

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.811 of 2019
and
C.M.P.No.5322 of 2019

M/s."Convinio Shopping Nine 2 Nine"
rep. by its Partner Mr.Muthu Palaniappan,
Garnet Tower Stilt Area,
Olympia Opaline, OMR,
Navallur,
Chennai – 603 103.

...Petitioner/Plaintiff

Vs

M/s.Olympia Opaline Owners Association
rep. by its authorised signatories,
Srikanth Srinivasan (Vice President),
Sivabaskaran Pachammal (Joint Secretary),
Olympia Opaline, OMR,
Navallur,
Chennai – 603 103.

...Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India against the docket order dated 05.01.2019 in
O.S.No.(SR).6803 of 2018 on the file of the learned District Munsif,
Chengalpet.

For Petitioner : Mr.Rajendra Prasad

ORDER

The above Civil Revision Petition gives rise to a very interesting question of law:

"Whether the Civil Court can act at the threshold in returning/rejecting a Plaint without numbering the suit on the ground that the parties have entered into an Agreement to refer the disputes"

2.In the instant case, the learned District Munsif, Chengalpet, has returned the Plaint filed by the revision petitioner with the following endorsement:

"Plaintiff's counsel present. Heard. On perusal of records, the Plaint document number two is a "Lease Agreement" entered between the plaintiff and defendant on 09.02.2018.

As per the Clause 19 of the above such Lease Agreement, it clearly shows as

"In case of any dispute or difference arising out of or in relation to

this Agreement then the same shall be resolved in and settled with the provision of the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactments thereof.

The place of Arbitration shall be Chennai."

Hence, this Court does not have jurisdiction to entertain this suit."

Hence, this Complaint is returned."

3. In order to analyse the above question, it is necessary for us to consider Section 9 of the Code of Civil Procedure which prescribes the Jurisdiction of the Civil Court. Section 9 of the Code of Civil Procedure reads as follows:

"Section 9 : Courts to try all civil suits unless barred.- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

4. Therefore, from a reading of the above Section, it is clear that any suit of a Civil nature except in respect of those suit which have been specifically barred under the Provisions of some Acts or impliedly barred then the Jurisdiction of the Civil Court gets ousted. A few illustrations are given herein below which is not an exhaustive one which would show acts which have ousted the jurisdiction of the Civil Court.

5. The Rent Control Act ousts the Jurisdiction of Civil Courts insofar as it relates to issues arising under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, like, eviction, fixation of fair rent, demolition and reconstruction, etc.,

6. The Motor Vehicles Act expressly ousts the Jurisdiction of Civil Courts and Section 175 would state that no Civil Court has Jurisdiction to entertain any claim for compensation which has to be adjudicated by the Claims Tribunal. Section 85 of the Waqf Act also expressly bars the Jurisdiction of the Civil Courts in relation to any dispute or question relating to any Waqf property or matters that are to be dealt with under the Act. The SARFAESI Act is a total ouster of the jurisdiction of the Civil Courts.

7. On the contrary, Section 8 of the Arbitration and Conciliation Act as it originally stood under the 1996 Act would read 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."

8. After the Amending Act of 2015, Section 8 of the Act would read as follows:

"Section 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 to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any Judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists."

(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:

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under Sub-section (1), and the said agreement or

certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court].

(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."

9. Therefore, the very Section contemplates referring parties to arbitration on the fulfillment/existence of the following conditions:

"a) that the matter in respect of which an action is instituted is subject to an arbitration agreement.

b) a party to the arbitration agreement or any person claiming through or under him applies to refer the disputes to arbitration not later than the date of submitting his first statement. (The 1996 Act only gave this liberty to a party to the Agreement to so

apply).

c) That the original arbitration agreement or duly certified copy of the same is annexed to the application. (the amending act has relaxed this condition)

10. Therefore, a reading of Section 8 would clearly indicate that the role of the Judicial authority to refer parties to arbitration will arise only upon an application being made by a party to the arbitration agreement or a person claiming under or through him. This window is given only to enable the defendant who is not desirous of having the dispute settled by arbitration to waive his right for having the dispute referred to arbitration. Therefore, from a reading of the above, it is very clear that a Judicial authority cannot *suo moto* return/reject a suit on the ground that the parties to the suit have agreed to refer all their disputes to arbitration at the threshold when the case is filed. Therefore, under the Arbitration and Conciliation Act, 1996, there is no total ouster of the jurisdiction of the Civil Courts unlike in the cases arising under the SARFAESI Act, Motor Vehicles Act, etc. The ouster is only by choice of the defending party.

11.The 2015 Amendment Act brought about the following changes to Section 8 of the Act:

(a)The word 'Party' is expanded to include persons claiming 'through' or 'under' them;

(b)The Judicial authority shall examine whether a valid arbitration agreement exists and such examination will only be a prima facie one;

(c)The cut off date for application under Section 8 of the Act shall mean the 'date of submitting the 1st statement on the substance of the dispute and the proviso gives liberty to the party who is not in possession of the Original or certified copy of the Agreement on account of the other retaining it, they can nevertheless apply under Section 8(1) and demand production from the other party.

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12.However, the Amending Act retains the requirement of parties being referred to Arbitration only upon an application being made by the respondent/defendant, who is a party to the agreement or any person claiming through or under him.

13.The above conclusion has been arrived at by this Court on a reading of the Section and relying upon the following Judgments:

(a)In **2000 (4) SCC 537 [P.Anand Gajapathi Raju and others v. P.V.G.Raju (died) and others]**, the Hon'ble Supreme Court would observe as follows:

"The conditions which are required to be satisfied under Sub Sections (1) and (2) of Section 8 before the Court can exercise its powers are;

(1)There is an arbitration agreement;

(2)a party to the agreement brings an action in the Court against the other party;

(3)Subject matter of the action is the same as the subject matter of arbitration;

(4)The other party moves the Court for referring the parties to arbitration before it submits his first statement or the substance of the dispute"

(b)In **2018 SCC ONLINE SC 487 [Ameet Lalchand Shah and others v. Rishabh Enterprises and another]**, the Hon'ble

"29. Principally four amendments to Section 8(1) have been introduced by the 2015 Amendments –

(i) **The relevant 'party' that is entitled to apply seeking reference to arbitration has been clarified/amplified to include persons claiming 'through or under' such party to the arbitration Agreement;**

(ii) scope of examination by the judicial authority is restricted to finding whether 'no valid arbitration agreement exists' and the nature of examination by the judicial authority is clarified to be on a "prima facie" basis;

(iii) The cut off date by which an application under Section 8 is to be presented has been defined to mean "the date of" submitting the first statement on the substance of the dispute; and

(iv) the amendments as expressed to apply notwithstanding any prior judicial precedent".

(c)In **2000 (2) CTC 74 [Sugal and Damani Finlease Limited v. V.P.Subramani Reddy]**, this Court has held that the provisions of Section 8 is mandatory upon the conditions adumbrated therein being fulfilled.

11.In the result, the learned District Munsif, Chengalpet, is directed to number O.S.No.(SR).6803 of 2018 forthwith on the revision petitioner resubmitting the returned papers along with the order copy. The original returned Plaint has been handed over to the counsel for the petitioner who has made an endorsement of such receipt on the bundle.

The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

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04.03.2019

Index : Yes/No

Internet : Yes/No

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Note to office:

Issue order copy today itself.

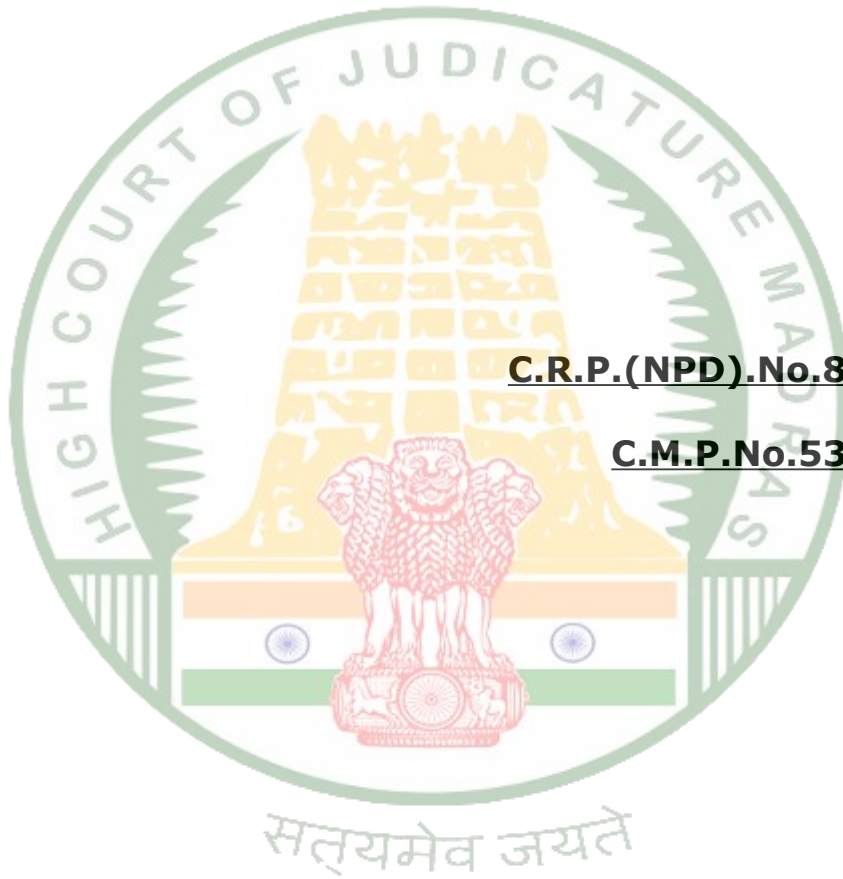
To

The District Munsif,
Chengalpet.

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P.T. ASHA, J,

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