

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 30.04.2019****CORAM:****THE HONOURABLE MS.JUSTICE P.T.ASHA****C.R.P.(PD).No.1699 of 2019**

D.Devaraj

...Petitioner

Vs

1.Rt.Rev.Timothy Ravinder,
Moderator's Commissary,
CSI Diocese of Vellore,
1/3, Anna Salai, Vellore 632 001.

2.Rev.N.Sampath Sadhanandam,
Secretary,
CSI Dioces of Vellore,
1/3, Anna Salai, Vellore 632 001.

3.T.Sunderraj,
Treasurer,
CSI Diocese of Vellore,
1/3, Anna Salai, Vellore 632 001.

4.The Director,
CSI Board for Child Care,
No.26, Lavelle Road,
Bengaluru 560 001.

5.The Branch Manager,
Indian Bank, Katpadi Branch,
Tharapadavedu, Katpadi

...Respondents

PRAYER Civil Revision Petitions filed under Article 227 of the Constitution of India as against the proceedings in O.S. S.R.1079 of 2019, on the file of the District Munsif Court, Katpadi.

For Petitioner : Mr.S.Santhan

ORDER

The above Civil Revision Petition has been filed as against the proceedings in O.S. S.R.1079 of 2019, on the file of the District Munsif Court, Katpadi.

2.The Civil Revision Petition has been filed challenging the return/rejection of the suit in O.S. S.R.1079 of 2019 on the ground that the plaintiff has an alternative remedy in the form of arbitration as the Bye-laws of the Diocese provide in Article XIV. This Court, in a similar situation in the decision reported in 2019 (2) CTC 854, has held as follows:

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.

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"

(1) In 2000 (4) SCC 537 (P.Anand Gajapathi Raju and others Vs.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 Supreme court held as follows:

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 an 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 Demani Finlease Limited Vs. V.P.Subramani Reddy], this Court has held that the provisions of Section 8 is mandatory upon the conditions adumbrated therein being fulfilled.

3. In view of the above, the learned District Munsif Judge, Katpadi is directed to number the suit. The Original Plaint is returned to the petitioner. The learned counsel appearing for the petitioner has also made necessary endorsement to that effect.

4. Accordingly, the Civil Revision Petition is allowed. No costs.

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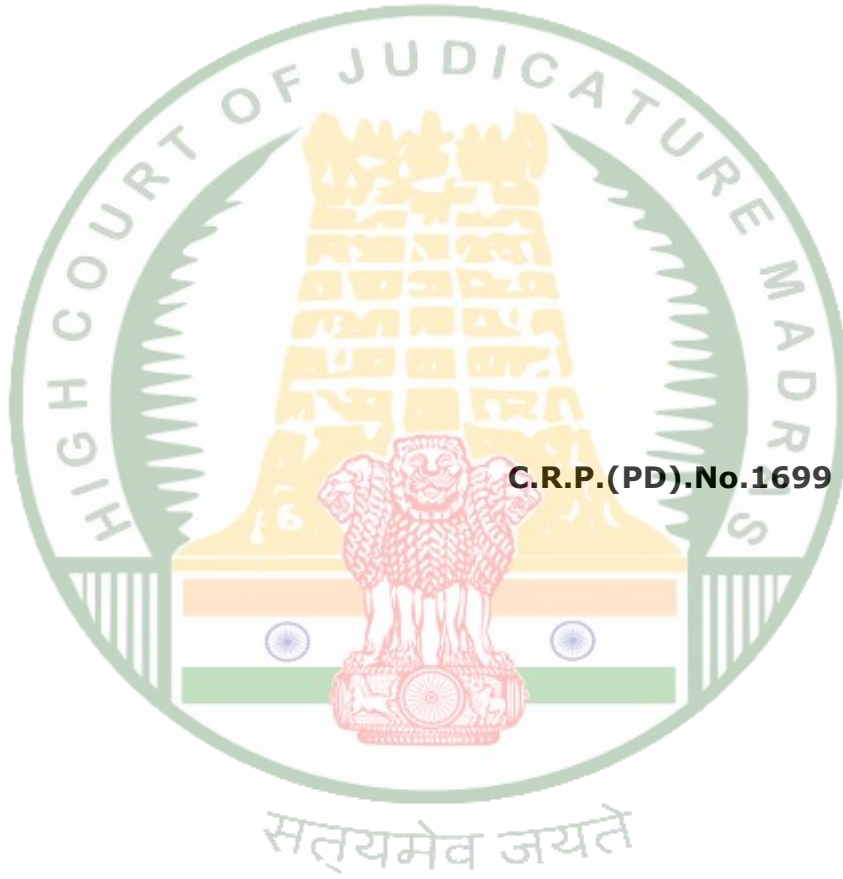
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To

1. The District Munsif Court, Katpadi.

P.T.ASHA, J

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