

A.No. 5538 of 2010

IN

C.S.No. 874 of 2009

C.V.KARTHIKEYAN ,J.

This application has been filed under Order XIV Rule 8 of High Court O.S. Rules and under order 3 Rule 1 Clause 12 of Letters Patent, to revoke the leave granted in A.No. 2893 of 2008 in C.S.No. 874 of 2009 on 18.08.2009.

2. The applicant herein is the defendant in the suit. In the affidavit filed in support of the above application, it had been stated that no part of the cause of action arose within the jurisdiction of this Court and consequently, the suit is not maintainable before this Court. It has been stated that the agreement between the plaintiff and the defendant was entered into at Bangalore and the jurisdiction of Courts conferred in the said agreement is at Bangalore and not Chennai. It had been further stated that the defendant also resides at Bangalore. The agreement between the parties was entered into at Bangalore. It had been further stated that the agreement relates to certain transactions at Chennai Airport situated in Meenambakkam, and consequently even those transactions are outside the territorial jurisdiction of this Court. It had been further stated that under the

agreement, if there has been differences between the parties, then the said dispute shall be referred to an arbitration. It had therefore been prayed that this Court should revoke the leave granted to institute this suit in C.S.No. 874 of 2009 in this Court in A.No. 2893 of 2008 by order dated 18.08.2009.

3. A counter affidavit had been filed by the respondent/plaintiff stating that in A.No. 2893 of 2008, the entire facts have been stated and only thereafter has leave been granted to institute the suit. It had been further stated that merely because under the agreement between the parties, it was mentioned that disputes should be subjected to the jurisdiction of Bangalore City Civil Court would not take away jurisdiction from this Court to entertain the suit. It had been further stated that notice was initially ordered and the applicant had not availed the opportunity to oppose the application and consequently, this Court had granted leave to institute the suit. It had been further stated that clause with reference to appointment of arbitrator is restricted to the interpretation of the terms of agreement and all disputes with regard to the interpretation of the terms of agreement. The enforcement of rights between the parties has to be decided in the Civil Court alone. It had been therefore stated that the application has no merits and has to be dismissed.

4 . Heard both sides.

5 . The suit has been filed for recovery of money based on a memorandum of agreement dated 01.02.2006 between the parties herein relating to grant of monthly lease of one air craft pushing back towing tractor to be used by Paramount Airways Pvt. Ltd., at Chennai Airport for pushing their air crafts. According to the agreement, the applicant should pay an advance of Rs.4,50,000/- and the monthly lease amount was fixed at Rs.1,50,000/-. It had been further stated that the plaintiff had provided the necessary equipment to the defendant who was irregular in paying the monthly lease amounts. Even the advance amount was not paid. At that stage, there had been disputes between the parties and consequently, the suit had been filed for recovery of a sum of Rs.43,50,180/- together with costs. The agreement entered into between the parties had been filed as Document No.1 to the suit. The said agreement is dated 01.02.2006.

6 . A perusal of the said agreement shows that the agreement had been executed at Bangalore and stamp paper had been purchased at Bangalore. In Clause 15 of the said agreement, it had been stated as follows:-

“15. All disputes arising out of this agreement shall be subject to the jurisdiction of Bangalore Civil Court only”.

7. A perusal of the agreement further shows that the agreement relates to facilities provided at Meenambakkam Airport more particularly usage of one aircraft pushing back towing tractor for use by M/s.Paramount Airways Pvt. Ltd., at Chennai Airport. Consequently, the entire situs of performance of the agreement was within the Meenambakkam Airport, Chennai and it is a fact that the said Airport is situated outside the jurisdiction of this Court. A further perusal of the agreement also shows that Clause 14 is as follows:-

“14. All disputes arising between the parties with regard to interpretation of the terms of this agreement shall be settled by mutual discussions only and in the event of differences between the parties persisting, the same shall be referred to an arbitrator agreeable to both the parties.”

8. In this connection, the learned counsel for the applicant stated that since the parties had executed the agreement at Bangalore and had mutually agreed that the disputes shall be subject to the jurisdiction of the

Bangalore City Civil Court, it is only that Court which has territorial jurisdiction to determine the issues involved herein. In this connection, the learned counsel referred to *2004 (4) SCC 671 (Hanil Era Textiles Ltd., Vs. Puromatic Filters (P) Ltd.,)* in which it had been held as follows following an earlier Judgment of the Hon'ble Supreme Court in *(1971) 1 SCC 286 (Hakam Singh Vs. Gammon (India) Ltd.,)* as follows:-

“It is not open to the parties to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or a proceeding, an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. It was also held that such an agreement does not contravene Section 28 of the Contract Act. ”

9. In this case, the parties have voluntarily entered into the agreement produced as Document No.I, entered into at Bangalore and have agreed that has only the Courts at Bangalore can adjudicate any disputes. When that is the case and when such agreement is valid in the eyes of law, this Court cannot wade into the said issue and confer jurisdiction on itself when the parties did not so desire. On this ground, I hold that the suit has to be returned to be presented before the

competent Court at Bangalore. Irrespective of the above, it is also seen that the situs of the operation of the terms of the contract and the entire performance of the contract is at Meenambakkam Airport, which is outside the jurisdiction of this Court and on that ground also, I hold that this Court does not have jurisdiction to try the issues raised in the suit.

10 . It is further seen that under Clause 14 of the agreement between the parties, the disputes with respect to interpretation of the terms of the agreement shall be referred to an arbitration.

11 . with respect to the averments in the plaint, it is seen that originally the advance amount was fixed at Rs.4,50,000/- and the monthly lease was fixed at Rs.1,50,000/-. It is further stated in the plaint at paragraph 8 that one of the Directors of the plaintiff's Company met the Managing Director of the defendant's Company at Bangalore at the end of March 2007 and it was conveyed that the monthly lease shall be increased to Rs.2,50,000/- from March 2007. This aspect further re-enforces the contention that the agreement, not just in writing, but also subsequent oral agreement between the parties was only at Bangalore. In the very same paragraph, it had been further stated that at Bangalore during the very same meeting the defendant had also given his oral concurrence. Consequently, even subsequent to Document No.I, further agreement though oral, had been agreed by the parties into only at Bangalore.

12 . It is further seen from Paragraph No. 11 that the defendant had repeatedly given an excuse that their failure to pay monthly lease was only because of delayed payment of bills by M/s.Paramount Airways Pvt. Ltd., at Chennai Airport. It is further seen that at paragraph No. 12 that the plaintiffs have stated that the defendant had violated all the terms and conditions of the memorandum of agreement dated 01.02.2006 leaving the plaintiff with no other option but to terminate the agreement with the defendant. All these aspects relating to interpretation of the terms of the agreement, with respect to increase in lease amount through an oral agreement, reason for non payment of lease amount and termination of lease agreement. Naturally when an arbitration clause binds the parties again this Civil Court is barred from entertaining the suit.

13. I hold that for all the grounds stated above, the plaint has to be returned for being represented before the competent Court or the issues have to be decided through arbitration as is deemed fit by the parties. At any rate, this Court has no jurisdiction. The leave granted in A.No.2893 of 2008 dated 18.08.2009 is therefore revoked and this application is allowed.

C.V.KARTHIKEYAN ,J.

vsg

Pre-delivery order in

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