



Malavika Ramanand
Associate

MADRAS HC ON SURVIVAL OF ARBITRATION CLAUSES IN TERMINATED AGREEMENTS

A. Introduction

Madras High Court (HC), in the *Rajasthani Marble* case,¹ held that the arbitration clause in a partnership deed will survive the termination of the deed, as it is an independent agreement in itself.

B. Brief Facts

1. Four individuals started a firm 'Rajasthani Marble' by a partnership deed in 1997.
2. There was a reconstitution of the partnership where two partners exited, and the remaining two executed an amended partnership deed in 2018 (**Partnership Deed**).
3. The Partnership Deed, at clause 15 stated: "*In case of dispute between any of the parties hereto the provisions of Arbitration Act, 1940 shall apply.*"
4. Certain disputes arose between the partners, and they were referred to mediation. The mediation was not successful, and redressal was sought by way of arbitration.

C. Respondent's Contentions

The respondent made the following submissions:

1. The Partnership Deed was terminated by way of a Letter of Consent of December 2018 executed between the parties;
2. The claim of the petitioners is an assertion of a right *in rem i.e.*, right to title *qua* properties and therefore is not arbitrable; and
3. The arbitration clause in the Partnership Deed is not valid as it refers to the Arbitration Act, 1940, which was repealed by the Arbitration & Conciliation Act, 1996 (**ACA**), as of the date of execution of the Partnership Deed.

D. Order & Analysis

1. On the issue of the termination of the Partnership Deed, the HC reiterated the principle in the 2012 Supreme Court (SC) *Reva Electric Car* case,² and held:
*"Section 16(1)(a) of the Arbitration and Conciliation Act, 1996 provides that an arbitration clause which forms part of the contract shall be treated as an agreement independent of the other terms of the contract. The plain meaning of the aforesaid clause would tend to show that even on the termination of the agreement/contract, the arbitration agreement would still survive."*³

¹ *Rajasthani Marble and Anr. vs. K. Kumar and Ors.* (28.03.2022 - MADHC): MANU/TN/2432/2022 (the **Order**).

² *Reva Electric Car Company P. Ltd. vs. Green Mobil* (25.11.2011 - SC): MANU/SC/1396/2011.

³ Para. 10 of the Order, and para. 33 of SC order in the *Reva Electric Company* case.

2. On the second issue that the claims are not arbitrable, the HC held that it is not a right *in rem* but action *in personam*. It also held: “...[S]ome of the disputes are not arbitrable disputes can always be raised before the Arbitral Tribunal...[T]his being a Section 11 [of the ACA] legal drill, elaborate pleadings on the claim of the petitioners with exactitude and specificity is not before this Court.”⁴
3. On the third issue that the Partnership Deed containing the arbitration clause cannot be valid as it refers to the repealed Arbitration Act, 1940, the HC examined the principles laid down in the 1998 *K. K. Modi* case.⁵ In this case, the SC had laid down three factors to determine whether an agreement qualifies as an arbitration agreement:
“(i) Existence of disputes as against intention to avoid future disputes;
(ii) The tribunal or forum so chosen is intended to act judicially after taking into account relevant evidence before it and the submissions made by the parties before it;
(iii) The decision is intended to bind the parties.”⁶
4. The HC held that the nomenclature or the language of the clause takes a tertiary position, and the primary determinant is the intention of the parties to resort to arbitration, thus upholding the arbitration clause of the Partnership Deed where the parties’ intentions to settle disputes through arbitration is clear and unambiguous.

This Counsencence Connect contains information in a nutshell on a recent change in law. This is not legal advice and must not be treated so. For any clarifications, please contact us at: info@counsencence.com. Past issues of Counsencence Connect are available at the ‘Newsletters’ page of our website (www.counsencence.com).

⁴ Para. 12 of the Order. Sections 11 and 16 of the ACA, deal with the appointment of arbitrators and the competence of arbitral tribunal to rule on its jurisdiction, respectively.

⁵ *K.K. Modi vs. K.N. Modi and Ors.* (04.02.1998 - SC): MANU/SC/0092/1998.

⁶ Para. 13 of the Order, and para. 20 of SC order in the *K. K. Modi* case.