

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.2134 of 2014  
and  
M.P. Nos.1, 2 & 3 of 2014

S.Srinivasan

... Petitioner

Vs

1.M.S.Constructions  
Rep. by its Proprietor,  
S.Sivakumar

2.S.Ravi

... Respondents

(2<sup>nd</sup> Respondent is not a  
necessary party in the above  
CRP and no relief is claimed  
against him)

**Prayer:**Civil Revision Petition filed under Article 227 of Constitution of India against the fair and final order dated 30.04.2014 made in I.A.No.2031 of 2013 in O.S.No.849 of 2013 on the file of the Principal District Munsif, Alandur.

For Petitioner : Mr.A.E.Ravi Chandran

For Respondent 1 : Mr.V.Raghavachari

Respondent 2-Given up

**ORDER**

The instant Civil Revision Petition has been filed challenging the order dated 30.04.2014 passed by the learned Principal District Munsif, Alandur in I.A.No.2031 of 2013 in O.S.No.849 of 2013.

**Brief facts leading to the filing of the instant revision:**

2. The petitioner is the first defendant in the suit O.S.No.849 of 2013 filed by the first respondent against the petitioner as well as the second respondent seeking for the following reliefs:

“ i) To pass a decree of Permanent injunction restraining the Defendants, their men or agents or servants or any one claiming through or under them in any manner interfering or forcible eviction of the plaintiff from the suit schedule property without following due process of law without settling the dues to the plaintiff.

ii) To pass a decree of Permanent injunction restraining the Defendants or their men or agents or servants or any one claiming through or under them in

any manner engaging or entering into any contract with any third party to complete the construction work without settling the dues to the plaintiff, except under due process of law.”

3. On receipt of the suit summons in O.S.No.849 of 2013, the petitioner filed I.A.No.2031 of 2013 in O.S.No.849 of 2013 under section 8 of the Arbitration and Conciliation Act, 1996 seeking for a direction from the Court to refer the dispute to the arbitration as per the Supplemental Agreement dated 23.08.2012 between the petitioner and the first respondent which contains the arbitration clause.

4. A counter affidavit was also filed by the first respondent/plaintiff in I.A.No.2031 of 2013 wherein the first respondent/plaintiff has denied the execution of supplemental agreement dated 23.08.2012 which is the arbitration agreement and has also stated that he has already filed an application under Section 45 of the Indian Evidence Act read with Order XXVI Rule 9 & 10 of CPC read with Section 151 of CPC to appoint an Advocate Commissioner to take

the alleged original supplemental agreement dated 23.08.2012 along with the admitted signature of the S.Sivakumar, proprietor of the first respondent, company and to submit the same to the Forensic Department and to get the report from the forensic department with regard to veracity, period of execution of the original supplemental agreement dated 23.08.2012 and to compare with the admitted signatures and to file the same before the Court for proper adjudication.

5. By order dated 30.04.2014, the Trial Court dismissed I.A.No.2031 of 2013 in O.S.No.849 of 2013 on the ground that since serious allegations of fraud and fabrication of document has been levelled by the first respondent/plaintiff against the petitioner/first defendant and further, the petitioner/first defendant having subjected to the jurisdiction of the Civil Court and having not filed a counter in the application filed by the first respondent/plaintiff under Section 45 of the Indian Evidence Act, in I.A.No.268 of 2014, the petitioner/first defendant cannot seek to refer the dispute to the arbitration, that too, after filing of I.A.No.2032 of 2013 under Section 151 of CPC to suspend the interim injunction granted in the suit. Aggrieved by the dismissal of I.A.No.2031

of 2013, the instant revision has been filed by the petitioner/first defendant under Article 227 of the Constitution of India.

6. Heard A.E.Ravi Chandran, learned counsel for the petitioner and Mr.V.Raghavachari, learned senior counsel for the first respondent.

**Discussion:**

7. The petitioner/first defendant is the owner of the land and admittedly, he had engaged services of the first respondent/plaintiff who is a building contractor for doing construction work in his property. Since there arose disputes between the parties, the first respondent/plaintiff filed the suit O.S.No.849 of 2013 seeking for the following reliefs against the petitioner and the second respondent in this revision:

“ i) To pass a decree of Permanent injunction restraining the Defendants, their men or agents or servants or any one claiming through or under them in any manner interfering or forcible eviction of the plaintiff from the suit schedule property without following due process of law without settling the dues to

the plaintiff.

ii) To pass a decree of Permanent injunction restraining the Defendants or their men or agents or servants or any one claiming through or under them in any manner engaging or entering into any contract with any third party to complete the construction work without settling the dues to the plaintiff, except under due process of law.”

8. On receipt of the suit summons, the petitioner filed I.A.No.2031 of 2013 in O.S.No.849 of 2013 under Section 8 of the Arbitration and Conciliation Act 1996 seeking for a direction to refer the dispute to arbitration in view of the arbitration clause contained under the supplemental agreement dated 23.08.2012 between the parties. The first respondent/plaintiff has disputed the said supplemental agreement dated 23.08.2012 on the ground that the said agreement is a fabricated document created by the petitioner/first defendant. Even before filing of the counter in I.A.No.2031 of 2013, the first respondent/plaintiff has filed an application under Section 45 of the Indian Evidence Act, read

with Order XXVI Rule 9 and 10 read with Section 151 of CPC for appointment of Advocate Commissioner to take the alleged Supplemental Agreement dated 23.08.2012 along with the admitted signature of S.Sivakumar, proprietor of the first respondent, company and to submit the same to the forensic department and to get the report from the forensic department with regard to the veracity, period of execution of the alleged Supplemental agreement dated 23.08.2012 and to compare with the admitted signatures and to file the same before this Court for appropriate adjudication.

9. The Trial Court after perusing the affidavit and counter affidavit filed in support of I.A.No.2031 of 2013 filed by the petitioner/first defendant seeking a reference to the arbitration, dismissed I.A.No.2031 of 2013 on the ground that serious allegations of fraud and fabrication have been alleged against the petitioner/first defendant. Further, the Trial Court in the impugned Order has observed that the petitioner/first defendant having subjected himself to the jurisdiction of the Civil Court and without filing any counter in the petition I.A.No.268 of 2014 filed under Section 45 of the Indian Evidence

Act cannot seek reference to arbitration, that too, when he has already filed an application under Section 151 of CPC to suspend the injunction granted in the suit.

10. After examining the impugned order, this Court is of the considered view that the Trial Court ought not to have made an observation that the petitioner/first defendant has subjected to the jurisdiction of the Civil Court while dismissing the application filed by the petitioner/first defendant seeking for reference to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996.

11. As seen from the records, the petitioner/first defendant has not subjected himself to the jurisdiction, but has only filed vakalat engaging a counsel and thereafter, has filed an application I.A.No.2031 of 2013 under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the dispute to arbitration and has also sought for suspension of injunction granted earlier in the suit in I.A..No.2032 of 2013, on the ground that there is an arbitration clause and hence, the Civil suit is not maintainable. This cannot be construed that the petitioner/first

defendant has subjected himself to the jurisdiction of the Civil Suit, but the Trial Court under impugned order has erroneously observed that the petitioner/first defendant has subjected himself to the jurisdiction of the civil suit.

12. However, considering the fact that the first respondent/plaintiff has filed application under Section 45 of the Indian Evidence Act seeking for an appointment of an expert with regard to the disputed and undisputed signature of the first respondent/plaintiff, the Trial Court was right in dismissing the application I.A.No.2031 of 2013 filed by the petitioner/first respondent seeking reference to arbitration under Section 8 of Arbitration and Conciliation Act, 1996 as the said application was premature, as an application under Section 45 of Indian Evidence Act filed by the first respondent/plaintiff is still pending adjudication on the file of the Trial Court. But the reasons given by the Trial Court for dismissal of I.A.No.2031 of 2013 is erroneous.

13. Only on the ground that the application being premature, the Trial Court ought to have dismissed the application, but the Trial

Court dismissed the application on the ground that the petitioner/first defendant has subjected himself to the jurisdiction of the civil court which is not so, as seen from the suit records. Since the application under Section 45 of Indian Evidence Act has been filed by the first respondent/plaintiff in I.A.No.268 of 2014, the application under Section 8 of the Arbitration and Conciliation Act, 1996 cannot be heard and decided, unless and until, the said application under Section 45 of Indian Evidence Act is disposed of by the Trial Court. Therefore, the Trial Court will have to first decide I.A.No.268 of 2014 filed by the first respondent/plaintiff under Section 45 of Indian Evidence Act and depending upon the result of the said application, the Trial Court can decide whether to entertain I.A.No.2031 of 2013 filed by the petitioner/first defendant under Section 8 of the Arbitration and Conciliation Act, 1996. Considering the long pendency of the suit, expeditious disposal will have to be given.

#### Conclusion:

14. For the foregoing reasons, the impugned order dated 30.04.2014 passed in I.A.No.2031 of 2013 in O.S.No.849 of 2013 on the

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file of the learned Principal District Munsif, Alandur is hereby set aside and the matter is remanded back to the Trial Court. This Court directs the Trial Court to dispose of I.A.No.268 of 2014 filed by the first respondent/plaintiff under Section 45 of the Indian Evidence Act within a period of one month from the date of receipt of a copy of this order and depending upon the result of I.A.No.268 of 2014, the Trial Court shall decide as to whether to entertain I.A.No.2031 of 2013 filed by the petitioner/first defendant under Section 8 of the Arbitration and Conciliation Act, 1996. Once the Trial Court has decided to entertain I.A.No.2031 of 2013, the same shall be decided within a period of three months thereafter.

15. With the aforesaid directions, the civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/ No  
Speaking Order/Non-speaking Order  
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ABDUL QUDDHOSE, J.

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To  
The Principal District Munsif, Alandur.



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