

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3403 of 2016 and
CMP.No.17293 of 2016

1.M/s.Ananya Shelters (P) Ltd.,
Rep. by its Managing Director A.Yuvaraj
No.56, Gandhi Nagar,
Goundampalayam,
Coimbatore - 641 030.

2.A.Yuvaraj

3.Uma Maheswari

...Petitioners

versus

M/s.Nana Nani Homes (Phase -1)
Villa Owners Welfare Association
Rep. by G.V.R.S.Manian
Office at Thondamuthur, Coimbatore.

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.03.2016 made in I.A.167 of 2016 in O.S.No.90 of 2015 on the file of I Additional District and Sessions Court at Coimbatore.

For Petitioners : Mr.Perumbulavil Radhakrishnan

For Respondent : Mr.Kuberan
M/s.Rank Associates

ORDER

The respondent filed a suit in O.S.No.90 of 2015 against the petitioners before the I Additional District and Sessions Court, Coimbatore.

2. Before the Trial Court, the petitioners filed an application in I.A.No.167 of 2016 invoking Section 8 of the Arbitration and Conciliation Act, 1996. The application was dismissed by the Trial Court. The petitioners, without availing the statutory remedy filed this Civil Revision Petition, challenging the order dated 28 March 2016.

3. The learned counsel for the petitioners contended that there was a provision for arbitration in the agreement executed between the petitioners and the individual allottees. Individual allottees were expected to refer the matter to arbitration in case there is a dispute. According to the learned counsel, the respondent, after forming an association of Villa owners filed the civil suit against the petitioners for various reliefs. The petitioners, therefore, were correct in filing the application under Section 8 of the Arbitration and Conciliation Act. In short, the contention of the learned counsel for the petitioners is that the Trial Court ought to have referred the parties to Arbitral Tribunal.

4. The learned counsel for the respondent challenged the very maintainability of the Civil Revision Petition. According to the learned counsel, the order passed by the Trial Court is appealable under Section 37 of the Arbitration and Conciliation Act. According to the learned counsel, it was only to overcome the hurdle of limitation, the petitioners filed this revision instead of filing statutory appeal under Section 37 of the Arbitration and Conciliation Act.

5. The petitioners filed an application in I.A.No.167 of 2016 before the I Additional District and Sessions Court, Coimbatore, under Section 8 of the Arbitration Act. The learned Trial Judge dismissed the application on the ground that there was no agreement between the petitioners and the respondent.

6. The order passed by the Trial Court in an application under Section 8 declining to refer the parties to arbitration is appealable under Section 37(1) of the Arbitration and Conciliation Act. The appeal shall be filed within a period of 90 days.

7. The order was passed on 28 March 2016. The certified copy of the order was made ready on 18 April 2016. The petitioners took delivery of the order on 21 April 2016. The petitioners filed the revision petition on 20 October 2016. The time prescribed for filing appeal under Section 37 of the Act in the subject case expired on 18 July 2016. The learned counsel for the respondent is therefore perfectly correct in his contention that it was only to overcome the period of limitation, the petitioners avoided the statutory proceedings and filed the civil revision petition.

8. There is no dispute that there is no prescribed period for filing civil revision petition under Article 227 of the Constitution of India. Even then, the party must avail the jurisdiction within a reasonable period. In case, there is an appellate remedy available and the party wanted to bypass the said remedy, such proceedings should be instituted well within the time prescribed by the statute. There is no question of keeping the matter pending and after the expiry of statutory period for filing the appeal, initiating proceedings under Article 227 of the Constitution to set aside the order.

9. In the subject case, the very initiation of the revision petition is to overcome the period of limitation. The petitioners were well aware that an appeal under Section 37 of the Arbitration Act would not be maintainable as on the date on which, this revision petition was filed. I am therefore of the view that the civil revision petition does not deserve consideration.

10. In the up shot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

03.11.2016

Index : Yes/No
svki

To

The I Additional District and Sessions Court,
Coimbatore.

K.K.SASIDHARAN,J.

(svki)

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