

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 5682 of 2021**=====  
KRISHNA CALIBRATION SERVICES

Versus

JASMIN BHARAT PATEL  
=====

Appearance:

PARAS K SUKHWANI(8284) for the Petitioner(s) No. 1,2

NOTICE SERVED for the Respondent(s) No. 1  
=====CORAM:**HONOURABLE MR. JUSTICE UMESH A. TRIVEDI****Date : 19/07/2022****ORAL ORDER**

[1.0] By way of this petition under Article 227 of the Constitution of India the petitioners - original defendants seek to challenge the order dated 17.11.2018 (as reflected from the order whereas in the prayer clause it is stated to be 17.11.2019) passed below Exh.16 in Special Civil Suit No.640 of 2013 whereby the application Exh.16 jointly given by the parties to the proceedings to refer the dispute to the Arbitrator under Section 89(2)(a) of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'the Code'*) came to be rejected on the original plaintiff, who initially consented for the same, withdrew the consent for sending it to the Arbitrator.

[2.0] Mr. Sukhwani, learned advocate for the petitioners, submitted that if the matter is sent to the Arbitrator selected by both the parties, the Arbitrator may be able to dispose of two suits and the petitioners are ready to settle the same with

the original plaintiff and are also ready to part with /comply their legitimate demand. He has further submitted that once the original plaintiff has consented to send the dispute between them to the Arbitrator, as stated hereinabove, it has to be sent for Arbitration and no other order could be passed by the Court, and therefore, he has submitted that this petition be admitted and allowed.

[2.1] Drawing attention of the Court to Section 4 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) read with Section 89 of '*the Code'*', it is submitted that once he has participated in the proceedings before the Arbitrator, he cannot now withdraw from the Arbitration thereof, and therefore, he has submitted that this petition be admitted and allowed.

[3.0] Having heard Mr. Sukhwani, learned advocate for the petitioners as also going through the impugned order and the documents annexed with it, it is clear that the application purported to be under Section 89(2)(a) of '*the Code'*' came to be filed on 20.03.2014 jointly requesting the Court that there is element of settlement, which is acceptable to the parties, it may be sent to the Arbitrator selected by both of them mentioned therein. However, before the Court formulated the terms of settlement and offered those terms to the parties for their observations as also before it could be referred to the Arbitrator, the original plaintiff withdrew his consent for sending the dispute between them to the Arbitrator as applied under Exh.16 jointly with the original defendants, and therefore, before a Court formulates the terms of settlement and refers it to the Arbitrator, there is no question of

submitting it to the jurisdiction of the Arbitrator, as claimed by Mr. Sukhwani, arises. Even if, before the order could be passed, if any proceedings are initiated, it cannot be said to be an Arbitration proceeding as referred to the Arbitrator by the Court. However, before the Court, original plaintiff withdrew his consent for sending the dispute between the parties to the Arbitrator, which is within his right to dispute the same till the consent is acted upon and dispute is referred to the Arbitrator by the Court. The reference to Section 4 of 'the Act' read with Section 89 of 'the Code' is misconceived as it refers about available objections not raised without undue delay and time limit is provided for and no such objection within that time limit is raised, which shall be deemed to have been waived. The said provision will not apply in the present situation as the dispute in the present case is required to be sent to the Arbitrator with the consent of the parties and there is no element of Arbitration in it in absence of any arbitration agreement. At the same time, a party may consent to send the dispute for Arbitration but before the Court acts upon it and passes any order to refer the same to the Arbitrator, party is free to withdraw the consent. Thus, there is no illegality found in the impugned order. Thus, I see no reason to interfere with the impugned order, that too, while exercising jurisdiction under Article 227 of the Constitution of India, and therefore, this petition is rejected. Notice is discharged.

**(UMESH A. TRIVEDI, J.)**

*siji*