

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.08.2018
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
Civil Revision Petition No.1119 of 2013
and M.P.No.1 of 2013

M/s.Haran Textile Company,
Rep., by its Parnter Mr.G.Jawahar,
Having its administrative office at Geejay Arcade,
No.121, T.V.Swamy Road West, R.S.Puram,
Coimbatore-2. ... Petitioner/Plaintiff

-vs-

1.M/s.Varath International Trading F.Z.C
Rep. by its Managing Director,
G.Balasubramanian,
Post Box No.21012,
Ajman Free Zone, Ajman,
United Arab Emirates.
Administrative Office at;
Post Box No.29409,
Sharjah, United Arab Emirates.

2.Mr.G.Balasubramanian. ... Respondents/Defendants

Civil Revision Petition filed under Article 227 of the
Constitution of India against the fair and decreetal order of
the IV Additional District & Sessions Judge (Fast Track Court
No.II) at Coimbatore, dated 06.09.2012 in I.A.No.269 of 2012 in
O.S.No.408 of 2010.

For Petitioner : Mr.P.Valliappan
For Respondents: No Appearance

सत्यमेव जयते
O R D E R

The revision petitioner is the plaintiff in O.S.No.408 of
2010 on the file of the I Additional District Judge, Coimbatore.
The revision petitioner/plaintiff filed the said Suit against
the respondents herein praying for a judgment and decree for a
sum of Rs.1,09,28,130/- along with subsequent interest at the
rate of 18% per annum from the date of Suit till the date of
realization and also costs of the suit.

2. In the plaint, it is averred among other things that the
plaintiff is a partnership concern carrying on business and
having their office at Coimbatore and the first respondent/first

defendant company is based on Sharjah (United Arab Emirates) of which, the second respondent is the Managing Partner. The second defendant/second respondent, for and on behalf of the first respondent, had offered to supply Cameroon Raw Cotton and also received USD 224979.43 equivalent to INR 1,03,17,557/-. Subsequently, the respondents/defendants expressed their inability to supply cotton and therefore, cancelled the contract and agreed to refund the above said sum and despite such an assurance, it has not been paid and therefore, the plaintiff/revision petitioner came forward to file the said Suit.

3. The defendants had filed the written statement dated 01.11.2010 denying the averments made in the plaint and also took a specific stand that they have never executed document No.4 and also not given any cheque. It is their further stand that in the light of the Sale Contract dated 18.01.2010 bearing Contract No.IND/COT/186/2009/10, arbitration clause is available and as such, the Suit is not maintainable. The defendants, prior to filing of the written statement, filed I.A.No.1000 of 2010 dated 02.07.2010 under Section 8(1) of Arbitration and Conciliation Act, 1996, by taking the stand that in the light of the above said contract, the remedy open to the respondent/plaintiff is to approach the arbitrator viz., the International Cotton Association, United Kingdom and therefore, prayed for referring the matter to the said arbitrator. The said application was refuted by the revision petitioner who was arrayed as the respondent in the said application by submitting among other things stated that no arbitration clause exist between them and the defendants have not been complied with the mandatory requirement of Section 8 of the said Act and also pointed out that the original Arbitration Agreement dated 18.01.2010, has also not been disclosed and prayed for dismissal of the same.

4. The Court of IV Additional District and Sessions Judge, Coimbatore, after taking into consideration the materials placed and the rival submissions, had allowed the said application in I.A.No.269/2012 to sent for the documents in Sale Contract dated 18.01.2010 for disproving the claim of the plaintiff, vide impugned fair and final orders dated 06.09.2012 and challenging the illegality of the same, the revision petitioner/plaintiff has filed this present Civil Revision Petition.

5. The learned counsel appearing for the revision petitioner would submit that subsequently, the defendant had filed their written statement and thereby subjecting themselves to the jurisdiction of the Civil Court and would further add that though the respondents/defendants claimed there is an agreement dated 18.01.2010 in which arbitration clause exists admittedly,

not even filed the xerox copy of the same and though the Lower Court has recorded the fact of non-production of the original Arbitration Agreement, still allowed the application and therefore, prays for interference. The learned counsel appearing for the revision petitioner, in support his submission, has placed reliance on the decisions of this Court in Jain Housing & Constructions Ltd. vs. V.Ramaiah and Another [2009 (2) CTC 97 (Madras)] and Secursys Technologies (P) Ltd. vs. IVRCL Limited [2015 (2) MWN (Civil) 636 (Madras)].

6. Though the respondents have been served and their names appearing in the cause list, there is no representation on their behalf.

7. This Court has considered the arguments advanced by the learned counsel appearing for the revision petitioner and also perused the materials placed before it.

8. The respondents, prior to filing of the application under Section 8(1) of the Arbitration and Conciliation Act, 1996, had filed their written statement. A perusal of the averments filed in support of I.A.No.269 of 2012 in O.S.No.408 of 2010 would disclose that heavy reliance has been placed upon the Arbitration Agreement dated 18.01.2010 and even according to the respondents, the said agreement is available with City Union Bank, Ramnagar Branch, Coimbatore and therefore, in order to get over claim of the plaintiff in the form of the Suit, filed I.A.No.269/2012 under Order 16 Rule 1 read with 151 of the Civil Procedure Code to summon the Bank Official of City Union Bank, Ramnagar Branch, Coimbatore and to produce the said document.

9. The primordial submission made by the learned counsel for the petitioner is that in I.A.No.1000 of 2010 filed by the second respondent/second defendant, to refer the Suit under Section 8(1) of Arbitration and Conciliation Act, 1996, the petitioner specifically took a stand that no Arbitration Agreement exist in respect of the obligation created under the letter dated 09.03.2010 and in order to get over the lacuna only, the present application is filed and would further add that without enclosing the original Arbitration Agreement, I.A.No.1000 of 2010 itself is not maintainable and therefore, the present application for summoning all the documents is also not maintainable.

10. A perusal of the impugned order would disclose that the Lower Court proceeded on the footing, as if the document is not disputed by the parties, whereas the petitioner took a specific stand that no Arbitration Agreement exists. It is also the stands of the learned counsel appearing for the revision petitioner, the respondents cannot file I.A.No.1000/2010 under

Section 8(1) of the Arbitration and Conciliation Act, 1996, to refer the matter for arbitration without enclosing the original documents. It is to be pointed out at this juncture that not even a xerox copy of the said agreement has been filed in I.A.No.1000 of 2010. The second respondent, in order to get over the said lacuna only, has filed I.A.No.269 of 2012.

11. In the considered opinion of this Court, in the light of the above reasons, the impugned order summoning the documents is an unsustainable one.

12. In the result, the Civil Revision Petition stands allowed and the fair and final order of the IV Additional District & Sessions Judge (Fast Track Court No.II) at Coimbatore, dated 06.09.2012 made in I.A.No.269 of 2012 in O.S.No.408 of 2010 is set aside. Consequently, I.A.No.269 of 2012 in O.S.No.408 of 2010 is dismissed. No costs. However, the respondents / defendants want to probablise their other defence, they are at liberty to do so in accordance with law.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
The IV Additional District & Sessions Judge,
Fast Track Court, No.II, Coimbatore

+lcc to Mr.P.Valliappan, Advocate Sr.No.56796

VGII(CO)
sm:12.9.2018

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