



Supreme Court holds that when the parties have settled their differences and compromised the matter, arbitration clause in a prior agreement cannot be invoked in the dispute subsequently arising between the parties¹

Brief Facts

The Appellant/Zenith Drugs & Allied Agencies Pvt. Ltd. (“Zenith”) entered into an agreement dated 1 May 1997 (“Agreement”) with M/s Rhone Poulenc India Limited (“RPIL”). Pursuant to the Agreement, RPIL appointed Zenith as its clearing and forwarding agent. The Agreement contained an arbitration clause.

RPIL informed Zenith that their company is getting merged with the Respondent/Nicholas Piramal India Ltd. (“NPIL”) and that pursuant to the merger, RPIL shall cease to exist as a legal entity. Therefore, with effect from three months from the date of the letter, the Agreement shall stand terminated.

Zenith filed a Title Suit No. 241/2001 *inter alia* praying for declaration that the Agreement was valid, subsisting, legal and continuing and for further declaration that RPIL and NPIL cannot terminate Zenith as clearing and forwarding agent (“Title Suit”). The issues between the parties were resolved *vide* a compromise deed (“Compromise Deed”) and the Title Suit was decreed. In terms of the said compromise, Zenith alleged that NPIL refused to honour the terms of the Compromise Deed and filed a Title Execution Case for execution of the Compromise Deed.

Zenith instituted a Money Suit No. 73/2003

(“Money Suit”) claiming compensation for loss of goodwill and loss of profit. Thereafter, NPIL filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (the “Act”), relying on the arbitration clause under the Agreement, for referring the parties to arbitration in the Money Suit. The Trial Court dismissed NPIL’s application. NPIL filed a Civil Revision Petition before the High Court of Guwahati challenging the order of the Trial Court. The High Court *vide* impugned order dated 26 March 2007 (“Impugned Order”) allowed the Revision Petition and referred the dispute to arbitration. Aggrieved by the Impugned Order, Zenith appealed before the Supreme Court.

Issues

- (i) Whether the High Court was right in referring the parties to arbitration?
- (ii) Whether Zenith is right in contending that the dispute raised in the Money Suit is not covered by the arbitration clause under the Agreement and cannot be referred to arbitration?

Judgment

Issue (i): The Court *inter alia* held that from a reading of the Compromise Deed, it is clear that the parties have substituted a new agreement by way of compromise. As per the Agreement, Zenith was the clearing and forwarding agent for the entire north-

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eastern region; whereas under the terms of the Compromise Deed, Zenith was appointed as the stockist of the company only for Guwahati and Agartala and not as clearing and forwarding agent for north-eastern region. The Court further held that when the parties have settled their differences and compromised the matter, arbitration clause in the prior agreement cannot be invoked in the dispute subsequently arising between the parties.

Issue (ii): Some of the issues in the Money Suit relate to the loss allegedly sustained by Zenith due to termination of the Agreement, other issues related to the loss said to have been caused to Zenith subsequent to the Compromise Deed. However, since NPIL had challenged the Compromise Deed alleging that it has been obtained by inducement and fraud, the Court while relying on the judgment of **A. Ayyasamy v. A. Paramasivam and Others**,

(2016) 10 SCC 386, held that in view of the allegations of fraud levelled by NPIL, the Compromise Deed is vitiated by fraud, the parties cannot be referred to arbitration.

Analysis

This judgment clearly lays down that existence of the agreement to arbitrate is essential before a party can be referred to arbitration by the Court and the plea of fraud can be decided only by the Civil Court upon consideration of the evidence of the parties. Supreme Court has held that parties can be referred to arbitration only if the subject matter of the suit is also the same as the subject matter of arbitration agreement. Therefore, only those disputes which are specifically agreed to be resolved through arbitration can be the subject matter of arbitration, and upon satisfaction of the same, a Court can refer the parties to arbitration.

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Quorum: R. Banumathi and A. S. Bopanna, JJ.

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