

A.No.2485 of 2014
in
C.S.No.539 of 2013

M.M.SUNDRESH, J.

1. This application has been filed seeking to revoke the leave granted by this court on the primary contention that the property in dispute is situated out of jurisdictional court. It is incidentally submitted that it is for the learned arbitrator to decide the question of jurisdiction.

2. On 15.06.2007, a Memorandum of Understanding was entered into between the defendant Nos.1 and 2 on one side and defendant No.3 on the other. The applicants herein are the Defendants 1 and 2. Now, in the Memorandum of Understanding, it has been stated that the defendant-3 shall facilitate and acquire a minimum of 310 acres. Therefore, the role of third defendant is to make a minimum of 310 acres of land ready for the purpose of acquiring for the applicants/Defendants 1 and 2.

3. It appears that the third defendant had entered into power deeds with various land owners including respondents/plaintiffs. These properties are situated admittedly outside the jurisdictional court.

4. It is the case of the applicants that the third respondent has resiled

from the Memo of Understanding though the applicants have performed their part by making sufficient payment. Admittedly, the Memorandum of Understanding entered into between the applicants and the defendant-3 has got an Arbitration Clause in page No.15 of typed set, which reads as under:

"DISPUTE RESOLUTION

in the event of any dispute arising between the parties hereto with regard to this MOU or the interpretation of the terms hereof, the same shall be resolved amicably by the parties hereto and in case the same is not resolved then the dispute shall be referred to an arbitrator appointed in term of the Arbitration and Conciliation Act of 1996.

The courts at Chennai shall alone have the jurisdiction in case of legal disputes."

A reading of the aforesaid clause dealing with the dispute resolution makes it clear that dispute is only *inter se* between applicants and D3. It also stated that the jurisdiction lies with the Courts at Chennai.

5. The applicants filed an application before the District Court, Chengalpet, seeking to invoke clause of Arbitration under Section 9 of the Arbitration and Conciliation Act, 1996.

6. The matter went up to the Supreme Court, wherein, an order was

passed on 14.03.2011 in SLP(C) No. CC.2782 of 2011, which finds place in page Nos.17 and 18 of the typed set filed by the plaintiffs. The relevant portion of the above said order is extracted hereunder:

"The petitioners will be at liberty to implead the land owners in the proceedings before the Principal District Judge, Kancheepuram District at Chengalpattu, at their own risk, subject to any objection that may be taken, both by the respondent herein and those who may be sought to be impleaded. It may also be added that the petitioners herein will be entitled to amend their pleadings in the Section 9 application before the Trial Court and, similarly, the respondent will also be entitled to amend its pleadings accordingly."

7. In pursuant to the said order, apart from filing counter to the petition filed for impleading the respondents 3 to 13 herein under Section 9 of the Arbitration and Conciliation Act, 1996 before the learned Principal District Court, Chengalpet, an application was also filed before the learned arbitrator whose seat of arbitration is admittedly at Chennai. In pursuant, a direction was issued by the learned arbitrator and notice was issued through the applicants to the respondents/plaintiffs asking them to appear before the learned arbitrator.

8. Challenging the said proceedings, the present suit has been filed

interalia alleging that the learned arbitrator does not have any jurisdiction to implead the plaintiff as a party/respondent to the arbitration proceedings.

9. With the above said arguments, the learned counsel for the applicant has made the following submission:-

The issue of jurisdiction is the matter before the learned arbitrator and there is no cause of action and if any can at best be available before the District Court, Chengalpet before whose jurisdiction, the property is situated. Just because the notice is issued by the learned arbitrator, this court does not have any such jurisdiction and the direction issued by the Apex Court would govern the case on hand, especially with respect to the notice issued to the learned arbitrator. In support of the contention, the learned counsel has made reliance on the judgment passed on 14.03.2011 in SLP(C) No. CC.2782 of 2011, as stated supra.

10. The learned counsel for the respondents / plaintiffs submitted that admittedly the plaintiff, not being a party to the arbitration agreement and the M.O.U., the suit is maintainable, especially when the third defendant has not signed the documents as agent. By way of reply, learned counsel for the applicants submitted that since there is no dispute over the power deed executed by the plaintiff the learned arbitrator has sufficient jurisdiction and only in pursuance of the same alone, MOU has been entered into

between the parties.

11. The fundamental facts are not in dispute. A perusal of MOU shows that third defendant merely acted as a facilitator alone. In other words, the MOU has not been entered into between the plaintiff and respondents. The MOU refers to a minimum of 310 acres which perhaps might include the land of the plaintiff but that will not give the jurisdiction to the learned arbitrator to include the plaintiff. Admittedly, the plaintiff is not a party to the arbitration agreement or MOU.

12. In the case on hand, it is seen that the seat of arbitration is within the regular jurisdictional court. A cause of action is nothing but a bundle of facts which are material to the suit. The sum and substance of the plaintiff is that the learned arbitrator has no jurisdiction to issue any notice to the plaintiff to implead him as a party. The scope of the application filed under Section 9 of the Arbitration and Conciliation Act, 1996 is different to the arbitration proceedings. After all objection under Section 9 of the Arbitration and Conciliation Act, 1996 is for an interim measure and the aforesaid power exercised under Section 9 of the Arbitration and Conciliation Act, 1996 is wider than the one to be exercised by the learned arbitrator as the case may be. The learned arbitrator gets the jurisdiction in pursuant to the arbitration agreement signed by the parties and not otherwise. Such an

arbitration agreement inter se will not bind a third party who has no role in the M.O.U.

13. The learned counsel for the applicant has relied upon a decision rendered in the case of **M/s.Gulati Construction Co., Jhansi Vs. Betwa River Board and another** reported in **AIR 1984 Delhi 299** which deals with the seat of arbitration chosen by the learned arbitrator which is not applicable to the case on hand. Similarly, the decision in **Bata shoe Co., Ltd, Vs. Union of India** reported in **AIR 1954 Bombay 129 (Vol.41, C.N.33) (1)** deals with a notice under Section 18(b) Presidency Small Cause Courts Act, which also does not have any application to the present case.

14. The suit is not concerned with the property but with that of arbitration proceeding which is admittedly pending within the jurisdiction of this court. Furthermore, even as per the submission of the applicant and the third defendant, the territorial jurisdictional Court is at Chennai. It is further to be seen from the MOU under the clause of interpretation, which indicates the same has been executed as principle to principle basis and not otherwise.

15. Hence, looking from any angle, this Court does not find any reason to revoke the leave granted by this Court. Accordingly, the application

to revoke the leave stands dismissed.

gv

03.10.2016

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