

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
and

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

O.S.A.No.172 of 2017
and C.M.P.No.11441 of 2017

1.M/s.GPR Logistics

2.Mrs.P.Ranjini

3.Mrs.D.Kalpana

... Appellants/Applicants/
Plaintiffs

vs.

Mr.A.Suresh Anand

... Respondent/Respodnent/
Defendant

Original Side Appeal filed under Order 36 Rule 1 of O.S.Rules r/w clause 15 of the letters patent against the Fair and Decretal order passed by the ordinary original Civil jurisdiction of this Court dated 09.01.2017, made in application No.6235 of 2016 in C.S.No.677 of 2009.

For Appellants :

Mr.Naresh Vassudhev

JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. This is an appeal preferred against the judgment and order dated 09.01.2017, passed by the learned single Judge.

1.2. By virtue of the impugned judgment and order, the appellants/plaintiffs application No.6235/2016 filed in C.S.No.677 of 2009 was dismissed.

1.3. In sum, the appellants, who are plaintiffs in the suit, had filed the aforementioned application for referring the dispute, which had arisen between the respondent/defendant and themselves to arbitration. This application was filed by the appellants/plaintiffs, admittedly, after pleadings in the suit stood completed and issues had been framed. The suit, even according to the counsel for the appellants/plaintiff is ripe for trial.

2. The reply of the respondent/defendant is on record.

2.1. A perusal of the reply shows that the respondent/defendant opposes the appointment of an arbitrator, inter alia, on the ground that nearly seven years have passed since the institution of the suit and therefore, given the time and money that, he has spent in defending the suit, it would make no practical sense to refer the dispute, arising between the parties, to arbitration at this stage.

3. The learned single judge in the impugned judgment also takes the view that given the time which has elapsed, it would not be expedient, at this stage, to refer the parties to arbitration.

4. Mr.Naresh Vassudhev, learned counsel for the appellants/plaintiffs, however, assails the judgment on the ground that the learned single Judge failed to appreciate the contours of Section 89 of the Code of Civil Procedure, 1908 (in Short "CPC") while passing the impugned judgment and order. According to the learned counsel, the Court was duty bound to refer the dispute arising between the parties to arbitration.

5. In our view, the submission advanced by the counsel for the appellants/plaintiffs is not sustainable for the following reasons. First, a bare perusal of Section 89 of CPC would show that, where according to the Court there exists elements of settlement, which may be acceptable to the parties, the Court shall, thereupon, formulate the terms of settlement and handover the same to the parties for their observations. Upon receiving the observations of the parties, the Court is empowered to reformulate the terms of a possible settlement and thereafter, have the parties resolve their disputes in one of the possible modes provided in clause (a) to (d) of sub Section 1 of Section 89 of CPC.

5.1. To be noted, clause (a) of sub Section 1 of Section 89, adverts to arbitration.

6. In our view there is nothing on record, which is suggestive of subsistence of elements of settlement. Therefore, to our minds, the mechanism provided in section 89 of CPC cannot be applied. The very fact that the respondent/defendant has opposed the appellants/plaintiffs' application for referring the disputes to arbitration fortifies the conclusion reached above.

6.1. Secondly, we agree with the learned single Judge that, since, nearly seven (7) years have elapsed, since the time, when, the suit was first instituted, it would serve, at this stage, no purpose in referring the parties to arbitration. In this behalf, we, in a sense, agree with the stand taken by the respondent/defendant that he has invested a huge amount of money

in defending the suit and therefore, would find it difficult, in now, bearing the burden of additional expenses, if arbitration is ordered.

7. Furthermore, a perusal of the arbitration clause shows that it confines the scope of adjudication to disputes which arise out of interpretation of the agreement. As averred by the appellants/plaintiffs in their application the arbitration clause has been inappropriately drafted, which is why in the first instance they chose to file a suit. For the sake of convenience, the arbitration agreement obtaining between the parties, is extracted hereafter:

"If any dispute arising out of this contract interpretation of the agreement shall be referred to the arbitrators one to be nominated by each party.

In the event of a disagreement between arbitrators, dispute shall be referred to an Umpire and the latest Arbitration Act shall apply to all such references, venue will be at Chennai".

8. For the foregoing reasons, we are not persuaded to interfere with the impugned judgment and order. Accordingly, the appeal is dismissed. Consequently, the connected application shall also stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Sub Assistant Registrar
Original Side
High Court Madras

O.S.A.No.172 of 2017

gr(co)
aa23/08/2017