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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 22.02.2019

DELIVERED ON : 12.03.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.252 of 2015

and

M.P. (MD) No.1 of 2015

O.S.Mohammed .. Petitioner/Petitioner/Defendant No.1
Vs.

1.M.H.Thoulath Beevi
Represented through
her Power Agent M.H.Mumtaj

2.M.H.Mumtaj

.. 1st & 2nd Respondents/
1st & 2nd Respondents/Plaintiff

3.K.U.Abdul Kareem Mubarak

..3rd Respondent/3rd Respondent/
2nd Defendant

Prayer : This Civil revision petition is filed under Article 227 of Indian Constitution, to set aside the order passed in I.A.No.1225 of 2013 in O.S.No.103 of 2013 dated 05.01.2015 on the file of the Additional District Munsif Court, Tenkasi.

For Petitioner	: Mr.N.Ganagasapapathy
For Respondents 1 and 2	: No Appearance
For 3 rd Respondent	: Mr.M.Saravanan

ORDER

Heard Mr.N.Ganagasapapathy, learned counsel appearing for the petitioner and Mr.M.Saravanan, learned counsel appearing for the respondents 1 and 2.

2.This petition has been filed against the order passed in I.A.No.1225 of 2013 in O.S.No.103 of 2013 dated 05.01.2015 on the file of the Additional District Munsif Court, Tenkasi.

3.The petitioner is the first defendant, the respondents 1 and 2 are the plaintiffs and the third respondent is the second defendant in the suit. The respondents 1 and 2 have filed a suit in O.S.No.103 of 2013 before the learned Additional District Munsif, Tenkasi to declare the suit properties are the properties of the partnership Firm and its partners and for an order of injunction. In the suit, the petitioner filed a petition in I.A.No.1225 of 2013 under Order 7 Rule 11 of C.P.C., and Order 14 Rule 2 of C.P.C., to reject the plaint. The trial Court has dismissed the petition. In the order of dismissal, the petitioner has filed this petition.



4. On the side of the petitioner, it is stated that the suit is filed due to a dispute between the partners of the Firm and there is an arbitration clause in the deed but the suit was filed in an individual capacity. When the remedy is to approach the Arbitrator, the plaintiffs have filed this suit. After one year from the date of filing of the written statement, the plaintiffs filed another suit in the name of the Firm in O.S.No.318 of 2014 and that suit was dismissed for default. The property belonged to the defendants in their individual capacity and the suit is to be rejected.

5. In support of his contention, the Judgment passed by this Court in the case of **M. Subramanian v. ADS Educational Trust, By its Managing Trustee T.S. Raja Trichy & Others** reported in **CDJ 2013 MHC 3030** is cited.

6. On the side of the third respondent, it is stated that already issues are framed in this case and the case is pending due to the stay order in this petition. The petitioner has not taken any steps for arbitration and that he has only approached this Court and has obtained a stay order. As per the partnership deed column no.19, any dispute arising among partners shall be referred to arbitrators of not more than five and not less than three and their award shall be binding on the partners. The petitioner has filed a petition to reject the plaint in this aspect. Column 19 of the partnership deed states as follows:

"any dispute arising among partners shall be referred to arbitrators of not more than five and not less than three and their award shall be binding on the partners"

7. In the written statement in paragraph no.5, the petitioner has denied that the suit properties are not the properties of M/s. Shah Crusters, Partnership Firm. Any request for referring a matter to arbitration must be made prior to the first statement on the substance of the dispute. The petitioner has already filed his written statement in the case and as per Section 8(1) of the Arbitration Act, the petitioner cannot raise this ground after the filing of the written statement.

8. In the above circumstances, this Civil Revision Petition is dismissed by confirming the order passed in I.A.No.1225 of 2013 in O.S.No.103 of 2013 dated 05.01.2015 on the file of the Additional District Munsif Court, Tenkasi. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //



1. The Additional District Munsif, Tenkasi.

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+1CC TO MR.R.SUBRAMANIAN, Advocate Sr. No. 53479

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12.03.2019

TR (02.04.2019) 3P 3C