

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.No.24 of 2010
and M.P.No.1 of 2010

Dharmsee Parpia
A Partnership Firm represented
By its Partner & Duly Authorised Signatory,
Mr.Aqeel Parpia,
'Al Hamra', No.II (Old No.1),
Kothari Road, Nungambakkam,
Chennai - 600 034. ...Petitioner

Vs

M/s.J.K.Leathers a Partnership firm
represented by its partner Mr.Ehtesham,
'Marble House',
No.118/7, Vepery High Road,
Periampet, Chennai - 600 003 ... Respondent

Prayer: Civil Revision Petition filed under Section 115 of the
Code of Civil Procedure against the order dated 18.08.2008 on
the file of the learned V Judge, Small Causes Court, Chennai.

For Petitioner : Mr.R.Sunil Kumar

For Respondent : No Appearance

J U D G M E N T

This Civil Revision Petition has been filed against the
order made in N.T.A.No.22 of 2005, dated 18.08.2008 on the file
of the learned V Judge, Small Causes Court, Chennai.

2. Originally, the petitioner herein filed the suit in
O.S.No.10 of 2005 for recovery of a sum of Rs.8,405/- from the
respondent/defendant. The respondent filed the written
statement and thereafter the Court below framed the issues and

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examined the witnesses. After examining the witnesses, the trial Court passed decree in favour of the revision petitioner. Against the said order and decree passed by the trial Court the respondent herein preferred an appeal in N.T.A.No. 22 of 2005. The Court below after hearing both the parties allowed the appeal on the ground that there is an arbitration clause between the parties and the said document has been marked as Ex.P4. The Court also extracted Arbitration Clause in para 12 of its order, which reads as follows:

"In the case of hand, the whole case center around and based on Ex.A.1, plaintiff's sale confirmed letter issued to the defendant on 03.03.2004. A close perusal of Ex.A.1 the plaintiff clearly stated that

"Any dispute out of this contract shall be settled by agreement if possible failing, which it shall referred to arbitration at destination according to the custom of the trade, but such prior negotiations to be without prejudice to either buyers or sellers. If either party gives notices of arbitration, arbitration to be appointed within 14 days of such notice. Should either party failed to appoint an arbitrator, arbitrators, shall be appointed by the chamber of Commerce at destination. The decision of the arbitrators shall be final and binding on all concerned."

Therefore, the Appellate Court on its suo motto referred this clause and allowed the appeal directing the revision petitioner herein to file claim before the Arbitration.

3. The learned counsel appearing for the revision petitioner would refer Section 8(1) of the Arbitration and Conciliation Act, 1996, which reads as follows:

"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."

By referring the above section, the learned counsel submitted that if at all there is any objection to raise on the ground of availability of arbitration clause, the respondent herein should have raised all the issues before the trial court before filing written statement in the trial court. However, in the present case, admittedly, the defendant has not filed any application

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before the trial court to refer the matter to the arbitration by referring arbitration clause as referred under Section 8(1) of the Arbitration and Conciliation Act, 1996, but he filed his written statement and decree also passed by the trial court. Therefore, after fully perusing the trail and the argument, the trial court passed the judgment and decree. Having fully participated in the trial after filling the written statement there is no locus standi to raise any plea before the appellate court or even the appellate court cannot delegate the party to go before the arbitration. Therefore, he contended that the order passed by the trial court is liable to be set aside.

4. Heard the learned counsel for the petitioner and perused the material available on record.

5. Upon perusal of the Section 8(1) of the Act, it is clearly seen that if any party intend to refer the matter before the arbitration, in the event of filing any suit, the parties intent to refer the matter before the arbitration, shall file the application before the trial court before filing his first statement. In the present case, without filing any such application the respondent fully participated in the trial after filing the written statement. The court conducted the full fledged trial, upon hearing the argument, passed the final decree in favour of the revision petitioner.

6. When such being the position, the respondent herein preferred an appeal before the appellate court against the order of the trial court. Without having any plea on the part of the respondent herein, the appellate court duly on its own delegated the parties to the arbitration to decide the present issue. The appellate court does not have any power to let the parties to go before the arbitration in an appeal filed against the subsequent decree of the trial court.

7. The appellate court after hearing both the parties passed a final decree. No parties have ever filed the application before the trial court to refer such dispute before the arbitration as agreed between the parties. On the contrary, the defendant filed the written statement and participated in the trial. The trial court after hearing both the parties passed the judgment and decree. Any person intent to refer the matter before arbitration in terms of Section 8(1) of the Arbitration and Conciliation Act, 1996, such party should file an application. Once the written statement is filed, the right of the defendant to refer the matter before the arbitration in terms of Section 8(1) of the Arbitration and Conciliation Act, 1996 shall cease to exist.

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8. When that being the position, the Court below in an appeal filed against the contesting judgment and decree, has certainly no right to refer the matter to the arbitration. The order passed by the court below is totally contrary to the provision of Section 8(1) of Arbitration and Conciliation Act, 1996. Therefore, this Court inclined to set aside the order passed by the Court below and confirms the judgment and decree for a sum of Rs.8,405/- passed by the trial court.

9. Accordingly, with the above observations the civil revision petition is allowed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The V Judge, Small Causes Court,
Chennai.

2.IX Judge, Court of Small Causes,
Chennai.

Copy to:
The Section Officer,
VR Section, High Court,
Madras-104.

+lcc to Mr.R.Sunilkumar, Advocate SR.7913

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