



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.04.2018
CORAM :
THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

WEB COPY

C.R.P. (PD) (MD) No.940 of 2013
and
M.P. (MD) No.1 of 2013

M/s.Shriram Transport Finance Company Ltd.,
Represented by its Branch Manager,
No.27/5, SIMMA Towers, 1st Floor,
Canara Bank Upstairs,
Ettayapuram Road,
Kovilpatti.

: Petitioner / Defendant / Petitioner

vs.

G.Lakshmanan : Respondent / Plaintiff / Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to call for records and to set aside the fair and decreetal order passed by the learned District Munsif, Kovilpatti made in I.A.No.91 of 2012 in O.S.No.258 of 2011 dated 09.10.2012 by allowing this Revision Petition.

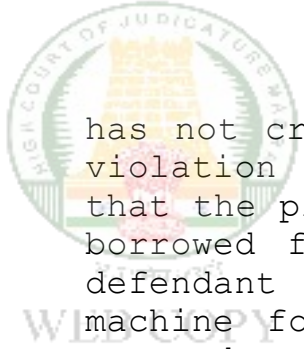
For Petitioner : Mr.Ananth C.Rajesh
For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed by the defendant in O.S.No.258 of 2011.

2.The following facts are not in dispute:

2.1.The plaintiff in the suit in O.S.No.258 of 2011 is a borrower from the petitioner herein, which is a finance company. The plaintiff himself admitted in the plaint that he obtained loan for purchasing a harvesting machine in 2008. It is the case of the plaintiff that he purchased harvesting machine with the financial assistance from the petitioner and that he has closed the account as he was compelled to pay large sum than due. It was also the case of the plaintiff that for the said purpose, the plaintiff once again borrowed a sum of Rs.6 lakhs on 20.07.2010 agreeing to repay the amount in 47 equally monthly installments. Though it is further stated that the plaintiff, who has paid a sum of Rs.2,57,000/- for a period of 40 installments, the defendant



has not credited the amount paid by the plaintiff. However, in violation of principles of natural justice and ignoring the fact that the plaintiff is ready and willing to settle the whole amount borrowed from the plaintiff towards principal and interest, the defendant is taking steps to take possession of the harvesting machine forcibly. Hence, the prayer in the suit filed by the respondent herein is for permanent injunction restraining the petitioner and their men from taking possession of the harvesting machine bearing Registration No.TN-76-Y-8464.

3.It appears that the Revision Petitioner after getting summons, filed I.A.No.91 of 2012 in O.S.No.258 of 2011, seeking a prayer to refer the case to arbitration. The petition filed under Section 8 r/w. Section 5 of Arbitration and Conciliation Act, 1996 in I.A.No.91 of 2012 was contested by the respondent only on the ground that the plaintiff is not disputing the agreement and that the suit is only for an injunction to prevent the respondent from forcibly dispossessing the defendant. Since the relief sought for by the respondent cannot be granted by the arbitrator under the Arbitration and Conciliation Act, it is contended that the Civil Court alone has got jurisdiction. The petition filed by the petitioner was dismissed by the Trial Court accepting the case of the respondent that the Civil Court alone is competent to grant relief in the suit as the scope of arbitration is only in relation to the dispute that may arise between the parties under the agreement. The Trial Court also relied upon the judgment of the Honourable Supreme Court reported in **2011(3) LW 150**, wherein it has been held that no order referring the dispute to arbitration could be passed in a suit, if the subject matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a Special Court or Tribunal. Since the prayer in the suit is for injunction, the trial Court was of the view that the relief can be granted only by the Civil Court. The reasoning of the learned Judge is perverse and erroneous and on a wrong understanding and interpretation of Section 8 of the Arbitration and Conciliation Act.

4.Section 8 of Arbitration and Conciliation Act reads as follows:

"8.Power to refer parties to arbitration where there is an arbitration agreement.

(1) A judicial authority before which an action is brought in a matter, which is the subject of an arbitration agreement, shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the



original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

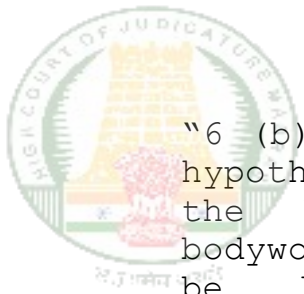
5. Section 8 makes it clear that whenever an action is brought before the Court in respect of a matter, which is the subject matter of an arbitration agreement, any person, who is a party to the arbitration agreement is competent to file a petition to refer the dispute to arbitration. The requirement of Section 8 is considered in several judgments. After referring to Section 8 of the Act, the Honourable Supreme Court in the case of **Branch Manager, Magma Leasing and Finance Limited and another vs. Potluri Madhavilata and another** reported in (2009) 10 SCC 103 has pointed out that the following conditions are to be satisfied to invoke Section 8 of the Arbitration and Conciliation Act.

- "(a) that there exists an arbitration agreement;
- (b) that action has been brought to the court by one party to the arbitration agreement against the other party;
- (c) that the subject-matter of the suit is same as the subject-matter of the arbitration agreement;
- (d) that the other party before he submits his first statement of the substance of the dispute, moves the court for referring the parties to arbitration; and
- (e) that along with the application the other party tenders the original arbitration agreement or duly certified copy thereof."

6. In the same judgment, the scope of Section 8 also has been considered and reiterated as follows:

"18. Section 8 is in the form of legislative command to the court and once the prerequisite conditions as aforesaid are satisfied, the court must refer the parties to arbitration. As a matter of fact, on fulfilment of the conditions of Section 8, no option is left to the Court has to refer the parties to arbitration. There is nothing on record that the prerequisite condition Section 8 are not fully satisfied in the present case. The trial court, in the circumstances, ought to have referred the parties to arbitration as per arbitration Clause 22."

7. In the present case, the learned counsel for the petitioner pointed out that the hypothecation agreement has been filed as a document along with application filed by the petitioner before the lower Court. As per this agreement, the petitioner has been given a right to repossess the asset under Clause 6 (b). The said Clause is extracted for convenience:



"6 (b).REPOSSESSION OF ASSEST: To take possession of the hypothecated assets from wheresoever it may be and remove the hypothecated asset including all accessories, bodywork and fittings and for the said purpose, it shall be lawful for Shriram or Shriram authorized representatives, servants, officers and agents forthwith or at any time and without notice to the Borrower(s) to enter upon the premises, or garage or godown where the hypothecated assets shall be lying or kept and to take possession or recover or receive the same and if necessary to break open such place of storage; Shriram will be within its rights to use a tow-van to carry away the assets. Any damage to the land or buildings caused by removal or the asset shall be the sole responsibility of the Borrower(s)."

8.The learned counsel further relied upon the Clause 15 of the agreement, which provides that all disputes, differences and / or claims arising out of these presents or as to the construction, meaning or effect here of or as to the rights and liabilities of the parties hereunder shall be settled by arbitration to be held in Madurai. The learned counsel further referred to Clause 15 of the agreement, which reads as follows:

"15.ARBITRATION:

All disputes, differences and / or claims arising out of these presents or as to the construction, meaning or effect here of or as to the rights and liabilities of the parties here under shall be settled by arbitration to be held in Madurai in accordance with the provisions of the arbitration and conciliation Act, 1996 or any statutory amendments thereof or any statute enacted for replacement thereof and shall be referred to the sole arbitration of a person to be nominated / appointed by Shriram. In the event of death, refusal, neglect, inability or incapability of the persons so appointed to act as an arbitrator, Shriram may appoint a new arbitrator. The award including the interim award/s of the arbitrator shall be final and binding on all parties concerned. The arbitrator may lay down from time to time the procedure to be followed by him in conducting arbitration proceedings and shall conduct arbitration proceedings in such manner as he considers appropriate. Any proceedings to be initiated in any Court of law in pursuance of this arbitration shall be instituted and held in the court at Tuticorin only."

9.The suit filed by the respondent is against the specific Clause in the agreement namely Clause 6 (b). Therefore, the dispute in the suit is one that falls within the scope of arbitration agreement. The ingredients of Section 8 are also



satisfied. In such circumstances, the contention of the respondent that the Civil Court alone is competent to decide the issue and that the respondent who has not disputed the agreement can maintain the suit de-hors the terms and conditions of the agreement entered into between the petitioner and the respondent is unsustainable. As held by the Hon'ble Supreme Court, the power of Court under Section 8 is limited and the Court has no option except to refer the parties to arbitration in case conditions of Section 8 are fulfilled. As stated already, the conditions of Section 8 in this case are satisfied. Hence, this Court find that the order of Lower Court in dismissing the petition filed by the petitioner is erroneous and illegal and hence, the same is set aside.

10.As a result, this Civil Revision Petition is allowed and the petition filed before the Lower Court in I.A.No.91 of 2012 stands allowed and the Lower Court is directed to refer the dispute for arbitration in terms of Clause 15 of the agreement and as per the certified copy of the agreement that is filed before the Court. No costs. Consequently, connected miscellaneous petition is closed.

11.The Registry is directed to send the records without any delay in case the records have been called for earlier.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To
The District Munsif, Kovilpatti.

COPY TO

The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.Ananth C.Rajesh, Advocate Sr.No.59892

IA/SRM

VB/RSK/SAR4/28/04/2018/5P/5C

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