

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P.(PD) No.3990 of 2012 &
M.P.Nos.1 of 2012 &
C.M.P.No.16782 of 2018

1.P.Bagavathy

2.S.Sumathi

3.U.R.Murugasamy

4.P.Ponnusamy

5.P.S.Ganesan

6.K.N.Venkatachalam

7.S.Ponnusamy

... Petitioners

Vs.

1.A.S.Angammal

2.M/S.DLF Limited, rep. by its
i) Chairman, Dr.K.P.Singh,
ii) Vice Chairman, Rajiv Singh,
iii) Managing Director, T.C.Goyal,
iv) Whole time Director, Pia Singh,
v) Group Executive Director – Legal,
Kameshwar Swarup,
Regd. Office/Head Office/head quarters,
shopping mall, 3rd Floor, Arjun Marg Phase-I,
DLF City, Gurgaon – 122 022, Haryana State.

3.M/S.DLF Limited, rep by its
Vice President, Sanjey Roy,
Corporate Office, DLF Centre, Sansad Marg,
New Delhi – 110 001.

4.M/S.DLF Limited, rep.by its
Senior Vice President,
Ramesh K. Swamy,
Southern Regional Office,
Chennai – 4.

5.S.A.Paranthaman ... Respondents

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the fair and final order in I.A.No.1515 of 2011 in O.S.No.172 of 2011 dated 12.04.2012 on the file of Additional District and Sessions Judge, Fast Track Court, No.IV Coimbatore at Tirupur.

For Petitioners : Mr.R.Krishnan

For Respondents : Mr.S.Mukunth, for R1
for M/S.Sarvabhauman
for R2, R3 & R5 – No Appearance
for R4 – Unserved

* * * * *

ORDER

This civil revision petition has been filed as against dismissal of petition filed to reject the suit filed for specific performance on the basis of Memorandum of Understanding entered

into between the parties.

2. Pending suit, the defendants have filed an application under Order 7 Rule 11 of CPC, seeking to reject the plaint mainly on the ground that in the Memorandum of Understanding entered into between the parties, there is a clause for referring the dispute before an Arbitrator. However, without doing so, the instance suit has been filed by the plaintiff and it is not maintainable.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

4. The plaint can be rejected under Order 7 Rule 11 of CPC only if the following parameters are fulfilled and they are

(i) if the plaint does not disclose a cause of action (ii) if the Court fee paid is improper and not adequate and (iii) if the Court before which the plaint has been filled has no territorial or pecuniary jurisdiction. Unless the above parameters are fulfilled, a plaint cannot be rejected by resorting to the provisions under Order 7 Rule 11 of CPC. In the present case, admittedly, there is a clause for arbitration in case, there is any dispute or differences between the parties. The

plaintiff also relies upon the agreement to institute the suit for specific performance and merely there is a clause available for referring the dispute before an Arbitrator, the suit filed for specific performance before the civil Court cannot be rejected. It is open to the parties to file appropriate application under Section 11 of The Arbitration and Conciliation Act, for appointment of an Arbitrator as provided under the Memorandum of Understanding entered into between them to refer the dispute. While so, the plaint filed by the plaintiff before the Court below cannot be rejected. The revision petitioners have to file appropriate application before this Court for referring the matter for Arbitration as per law.

5. Therefore, I do not find any error or infirmity in the order rejecting such application, it is for the revision petitioners to take recourse of law in order to invoke the arbitration clause.

6. With the above observation, the civil revision petition stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

11.04.2018

Index: Yes/No

AT

To

1.The Additional District and Sessions Judge,
Fast Track Court, No.IV Coimbatore at Tirupur.



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N.SATHISH KUMAR,J.

AT



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