

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.1094 of 2018
and
C.M.P.Nos.5879 & 11882 of 2018

Suneel H Shah ... Petitioner/Respondent/Plaintiff

-VS-

M/S. Sterling Holiday Resorts Ltd.,
presented by its General Manager Legal,
Mr. Ramesh Shanmugam ... Respondent/Petitioner/
Defendant

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, against fair and decreetal order dated 15.12.2017 passed in I.A.No.8105 of 2017 in O.S.No.2241 of 2017 by the learned Assistant Judge of XVIth Assistant City Civil Court, Chennai in as much as against the find arrived by the Trial Court in page 11 of its Order.

For Petitioner : Mr. T.V.Ramanujam,
learned Senior Counsel
for M/S.R.Thirumalai

For Respondent : Mr. N.C.Ramesh,
learned Senior Counsel
for M/S.Shivakumar and Suresh

ORDER

The Plaintiff is the revision petitioner before this court. The limited prayer sought for in the present civil revision petition is to rectify the two conflicting findings in the order, dated 15.12.2017, made in I.A.No.8105 of 2017 in O.S.No.2241 of 2017, passed by the learned XVI Assistant Judge, City Civil Court Chennai

2.The facts necessary for disposal of the this Civil Revision Petition are as follows:-

2.1. The suit had been filed based on the Vacation Time Share Agreement, dated 30.12.1992, entered into between the petitioner/plaintiff and the respondent/defendant. The said agreement provides an arbitration clause in Clause 31 to the effect that in the event of any dispute arising between the time share holder and the company, the dispute shall be referred to two Arbitrators, each party having the right to nominate one Arbitrator.

2.2. Since there was a dispute with reference to the demand for annual maintenance asked by the company, the

revision petitioner /time share holder had filed said suit, seeking various reliefs, one such relief is for declaration that the demand for annual maintenance is null and void.

2.3.Pending the suit, the company came forward with I.A.No.8105 of 2017, invoking the provisions of Section 8 of the Arbitration and Conciliation Act 1996, seeking for dismissal of the suit and for referring the parties to arbitration. The learned XVI Assistant Judge, City Civil Court, Chennai by his order dated 15.12.2017 has observed that the agreement contained an arbitration clause and the issue and the cause of action raised in the suit are pertaining only to the Vacation Time Share Agreement. Since the issue and cause of action arose in respect of the Vacation Time Share Agent which contained an arbitration clause and the statutory provision of Section 8 would apply in the instant case. However the learned Judge proceeded to dismiss the application on the ground that the relief claimed was to dismiss the suit, which was not possible under Section 8 of the Arbitration and Conciliation Act 1996. Hence, this Civil Revision Petition has been filed seeking the relief as stated above.

3. Mr.T.V.Ramanujam, learned Senior Counsel appeared on behalf of the revision petitioner /plaintiff, would contend that the petitioner is aggrieved by the findings of the court below, while the dismissing the petition. The learned Judge had made an observation that the arbitration clause can be applied to the dispute between the revision petitioner and the respondent and the same may be struck off but had ultimately dismissed the Section 8 application. He would contend that the observation in the order that the dispute is arbitrable and the ultimate dismissal of the application would work to their detriment.

4.Mr. N.C.Ramesh, learned Senior Counsel, appeared on behalf of the respondent has contended that the respondent has filed another application in I.A.No.101 of 2018 under Section 8 of the Arbitration and Conciliation Act, seeking to refer the dispute raised in the suit to arbitration in terms of the Vacation Time Share Agreement, dated 30.12.1992.

5. In view of the said submissions of the learned counsel on either side and considering the limited scope of the relief sought for in this Civil Revision Petition, the following lines in the

impugned order, shall stand deleted:-

"Hence this court consider that the issue and the cause of action arise in the suit are pertaining only to the Vacation Time Share Agreement, since the said Agreement contain as Arbitration Clause, it is an obligation cast upon this court that as per the statutory provisions of Sec.8 of the Arbitration and Conciliation Act, the dispute arise between the parties of the said Agreement is required to be referred for the Arbitration and Conciliation proceedings only."

6.The learned XVI Assistant City Civil Judge, Chennai, shall consider I.A.No.101 of 2018, afresh and pass orders, on merits and in accordance with law, within a period of the three months from the date of receipt of a copy of this order and the parties are at liberty to raise their respective contentions before the court below. With the above lines, the Civil Revision Petition is disposed of and connected Civil Miscellaneous Petitions are closed. No costs.

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Index : Yes/No
Internet : Yes / No
Speaking/non-speaking order

jrs

To

1. The Assistant Judge
XVI Assistant City Civil Court,
Chennai.
2. The General Manager Legal,
M/S. Sterling Holiday Resorts Ltd.,



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