

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR. JUSTICE P.KALAIYARASAN

O.S.A.No.415 of 2010

and

M.P.No.1 of 2010

1. Texteema Engineering Industries
A partnership firm
402/2, Elgi Industries Estate
Singanallur, Coimbatore
 2. Ramdoss
Parner
M/s.Texteema Engineering Industries
402/2, Elgi Industries Estate
Singanallur, Coimbatore
 3. Nandagopal
M/s.Texteema Engineering Industries
402/2, Elgi Industries Estate
Singanallur, Coimbatore
- ... Appellants

Vs.

1. M/s.Texfield Engineers
Rep.by its Managing Partner
T.Chandramohan
23 A, Vivekananda Nagar
Singanallur
Coimbatore
 2. Pushpa Chidambaram
 3. Sarath Chidambaram
 4. T.K.Seshadri,
Senior Advocate, Arbitrator
- ... Respondents

This Appeal is preferred under Order XXXVI Rule 1 of O.S.Rules r/w Clause 15 of the Letters Patent Act against the order of this Court dated 18.3.2010 in O.P.No.139 of 2008.

For Appellants : Mr.Anirudh Krishnan
for M/s.Sarvabhuman Associates

For Respondents : No appearance for R1 to R3
R4 - Arbitrator

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY A.SELVAM, J.)

Challenge in this Original Side Appeal is to the order dated 18th day of March, 2010 passed in O.P.No.139 of 2008 by the learned Single Judge of this Court.

2. It is averred in the appeal that an agreement has come into existence betwixt the appellants and respondents 1 to 3 on 27.11.2000 with regard to distribution of Atomisers and during the course of business, a dispute has arisen and an arbitrator has been appointed by this Court by invoking Section 11 of the Arbitration and Conciliation Act, 1996 and he passed the order dated 15.10.2007 and the same has been challenged in O.P.No.139 of 2008 by respondents 1 to 3 herein, as petitioners.

3. The learned Single Judge, after hearing the arguments of both sides, has allowed the Original Petition No.139 of 2008 and thereby set aside the so-called award alleged to have been passed by the arbitrator on 15.10.2007 and against the order passed by the learned Single Judge, the present Original Side Appeal has been preferred at the instance of respondents 1 to 3 in O.P.No.139 of 2008, as appellants.

4. Even though respondents 1 to 3 herein have been served with summons, appearance has not been made. Under such circumstances, this Original Side Appeal is disposed of on merits on the basis of the arguments advanced on the side of the appellants.

5. The learned counsel appearing for the appellants has raised the following legal points:

(i) As per Section 69 of the Indian Partnership Act, 1932, respondents 1 to 3 herein have no locus standi to institute any legal proceedings, since the same has not been registered. The arbitrator has clearly invoked the said section, but the learned Single Judge has given an erroneous finding that Section 69 of the said Act is applicable only to suits and not for other proceedings

(ii) The arbitrator has not at all passed any award and therefore, the question of invoking Section 34 of the Arbitration and Conciliation Act, 1996 does not arise.

6. For considering the contentions made on the side of the appellants, the Court has to look into the award passed by the arbitrator. The arbitrator has considered the rival submissions made on either side and ultimately found that as per Section 69 (3) of the Indian Partnership Act, 1932, he has no jurisdiction to entertain the claim as well as the counter claim made by the parties.

7. As rightly pointed out by the learned counsel appearing for the appellants, the arbitrator has not passed any executable award. Since the arbitrator has not passed any executable award, the same cannot be challenged under section 34 of the Arbitration and Conciliation Act, 1996.

8. The only reason given by the learned Single Judge for setting aside the so-called award passed by the arbitrator is that Section 69 of the Indian Partnership Act, 1932 is applicable only to suits and not in respect of other proceedings. In fact, this Court has perused Section 69(3) of the Indian Partnership Act, 1932, wherein it has been clinchingly mentioned to the effect that sub sections (1) and (2) of Section 69 would also be applicable to other proceedings. Therefore, it is quite clear that respondents 1 to 3 herein as per Section 69 of the said Act are totally debarred from instituting any proceeding.

9. The second contention put forth on the side of the appellants is that since the arbitrator has not passed any award, the question of invoking Section 34 of the Arbitration and Conciliation Act, 1996 does not arise.

10. As rightly pointed out on the side of the appellants, this Court has perused the entire order passed by the arbitrator and the arbitrator has not passed any executable award and he simply passed an order to the effect that as per Section 69(3) of the Indian Partnership Act, 1932, he has no jurisdiction to deal with claims and counter claims made by the parties. Therefore, it is quite clear that the entire arguments put forth on the side of the appellants are really having acceptable force.

11. The learned Single Judge, without considering the above legal aspects, has erroneously set aside the so-called award passed by the arbitrator and altogether, the present Original Side Appeal deserves to be allowed.

In fine, this Original Side Appeal is allowed without cost. The order dated 18.3.2010 passed in O.P.No.139 of 2008 by the learned Single Judge of this Court is set aside and the Original Petition NO.139 of 2008 is dismissed without cost. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ajr

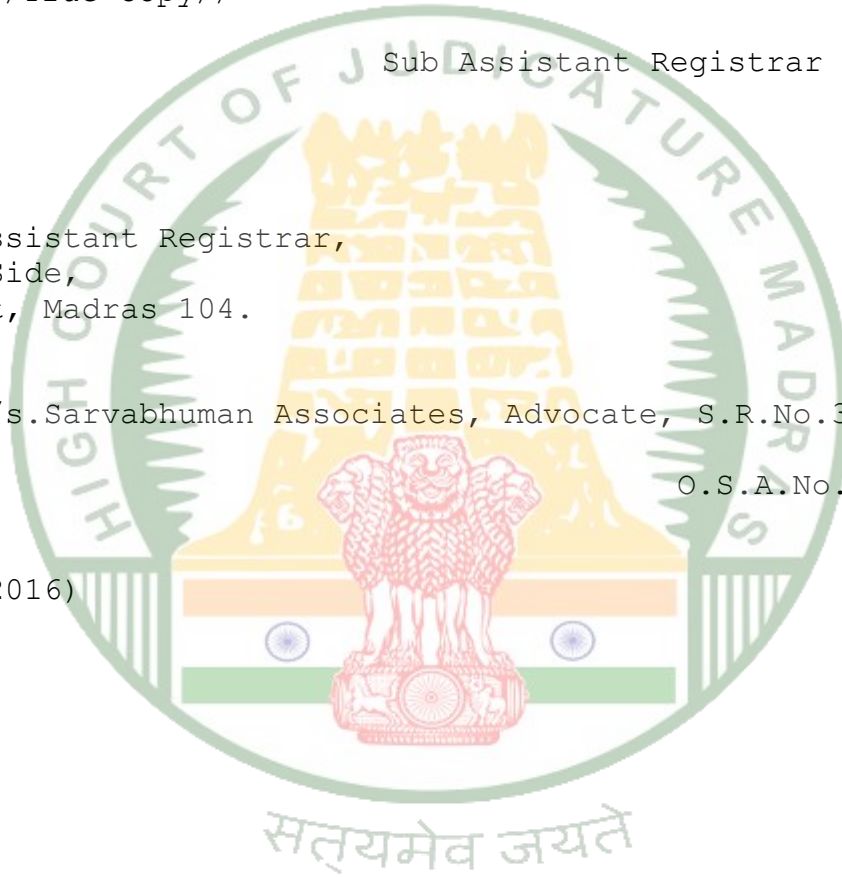
To

The Sub Assistant Registrar,
Original Side,
High Court, Madras 104.

+1cc to M/s.Sarvabhman Associates, Advocate, S.R.No.38960

O.S.A.No.415 of 2010

KGK(CO)
CA(26/07/2016)



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