

In the High Court of Judicature at Madras

Dated : 01.07.2016

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.20 of 2016

A.M.Arunachalam

.. Petitioner

-VS-

K.Tulasi Ram

.. Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an independent and impartial Arbitrator to hear and decide the disputes between the Petitioner and the Respondent arising out of Joint Venture Agreement dated 28.04.2014 and to pass an interim injunction restraining the respondent or his men or agents or servants or any men or persons acting under the advise and/or instructions of the respondent from operating the above schedule mentioned quarry pending disposal of the Arbitration.

For Petitioner : Mr.K.Seetharam

For Respondent : Mr.K.Pattabhi

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ORDER

We may notice at the inception that the respondent has filed the additional counter without leave of this Court. The same be taken off the record.

2. The petitioner has filed the petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 on account of the disputes arising *inter se* the parties from the Joint Venture Agreement dated 28.04.2014 pertaining to granite business in Chittoor-Kanipakkam quarry.

3. It is the case of the petitioner that in the year 2007-2008, he took a leasehold rights from Andhra Pradesh Mines and Geology Department for three black granite quarries located in Kanipakkam revenue village in Chittoor District, of a total extent of 5 hectares. This quarry lease was originally allotted in the name of some third parties and was transferred in the name of the petitioner by the Department of Mines and Geology, Chittoor, Andhra Pradesh. Initially, quarries were being operated in pursuance to the alleged shareholder agreement dated 07.12.2011. But that appears not to have worked well, resulting in termination of that agreement and the Joint Venture Agreement being executed on 28.04.2014.

4. There are allegations and counter allegation qua the facts thereafter. But in my view, the same are not required to be dealt with and this Court is not required to determine the merits of the controversy. The

only aspect to be seen by this Court is whether there is an arbitration agreement *inter se* the parties subsisting, whether disputes have arisen which are liable to be referred to arbitration and whether this Court would have territorial jurisdiction.

5. In order to appreciate the disputes in the aforesaid parameters, the dispute resolution clause is re-produced as under:-

“J. Dispute Resolution

1. Party-2 to give necessary support and co-operation for the smooth running of adjacent quarry or quarries that are leased to the Party-1. Those adjacent quarries will be operated by different Parties on Contract basis. Party-2 shall give his full support and co-operation for the smooth operations of those quarries. With respect to any dispute arising between the Party-2 and the other party who operates the adjacent quarry; the decision of the Party-2 is the final. Party-2 agrees to abide by the decision of the Party-1 in case of any such disputes.

2. Laws Governing Contract: This Contract shall be

subject to the Indian Laws and regulation and shall be governed by the Indian Laws that may be in force during the Contractual period.

3. All disputes and differences of any kind whatever arising out of and or in connection with this agreement shall be referred to the arbitration and final decision of an arbitrator to be agreed upon and appointed by the parties or in case of disagreement as to the appointment of a single arbitrator, to the appointment of two arbitrators, one to be appointed by each party and if there are two arbitrators, they shall mutually agree before taking upon themselves the burden of reference appoint an umpire. The arbitrator or arbitrators, as the case may be, shall make his or their award within four months or such further extended time as may be decided by him or them, as the case may be, with consent of the parties the date of entering on the reference. This submission to the arbitrators shall be deemed to be a submission to arbitration within the meaning of the Indian Arbitration Act,

1950 or any statutory modification thereof. The award of the arbitrator or arbitrators, as the case may be, shall be final and binding on the parties.

4.Jurisdiction of Court: The Parties accept that only the courts in Chennai will have the jurisdiction for deciding any dispute arising among the parties in respect of this JV Agreement.” (emphasis supplied)

6. The existence of the arbitration clause is not in dispute, nor is the factum of disputes having arisen *inter se* the parties.

7. Perusal of the counter filed by the respondent shows that other than the pleas on merits of the claim, an issue is sought to be raised, arising from the suit, being O.S.No.188 of 2015 filed before the Sub-Court, Chittoor by the respondent, in which the petitioner has filed the written statement. It is thus alleged that the petitioner accepted the jurisdiction of that Court and thus, abandoned the recourse for arbitration.

8. In respect of the aforesaid plea, the plaint filed has been

perused. The cause of action for the suit and the substratum of the controversy, in my considered view, is quite different. All that has been contended is that the petitioner has filed the Joint Venture Agreement as one of the documents as Exhibit "R2" and that itself would suffice.

9. I am unable to accept the aforesaid plea for the reason that filing of the document containing arbitration clause itself cannot be said to be fatal to the recourse of the arbitration, as the prayer in the suit was different and the controversy in a sense was different. The plaint refers to some other suits which had been filed and seeks a restraint order against the petitioner in interfering with the peaceful possession and enjoyment in respect of the schedule property by grant of permanent injunction. The stand of the petitioner was that there are some forged and fabricated documents filed to create the plaint.

10. The other aspect urged by the learned counsel for the respondent is lack of territorial jurisdiction of this Court. Perusal of the counter shows that no such plea is raised. The plea really raised was of the other suit pending and seeking for appointment of an Arbitrator being premature, as proceedings are pending before the Mines and Geology Department, Government of Andhra Pradesh. A plea is also sought to be raised that since there was allegation of forgery and fraud against the respondent, the subject matter could not be decided by the Arbitrator.

These pleas are only stated to be rejected. The learned counsel for the respondent however sought to submit that the issue of jurisdiction can always be urged even if not pleaded and that he tried to raise it through the additional counter, which was filed without leave, and the same has been taken off the record as per the direction passed by this Court.

11. It is trite to say that parties cannot confer jurisdiction by consent, where there is no jurisdiction at all. In the present case, so far as the jurisdiction is concerned, exclusively it has been conferred on Chennai Courts by consent of parties. Thus, the question which arises is as to whether Chennai Courts are completely devoid of any jurisdiction whatsoever for making the reference.

12. On perusal of the Joint Venture Agreement, I find that there is no specific place mentioned for execution of the agreement. But the learned counsel for the petitioner states that stamp paper was purchased in Chennai, it is signed by the first party in Chennai and the first witness is from Chennai. The submission of the learned counsel for the petitioner is that since the agreement was entered into at Chennai, that itself would suffice.

13. On the other hand, the learned counsel for the respondent states that absence of it being specified as to where the agreement is executed, and even if it was executed at Chennai, that would not confer jurisdiction, as the subject matter of the Joint Venture Agreement was mines to be exploited and located in Andhra Pradesh.

14. I am of the view that if such an agreement was entered into at Chennai and then by consent, the jurisdiction was conferred exclusively on Chennai Courts, it cannot be said that the Chennai Courts are devoid of any cause of action and do not have any jurisdiction. No doubt, there is some ambiguity arising from the non-specification of the place. But the facts referred aforesaid thus seem to suggest that the agreement has been executed at Chennai.

15. For the aforesaid reason, I am of the view that the petition is liable to be allowed and the disputes forming subject matter arising from the Joint Venture Agreement are liable to be referred to arbitration.

16. I, thus, by consent appoint Mrs. Justice Prabha Sridevan, a retired Judge of this Court as the Sole Arbitrator, to enter upon the reference and adjudicate the disputes *inter se* the parties. The

arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

17. The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

(S.K.K., CJ.)
01.07.2016

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Note: Mark a copy to

- (i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.
- (ii) The Arbitrator, as referred above.

The Hon'ble Chief Justice

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