferring the power on the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objection with respect to existence or validity of the arbitration agreement, we have no doubt in our mind that the civil court cannot have jurisdiction to go into that question.*
>
> *4. A bare reading of Section 16 makes it explicitly clear that the Arbitral Tribunal has the power to rule on its own jurisdiction even when any objection with respect to existence or validity of the arbitration agreement is raised, and a conjoint reading of sub-sections (2), (4) and (6) of Section 16 would make it clear that such a decision would be amenable to be assailed within the ambit of Section 34 of the Act.*

5. In this view of the matter, we see no infirmity in the impugned order so as to be interfered with by this Court. The petitioner, who is a party to the arbitral proceedings may raise the question of jurisdiction of the arbitrator as well as the objection on the ground of non-existence of any arbitration agreement in the so-called dispute in question, and on such an objection being raised, the arbitrator would do well in disposing of the same as a preliminary issue so that it may not be necessary to go into the entire gamut of arbitration proceedings."

(Emphasis supplied)

9. What would be the position in case a suit is filed by the plaintiff and in the said suit, the defendant files an application under Section 8 of the Act of 1996 questioning the maintainability of the suit on the ground that party had agreed to settle the disputes through the means of arbitration having regarding to the existence of an arbitration agreement between them? This has been very elaborately explained by this Court in ***A. Ayyasamy v. A. Paramasivam & Ors***. reported in **(2016) 10 SCC 386**. The Court held as under:-

"13. …Obviously, in such a case, the court is to pronounce upon arbitrability or non-arbitrability of the disputes.

14. In the instant case, there is no dispute about the arbitration agreement inasmuch as there is a specific arbitration clause in the partnership deed. However, the question is as to whether the dispute raised by the respondent in the suit is incapable of settlement through arbitration. As pointed out above, the Act does not make any provision excluding any category of disputes treating them as non-arbitrable. Notwithstanding the above, the courts have held that certain kinds of disputes may not be capable of adjudication through the means of arbitration. The courts have held that certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, cannot be referred to arbitration. The following categories of disputes are generally treated as non-arbitrable [See O.P. Malhotra on 'The Law and Practice

of Arbitration and Conciliation', 3rd Edn., authored by Indu Malhotra. See also note 10 ibid.]:

(i) patent, trade marks and copyright;

(ii) anti-trust/competition laws;

(iii) insolvency/winding up;

(iv) bribery/corruption;

(v) fraud;

(vi) criminal matters.

Fraud is one such category spelled out by the decisions of this Court where disputes would be considered as non-arbitrable.

15. "Fraud" is a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his detriment. Fraud can be of different forms and hues. Its ingredients are an intention to deceive, use of unfair means, deliberate concealment of material facts, or abuse of position of confidence. The Black's Law Dictionary defines "fraud" as a concealment or false representation through a statement or conduct that injures another who relies on it [See Ramesh Kumar v. Furu Ram, (2011) 8 SCC 613 : (2011) 4 SCC (Civ) 303 (a decision rendered under the Arbitration Act, 1940).] However, the moot question here which has to be addressed would be as to whether mere allegation of fraud by one party against the other would be sufficient to exclude the subject-matter of dispute from arbitration and decision thereof necessary by the civil court."

(Emphasis supplied)

10. In ***Booz Allen and Hamilton Inc. v. SBI Home Finance Limited & Ors.***, **(2011) 5 SCC 532**, this Court in the context of Section 8 of the Act of 1996 considered the question as to whether the subject matter was 'arbitrable' i.e. arbitrable by private forum (arbitral tribunal). In this context, the Court discussed the term 'arbitrability' by pointing out three facets thereof namely:-

(1) whether the disputes are capable of adjudication and settlement by arbitration?

(2) whether the disputes are covered by the arbitration agreement?

(3) whether the parties have referred the disputes to arbitration?

11. The Court held as under:-

> *"35. The Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is in arbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.*
>
> *36. The well-recognised examples of non-arbitrable disputes are : (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.*

> *37. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide Black's Law Dictionary.)*
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> *38. Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable."*
>
> (Emphasis supplied)

12. In ***Vidya Drolia v. Durga Trading Corporation*** reported in **(2021) 2 SCC 1**, this Court held that the grant and issue of patents and registration of trademarks are matters that fall within the sovereign or government functions and have *erga omnes* effect. *Prima facie*, the nature of disputes sought to be raised by the petitioners cannot be considered as actions *in rem*. The assumption that all matters relating to trademarks are outside the scope of arbitration is plainly erroneous. There may be disputes that may arise from subordinate rights such as licences granted by the proprietor of a registered trademark. Undisputedly, these disputes, although, involving the right to use trademarks, are arbitrable as they relate to rights and obligations *inter se* the parties to a licence agreement.

13. At this juncture, we would like to refer to the recent decision of this Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning*** reported in **2024 SCC OnLine SC 1754**, wherein one of us, J.B. Pardiwala, J., was a part of the Bench, which considered, *inter alia*, the issue as to whether a party could seek referral of a matter to arbitration, having previously executed a discharge voucher as the full and final settlement of all pending dues. Referring to the position of law elucidated in the case of ***National Insurance Company Limited v. Boghara Polyfab Private Limited*** reported in **(2009) 1 SCC 267**, the Court observed that the aspect of full and final settlement having been obtained by fraud or coercion itself gives rise to an arbitrable issue and thus does not act as a bar to arbitration. The relevant paragraphs are reproduced hereinbelow:-

> *"57. The position that emerges from the aforesaid discussion is that there is no rule of an absolute kind which precludes arbitration in cases where a full and final settlement has been arrived at. In Boghara Polyfab (supra), discussing in the context of a case similar to the one at hand, wherein the discharge voucher was alleged to have been obtained on ground of coercion, it was observed that the discharge of a contract by full and final settlement by issuance of a discharge voucher or a no-dues certificate extends only to those vouchers or certificates which are validly and voluntarily executed. Thus, if the party said to have executed the discharge voucher or the no dues certificate alleges that the execution was on account of fraud, coercion or undue influence exercised by the other party and is able to establish such an allegation, then the discharge of the contract by virtue of issuance of such a discharge voucher or no dues certificate is rendered void and cannot be acted upon.*
>
> *58. It was further held in Boghara Polyfab (supra) that the mere execution of a full and final settlement receipt or a discharge voucher would not by itself operate as a bar to arbitration when the validity of such a receipt or voucher is challenged by the claimant on the ground of fraud, coercion or undue influence. In other words, where the parties are not ad idem over accepting the execution*

of the no-claim certificate or the discharge voucher, such disputed discharge voucher may itself give rise to an arbitrable dispute."

(Emphasis supplied)

14. Further, referring to the time-sensitive nature of arbitration proceedings and the broad jurisdiction of arbitral tribunals under Section 16 of the Act of 1996, the Court observed that the aspects like full and final settlement, frivolity or dishonesty in litigation, etc. were well within the domain of the arbitral tribunal to consider and the courts, acting under Section 11 of the Act of 1996 must limit their scope of examination merely to ascertaining the existence of the arbitration agreement. The approach taken by this Court in ***Krish Spinning*** *(supra)* not only furthers the interpretation adopted by this Court in its previous decisions in ***Mayavati Trading Private Limited v. Pradyut Deb Burman*** reported in **(2019) 8 SCC 714** and ***In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act, 1899*** reported in **2023 INSC 1066**, but also gives meaningful effect to the change brought about by the 2015 amendment to the Act of 1996. The relevant paragraphs are reproduced hereinbelow:-

"123. The power available to the referral courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the referral court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the arbitral tribunal at the nascent stage of Section 11, the referral courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if it Section 11 application is rejected.

124. Section 11 also envisages a time-bound and expeditious disposal of the application for appointment of arbitrator. One of the reasons for this is also the fact that unlike Section 8, once an application under Section 11 is filed, arbitration cannot commence until the arbitral tribunal is constituted by the referral court. This Court, on various occasions, has given directions to the High Courts for expeditious disposal of pending Section 11 applications.

It has also directed the litigating parties to refrain from filing bulky pleadings in matters pertaining to Section 11. Seen thus, if the referral courts go into the details of issues pertaining to "accord and satisfaction" and the like, then it would become rather difficult to achieve the objective of expediency and simplification of pleadings.

125. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material."

(Emphasis supplied)

15. The law is well settled that allegations of fraud or criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the arbitral tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement.

16. Once an application in due compliance with Section 8 of the Act of 1996 is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance with the procedure under the special statute. The general law should yield to the special law — *generalia specialibus non derogant*. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay

the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court. **[*See:- A. Ayyasamy (supra)]***

17. Once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject-matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract. There is no element of discretion left in the court or judicial authority to obviate the legislative mandate of compelling parties to seek recourse to arbitration.

18. In view of the foregoing, we are of the view that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned judgment and order.

19. The Special Leave Petition stands, accordingly, dismissed.

20. Pending application(s), if any, stands disposed of.

Result of the case: Special leave petition dismissed.

†*Headnotes prepared by:* Niti Richhariya, Hony. Associate Editor
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