

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

REGULAR FIRST APPEAL NO. 937 OF 2016 (INJ)

BETWEEN:

NOVA MEDICAL CENTERS PVT LTD.,
HAVING ITS REGISTERED OFFICE AT,
NO.128, 5TH FLOOR, GOLDEN TOWERS,
OLD AIRPORT ROAD,
BENGALURU -560 017,
REPRESENTED BY
TEJASVI K.V.
MANAGER-LEGAL.

...APPELLANT

(BY SRI GIRISH K V, ADVOCATE)

AND:

1. SMT SOWMYA,
2. JAYAPRAKASH,

...RESPONDENTS

(BY SRI KIRAN S KASHYAP, ADVOCATE FOR
SRI N.C MOHAN, ADVOCATE)

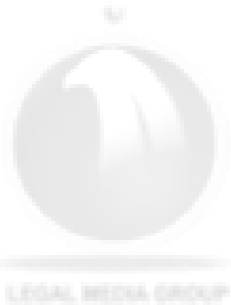
RFA FILED UNDER ORDER XLI RULE 1 R/W SEC. 96 OF CPC., 1908 AGAINST THE JUDGMENT AND DECREE DATED 02.03.2016 PASSED IN OS.NO.3344/2013 ON THE FILE OF THE VIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DISPOSING THE SUIT FOR PERMANENT INJUNCTION.IN TIMECF SUFFICIENT 1/16 FOR T IIA 1/16 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC., 1908.

THIS APPEAL COMING ON FOR FINAL HEARING, THIS DAY THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The plaintiff in O.S. No.3344/2013 on the file of the VIII Additional City Civil Judge, Bengaluru is assailing the judgment and decree dated 02.03.2016. The suit for injunction is dismissed on the ground that the parties to the suit have to invoke the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter for short referred to as the 'Act of 1996').

2. The admitted fact is that the plaintiff is a Company running a Hospital. Defendant No.2 was admitted as a patient in the Hospital run by the plaintiff, to avail some treatment. It is stated that second defendant was treated with due care and was discharged. However, it appears that the second defendant has developed Septicemia and takes treatment in another hospital. It is also stated that Rs.40 lakhs were agreed to be paid by the plaintiff-Company as compensation to the second



LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

defendant towards the discharge of his claim for damages for the alleged negligence while treating. The plaintiff has filed a suit for injunction alleging interference by the defendants in running the Hospital.

3. Defendants did not appear before the Trial Court and they were placed *exparte*. Subsequently, the plaintiff led evidence. Plaintiff has produced nine documents to substantiate his claim. The trial Court dismissed the suit on the ground that there is an Arbitration clause to resolve the dispute between the plaintiff and the defendants. The trial court referred to an agreement dated 05.01.2012, between the plaintiff and the second defendant wherein the plaintiff agreed to pay Rs.40 lakhs towards the claim made by the second defendant. Clause 13 of the Agreement provides for Arbitration in the event of a dispute relating to the terms and conditions specified in the agreement dated 05.01.2012. By taking shelter under Clause 13, the Trial Court has dismissed the suit on the ground that the suit is not maintainable because of Arbitration Clause.

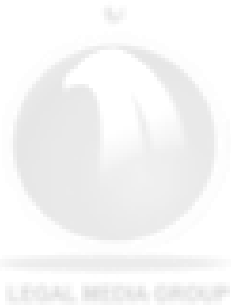
4. Learned counsel for the appellant would submit that objection relating to the jurisdiction of the Court to entertain



the suit in the light and binding Arbitration clause, if any, between the parties must be raised at the first hearing. Since such objection is not raised, the Trial Court erred in dismissing the suit on the ground that the parties have to take recourse to the provisions of the Act of 1996.

5. The point for consideration is whether the Trial Court is justified in dismissing the suit on the premise that the dispute is arbitrable though the defendants did not raise a defence of jurisdiction of the Civil court based on the arbitration Clause.

6. It is a well-settled principle of law that the objection to entertain the suit based on the arbitration Clause is to be raised before the Court at the first appearance and not later. In this case, the defendants have not entered appearance and remained *ex parte*. The conduct of the defendants would reveal that the defendants have waived their objection relating to the jurisdiction of the Court. The Court recorded the evidence. After having recorded evidence, the Court could not have dismissed the suit on the premise that the parties have to take recourse to the provisions of the Act of 1996.



LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

7. The Trial Court has not framed any points for consideration relating to the lawful possession of the plaintiff and alleged interference by the defendants. After having gone through the plaint averments, as well as the evidence placed before the Court, and considering the fact that the defendants have not contested the matter, and there being no ambiguity in the evidence led, this Court deems it appropriate to decide the case on merits instead of remanding it.

8. The oral and documentary evidence which are not disputed and which are tendered on oath reveal that the plaintiff is in lawful possession of the property. The defendants have no right and interest in the affairs of the plaintiff and they cannot interfere in the hospital activities of the plaintiff - Company.

9. Accordingly, this Court is of the view that the plaintiff has made out a case for the grant of injunction as prayed for.

10. Hence, the following:

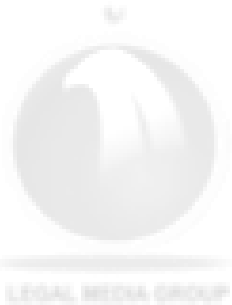


LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

ORDER

- (i) The impugned judgment and decree 02.03.2016 passed in O.S. No.3344/2013 on the file of the VIII Additional City Civil and Sessions Judge, Bengaluru are set aside.
- (ii) The suit of the plaintiff is decreed as prayed for.
- (iii) No Order as to Cost.
- (iv) Accordingly, the appeal is ***allowed***.

**Sd/-
JUDGE**



GVP

LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE