

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 27.04.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

**CRP(NPD)No.3977 of 2010**

S.R.Subramanian

.. Petitioner

Vs.

1.The Tamilnadu Medicinal Plant Forms &  
Herbal Medicine Corporation Ltd.,  
Anna Hospital Campus,  
Arumbakkam, Chennai – 106.

2.The Managing Director,  
The Tamilnadu Medicinal Plant Forms &  
Herbal Medicine Corporation Ltd.,  
Anna Hospital Campus,  
Arumbakkam,  
Chennai – 106.

.. Respondents

**Prayer:** Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the Judgment and decree of the learned 1<sup>st</sup> Additional Sub Judge, Salem dated 14.06.2010 made in A.S.No.52 of 2009.

For Petitioner : Mr.I.Abrar Md. Abdullah  
for Mr.M.Sudhakar

For Respondents : Ms.Dakshayani Reddy

**ORDER**

The unsuccessful plaintiff before the Trial Court by way of this Civil Revision Petition challenge the Judgment and Decree dated 14.06.2010 made in A.S.No.52 of 2009 by the learned Additional Sub Judge, Salem, confirming the Judgment dated 19.08.2008 of the Learned Principal District Munsif, Salem made in O.S.No.463 of 2006.

2.The value of subject Suit is less than Rs.25,000/- and hence this Civil Revision is preferred against the Judgment and Decree dated 14.06.2010 made in A.S.No.52 of 2009 which arise out of a Decree made in the above suit for Recovery of Money.

3.The Revision Petitioner as plaintiff has filed the above suit for recovery of money on the basis of a contract dated 09.02.2000. The suit is found laid by the revision petitioner company namely Aathreya Incorporation Salem for recovery of alleged unpaid amount due to be paid by the respondent corporation namely Tamil Nadu Medicinal Plant Farms and Herbal Medicinal Corporation Ltd towards materials said to have supplied by the revision petitioner.

4.In the said suit the respondent / defendant Corporation Ltd.

took out three Interlocutory Applications in I.A.Nos.1022, 1510 and 1511 of 2006 under Order XIV, Rule 2(2) of CPC seeking the Trial Court to frame preliminary issues and decide three issues viz. as to whether Trial Court had Territorial jurisdiction to decide the issue, secondly whether the suit is barred by Limitation and whether suit is maintainable when there was an Arbitration and Conciliation clause in the contract.

5.Earlier, the Learned Trial Court hearing upon the above interlocutory applications was pleased to dismiss the above applications holding that the question of limitation and maintainability can be decided only after a full fledged trial. Whereupon the respondent aggrieved over the dismissal of their applications have filed CRP.Nos.488 to 490 of 2008 before this Court. It is seen that this Court allowed the said Civil Revision Petitions by directing the trial Court to decide the same as preliminary issue.

6.Accordingly, the Trial Court tried the above issues as to maintainability and as to whether suit is barred by limitation as preliminary issue.

7. On the side of revision petitioner/plaintiff there was no oral and documentary evidence adduced. Whereas on the side of the respondent/defendant corporation Ex-A1 to Ex-A4 were marked and a witness namely S. Sundarraaj was examined as DW1 and through him Ex-B1 to Ex-B4 were marked.

8. The Learned Trial Judge on appraisal of the available evidence dismissed the suit as not maintainable on jurisdictional point and in view of the arbitration clause.

9. The revision petitioner/plaintiff filed an appeal in A.S.No.52 of 2009 before the 1<sup>st</sup> Additional Subordinate Judge, Salem. The said appeal came to be dismissed by a Judgment dated 14.06.2010 by confirming the decree and Judgment made by the trial Court in dismissing the suit and the same is under challenge in this Civil Revision petition.

10. I heard Mr.I.Abrar Md. Abdullah for Mr.M.Sudhakar, learned counsel for the revision petitioner and Ms.Dakshayani Reddy, learned counsel for the respondents and perused the entire materials available on record.

11.As stated above on the side of revision petitioner there was no oral or documentary evidence let in before the Trial Court to substantiate his pleading that the suit is maintainable before a civil forum.

12.No doubt that section 9 of CPC empowers a Civil Court to try all Civil Suits unless barred either expressly or impliedly. Therefore this Court wish to scrutinize the available evidence in the context of Jurisdiction and to see whether there is an express or implied bar over the suit.

13.On appraisal of evidence, it is seen from para-4 of Ex-B3 the indenture between the revision petitioner and the respondent dated 09.02.2000 stating that in case of dispute or differences of opinion it shall be referred to the arbitrator in accordance with the arbitration Act.

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14.It is equally important to state that the agreement has been entered in Chennai and the same is not disputed by the respondent.

15. More so in this context it is further to be noticed that nothing is brought on record by the revision petitioner to show that he has made any endeavor to refer the dispute to arbitrator. In this regard it would be useful to extract the clause No. 4 and 6 of agreement that runs as follows:-

"4. All disputes differences, claims and questions; which may arise during the subsistence of this agreement (or) supplemental agreement between the purchaser and vendor touching any matter covered by this agreement shall be referred to the arbitrator, in accordance with the provisions of the arbitration Act, 1940.

6. Only the Courts in Chennai have jurisdiction in respect of the Award of the Arbitrator." Thus it is obvious to find that the Court below has no jurisdiction to try the suit and in fact the jurisdiction is specifically ousted. It is also equally significant to see to respondent from the tender notice and the corresponding tender offer and tender documents dated 21.05.1999 and 03.02.2000 respectively to the respondent for the supply of HDPE and pet containers with certain conditions. In as much as the condition No. 47 in the 1<sup>st</sup> tender it stated that notwithstanding anything

contained in terms of offer by suppliers, no suit in regard to any matter whatsoever arising out of this contract, shall be instituted in any Court have a competent jurisdiction at Chennai City, Tamil Nadu.”

16.This Court is also conscious that Arbitration Act, 1940 stands repealed as on date. However it would be useful to note that during the execution of agreement and alleged breach the said Act was much in force.

17.Again in as much as Tender condition No.20 in second tender document it is stated that “If any dispute arose between the supplier and the first petitioner corporation Ltd arises in regard to any claim (or) liability the same shall be referred to a sale name for arbitrator to be appointed by the managing Director of Tamil Nadu medicinal plant farms and herbal medicine corporation Ltd., on a request being made by the supplier (or) by the first petitioner corporation Ltd making any claim upon the supplier within a 6 months, after expiry of the supply contract and the sole arbitrator shall conduct arbitration act 1940, only and the arbitration shall pass an award which shall be final conclusive and bringing upon the supplier and the first petitioner corporation and

the Courts at Chennai only.”

18.Thus it is obvious that the suit is not maintainable in view of the Arbitration Clause and on the point of Territorial Jurisdiction conferred to Court at Chennai. Accordingly, I find no reason to disturb the concurrent findings of the Courts below.

19.In the result, this Civil Revision Petition stands dismissed by confirming the order passed in A.S.No.52 of 2009, dated 14.06.2010, by the learned I Additional Subordinate Judge, Salem, confirming the Judgment and Decree in O.S.No.463 of 2006, dated 19.08.2008, on the file of the learned Principal District Munsif, Salem. No costs.

**27.04.2017**

vs

Index:Yes

Internet:Yes

To

1.The Principal District Munsif, Salem.

2.The Subordinate Judge, Salem.

**M.V.MURALIDARAN, J.**

VS



**Pre-Delivery order made in**  
**CRP(NPD)No.3977 of 2010**

**27.04.2017**

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