

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.03.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.688 of 2002

S.Sankar

... Appellant/Plaintiff

Vs.

1.Union of India
rep. by Chief
Secretary,
Govt. of Pondicherry,
Pondicherry.

2.Public Works Department
Rep. by Chief Engineer,
Pondicherry.

3.Office of Executive Engineer
Irrigation Division PWD
Pondicherry.

.... Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree of the learned Principal District Judge made in A.S.No.46 of 2001 dated 27.11.2001 reversing that of the learned I Additional District Munsif, Pondicherry, made in O.S.No.967 of 1997 dated 29.03.2001.

For Appellant : Mr.S.Subramanian

For Respondents: Mr.J.Kumaran

Government Advocate (Puducherry)

J U D G M E N T

The appellant herein/ plaintiff filed a suit for declaration declaring that the purported order dated 10.11.1997 in No.94/PW-ID/A.1/97/3687 passed by the third respondent herein/ third defendant order is in violation of the terms of contract between the plaintiff and the third defendant and as such is void ab initio and non est in the eye of law being unlawful, inactionable and unenforceable under law, for mandatory injunction directing the defendants to refer the plaintiff's questions and disputes as regards the work and contract vide Agt.No.35/PW-ID/A.1/94-95 to Arbitration as per Clause 25 of the contract between the parties and for permanent injunction restraining the defendants from enforcing or acting in

furtherance of said suit impugned purported order dated 10.11.1997 in No.94/PW-ID/A.1/97/3687 until reference and adjudication of the questions and disputes by the Arbitrator as under the contract between the plaintiff and the defendants.

2.The suit was decreed by the lower Court. Aggrieved by the same, the respondents herein/ defendants preferred appeal before the lower Appellate Court. The lower Appellate Court allowed the appeal and dismissed the suit. As against which, the present second appeal has been filed.

3.At the time of admission of the second appeal, this Court framed the following substantial questions of law:

"(a) Whether the lower Appellate Court was right in holding that Section 8 of the Arbitration and Conciliation Act, 1996, would bar the present suit?

(b) Whether the lower Appellate Court was right in reversing the trial Court judgment without adverting to the reasons given by the trial Court and giving its reasons for disagreeing with the reasoning of the trial Court? And

(c) Whether the judgment of the lower Appellate Court satisfied the mandatory requirements of O41, R31, CPC?"

4.Thereafter, vide order dated 05.02.2018 made in C.M.P.No.22069 of 2017 in S.A.No.688 of 2002, this Court has framed the following additional substantial question of law:

"Is the First Appellate Court right in its interpretation of Section 8 of the Arbitration and Conciliation Act, 1996 and finding that the dispute cannot be referred to Arbitration?"

5.The learned counsel appearing for the appellant has filed a memo dated 08.02.2018, signed by him as well as by the learned Government Advocate (Puducherry), praying to refer the matter to Arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. Today, the learned Government Advocate (Puducherry) has filed a memo dated 01.03.2018 stating that the respondent is giving consent for appointment of an Arbitrator and praying this Court to appoint Mr.K.Ranganathan, Advocate, No.143 La Porte Street, Puducherry, residing at No.10, II Cross Jaya Nagar, Puducherry, as the Arbitrator.

6.In view of the memos dated 08.02.2018 and 01.03.2018 filed by the appellant as well as the respondents, the substantial questions of law and the additional substantial question of law are answered in favour of the appellant/ plaintiff and the

second appeal is partly allowed in the above terms. The parties are granted liberty to raise all the disputes before the learned Arbitrator. After the Arbitral proceedings are over, based on the outcome of Arbitration, the lower Court namely, the learned I Additional District Munsif, Pondicherry, shall disburse the amount already deposited to the credit of O.S.No.967 of 1997, in favour of the person who succeed the case. The learned Arbitrator is directed to complete the Arbitral Proceedings within a period of six months.

7.In the result, the second appeal is partly allowed. The judgment and decree of the learned Principal District Judge, Pondicherry, made in A.S.No.46 of 2001, dated 27.11.2001, reversing the judgment and decree of the learned I Additional District Munsif, Pondicherry, made in O.S.No.967 of 1997, dated 29.03.2001, is modified in the above terms. No costs.

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Sd/-

Assistant Registrar(CCC)

Encl:xerox copy of memo dated 8.2.2018 and 1.3.2018

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge, Pondicherry.

2.The I Additional District Munsif, Pondicherry.

3.The Section Officer,
V.R.Section,
High Court of Madras,
Chennai 600 104.

+1cc to Government Pleader Sr.No.16374

Copy to:Mr.K.Ranganathan, Advocate

No.143, La Porte street, Puducherry

Residing at No.10, II Cross, Puducherry.

NRJK (CO)

sM:30.5.2018

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