IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 991 of 2017
and
CMP. Nos. 4879/2017 and 247/2018

1. Ravi Gupta
2. M.L. Gupta
3. Sarala Gupta .. Petitioners

Vs.

M/s. Jey Agencies
Rep. by its Proprietor
G. Balamurugan .. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 30.11.2016 in I.A. No. 123 of 2016 in O.S. No. 2748 of 2016 on the file of the XV Additional City Civil Court, Chennai.

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For Petitioners : Mr.S. Kalyanaraman

For Respondent : Mr. Ralph V. Manohar

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O R D E R

The present Civil Revision Petition is filed against the fair and decreetal order dated 30.11.2016 in I.A. No. 123 of 2016 in O.S. No. 2748 of 2016 on the file of the XV Additional City Civil Court, Chennai.

2. The respondent has filed the suit in O.S. No. 2748 of 2016 for refund of the advance amount. In the aforesaid suit, the petitioner has filed an application in I.A. No.123 of 2016, under Section 8 of the Arbitration and Conciliation Act to refer the above suit to the arbitration in view of the clause found in the lease deeds dated 01.06.2014. The learned counsel for the petitioners would submit that the court below, without appreciating the case of the petitioners, the defence raised in the written statement, had dismissed the aforesaid application. According to the petitioners, the reasons stated by the court below for dismissal of the application, is contrary to the facts and hence is liable to be set aside. Therefore, the present revision petition is filed before this Court.

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3. The learned counsel for the respondent would submit that the the application under Section 8 of the Arbitration Act filed by the petitioners, is not maintainable. Admittedly, the petitioners have relied upon the lease deed executed between the petitioners and the respondent, as a landlord and tenant, for the demised property. The respondent has vacated the premises in the year 2014 and the suit has been filed for refund of the advance amount, as per the lease deed dated 01.06.2014. Therefore, the application filed by the petitioners before the court below, is not maintainable.

4. The petitioners have relied upon clause 21 of the lease agreement dated 01.06.2014, executed between the parties, wherein it is specifically stated that any disputes, differences or controversies that arise between the parties shall be resolved through negotiations between the parties and each party will nominate an Arbitrator.

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5. The issue has already been decided by the Hon'ble Supreme Court in the case of ***Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. & Ors., reported in (2011) 5 SCC 532,*** *wherein in the paragraph 35*

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reads as follows :-

> ***"35.*** *The Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.*

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The well recognized examples of non-arbitrable disputes are : (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes."

6. In the light of the afore cited decision of the Hon'ble Supreme Court, which squarely applies to the case on hand, this Court finds no grounds to interfere with the order of the court below.

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7. Therefore, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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D. KRISHNAKUMAR J.,

avr

Index: Yes/ No

Speaking Order/Non Speaking Order

[Issue order copy on 27.03.2018]

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To

The XV Additional City Civil Court,
Chennai.

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