

CRP. NPD.Nos.1536 &1537 of 2018
and CMP No.8210 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 07.08.2020	Delivered on 19.08.2020
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. NPD.Nos.1536 &1537 of 2018
and CMP No.8210 of 2018 in CRP No.1536 of 2018

Josephine Ancilda

.. Petitioner in both the petitions

Vs.

1. HDFC Bank Limited

Rep. By its Branch Manager,
No.1, Camp Road, Selaiyur,
Chennai 600 073.

2. Chairman

Airline Allied Services Limited,
AASL Integrated Service Complex,
Air India Operations Building,
Meenambakkam, Chennai 600 027.

.. Respondents in both the petitions

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PRAYERS: Civil Revision Petition filed under Article 227 of the Constitution
of India, praying

(i) CRP NPD No.1536/18: to set aside the order of the Sub Judge, Tambaram,

dated 21.06.2017, passed in I.A. No.1110 of 2012 in O.S.No.236 of 2012.

(ii) CRP NPD No.1537/2018: to set aside the Judgment and decree of the Sub Judge, Tambaram, dated 06.09.2017, passed in OS. No.236 of 2012.

For Petitioner : Mr. SP. Chockalingam
(in both the petitions)

For Respondents : Mr. N.G.R. Prasad for R2
(in both the petitions)

No appearance for R1

COMMON ORDER

This matter is taken up for hearing through Video-Conferencing.

The plaintiff in OS No.236 of 2012, a suit for bare injunction restraining the first defendant/first respondent from making payments to the second defendant/second respondent in respect of the Bank Guarantee given on behalf of the plaintiff, has come up with these Civil Revision Petitions, aggrieved by an order of the learned Sub Judge, Tambaram, made in IA No.1110 of 2012 accepting the contention of the second defendant/second respondent that the said Court has no territorial jurisdiction to try the suit and the consequential dismissal of the suit.

2. The plaintiff had been employed by the second defendant as a Commercial Pilot under a Fixed Term Employment Agreement (FETA) dated 14.01.2011. The said agreement required the plaintiff to serve for a specific period of 5 years. The plaintiff had also as per the terms of the agreement furnished a Bank Guarantee for a sum of Rs.6,50,000/- on 26.04.2010, apart from executing a indemnity bond cum service undertaking. The plaintiff tendered her resignation on 05.08.2012 and the same was accepted by the second respondent without prejudice to its rights under the Fixed Term Employment Agreement dated 14.01.20211. When the second respondent sought to invoke the Bank guarantee on the ground that the plaintiff has committed breach of the Fixed Term Employment Agreement, the plaintiff filed the above suit seeking a permanent injunction.

3. Upon service of notice, the second defendant/second respondent viz., the employer filed an application in IA No.1110 of 2012 seeking a decision on the preliminary issue as to the jurisdiction of the Court to entertain the suit and a reference to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. It was the primary contention of the second defendant/second

respondent that the Fixed Term Employment Agreement dated 14.01.2011 contains an Arbitration Clause and therefore, the suit cannot be proceeded with. It further pleaded that the parties have agreed to restrict the jurisdiction of Courts regarding disputes under the Fixed Term Employment Agreement to Courts at Delhi, and therefore, the Sub Court, Tambaram, lacks territorial jurisdiction to try the suit. The second respondent employer relied upon Clause 16 of the Fixed Term Employment Agreement in support of its contentions.

4. The said application was resisted by the plaintiff contending that since she had already been relieved from employment, the Fixed Term Employment Agreement terminates and therefore, any Clause in the Fixed Term Employment Agreement will not bind her. It was her further contention that there was breach on the part of the employer. It was because of the said breach, she was forced to resign and hence she is not guilty of breach of the Fixed Term Employment Agreement. She would further claim that the parties cannot by agreement invest jurisdiction in one Court and since the branch office of the second defendant employer is situated within the jurisdiction of the Sub Court, Tambaram, and the first defendant Bank is also situated within the jurisdiction of the Sub Court, Tambaram, the Sub Court, Tambaram will have jurisdiction to

try the suit.

5. The learned Subordinate Judge upon a consideration of the scope of Clause 16 of the Fixed Term Employment Agreement concluded that both the Courts at Delhi and the Sub Court, Tambaram, will have jurisdiction over the subject matter. She also found that Clause 16 of the agreement specifically restricts the jurisdiction only to the Courts at Delhi. Applying the principle that the parties are at liberty to agree upon to invest the jurisdiction with a particular Court to the exclusion of others when more than one Court would have jurisdiction, the learned Subordinate Judge upheld the objection on the ground of territorial jurisdiction. She also went one step ahead and concluded that the Arbitration Clause would apply and the Civil Court cannot proceed with the suit. On the above conclusions, the Subordinate Judge allowed the application in IA No.1110 of 2012 and consequently dismissed the suit, hence the Revisions.

6. I have heard Mr.SP. Chockalingam, learned counsel appearing for the petitioner in both the petitions and Mr.N.G.R.Prasad, learned Counsel appearing for the second respondent/Management. The first respondent though

though served is not appearing either in person or through counsel duly instructed.

7. Mr.SP. Chockalingam, learned counsel appearing for the petitioner would vehemently contend that there was no application of mind on the part of the learned Subordinate Judge, inasmuch as, the suit is shown to be pending even after the application in IA No.1110 of 2012 had been allowed and a judgment and decree had been passed in the suit on 06.09.2017 itself. He would also invite my attention to the print outs from the e-Court website in support of his contention.

8. No doubt, from the print outs of the e-Court website, it is seen that the suit is shown to be pending even after 06.09.2017. But I have no doubt in my mind that it is only a mistake and that subsequent mistake cannot afford a touch stone for testing the correctness of the order dated 06.09.2017. The Civil Revision Petition in CRP No.1536 of 2018 is against the order dated 06.09.2017 and it is the correctness of the said order that has to be tested by this Court while deciding the Revision Petitions. Subsequent mistake, in my considered opinion, cannot afford a ground to overturn an order that has been

passed earlier that too in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

9. Arguing on merits, Mr. SP. Chockalingam, learned counsel appearing for the petitioner would submit that the Clause 16 of the Fixed Term Employment Agreement will not apply, inasmuch as, the relationship between the parties as that of an employer and employee has been terminated upon the resignation of the petitioner and its acceptance by the respondent. The learned counsel would further contend that the Clause in the agreement restricting the jurisdiction to the Courts at Delhi will only apply for Arbitration proceedings and not for exercise of original jurisdiction by a Civil Court. He would also contend that this being a suit for a permanent injunction restraining invocation of a Bank Guarantee, it is only the terms of the Bank Guarantee that should be looked into and not the original Fixed Term Employment Agreement.

10. Contending contra, Mr.N.G.R.Prasad, learned Senior Counsel appearing for the second respondent/Management, would submit that the resignation of the employee and its acceptance, though would result in termination of the Employer-Employee relationship, it will not have the

consequence of rendering it inapplicable to future disputes between the parties.

The present dispute viz., the dispute relating to invocation of Bank Guarantee is essentially one that stems out of the Fixed Term Employment Agreement and therefore, according to Mr.N.G.R.Prasad, learned Senior Counsel it is the Fixed Term Employment Agreement that would govern the dispute. He would also further submit that it is open to the parties to restrict the jurisdiction to one Court when two or more Courts would have jurisdiction and the petitioner/plaintiff who is a literate commercial Pilot has agreed to limit the jurisdiction to Courts at Delhi and she cannot now contend that the Courts at Tambaram would also have jurisdiction. Arguing further by the learned Senior Counsel would submit that Section 8 of the Arbitration and Conciliation Act, would also apply and therefore, the suit will have to be terminated and the parties have to be referred to Arbitration.

11. I have considered the rival submissions.

12. I shall first consider the question of territorial jurisdiction as the decision thereon would have a bearing on the jurisdiction of the Court to entertain the application under Section 8 of the Arbitration and Conciliation

Act, 1996. It is settled law that parties can restrict the jurisdiction to one of the Courts, if more than one Court would have jurisdiction. The Hon'ble Supreme Court in ***A.V.M.Sales Corporation v. Anuradha Chemicals Pvt. Ltd.***, reported in **2012 (1) CTC 867**, has held that it is open to the parties to restrict the jurisdiction to one Court, if more than one Court would have jurisdiction. In doing so, the Hon'ble Supreme Court had followed the earlier judgment in ***A.B.C.Laminart Pvt Ltd. V. A.P.Agencies, Salem***, reported in **AIR 1989 SC 1239**, wherein it was held as follows:

"Thus it is now a settled principle that where there may be two or more competent Courts which can entertain a suit consequent upon a part of the cause of action having arisen there with in, if the parties to the contract agreed to vest jurisdiction in one such Court to try the dispute which might arise as between themselves, the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague, it is not hit by Sections 23 and 28 of the Contract Act and cannot also be understood as parties contracting against the statute."

13. We have to examine the contentions of the parties on the basis of the law declared by the Hon'ble Supreme Court. Clause 16(i) of the Fixed Term Employment Agreement, reads as follows:

“16. ARBITRATION:

(i) Any dispute between the parties shall be finally settled by arbitration under the Indian Arbitration and conciliation Act, 1996, the arbitrators shall also determine and make an award as to the costs of the arbitration proceedings. The outcome of the Arbitration shall be binding upon all parties involved. The Arbitration proceedings shall be held at New Delhi. The parties agree to submit to the exclusive jurisdiction of the Courts at New Delhi in connection with any matters, which might arise out of this Agreement.”

A bare reading of the above Clause clearly demonstrates that the parties had agreed to restrict the jurisdiction to the Courts at Delhi. Though the learned counsel appearing for the petitioner would attempt to restrict the scope of the restraint only to Arbitration proceedings, I do not think such an interpretation would be in tune with the intention of the parties and the language of the instrument. Even though the Clause relating to restriction of jurisdiction is combined with the Arbitration Clause, it cannot be read in the manner suggested by the learned counsel appearing for the petitioner, so as to reduce its scope and applicability only to the Arbitration proceedings and not to other legal proceedings. The words ***“in connection with any matters, which might arise out of this agreement,”*** are definitely wider in scope so as to include the other legal proceedings also. I am therefore unable to agree with the contention of the learned counsel for the petitioner in this regard. ***(Emphasis supplied)***

14. The next contention of the learned counsel for the petitioner is that the restrictions in the Fixed Term Employment Agreement cannot be invoked, inasmuch as, the contract of the employment has come to an end, upon the acceptance of the resignation. This again is a result of a wrong understanding of

the scope of the Fixed Term Employment Agreement and the contents there of. The fact that the petitioner's resignation has been accepted by the second respondent will terminate the employment, but the termination of the employer-employee relationship by itself will not render the Fixed Term Employment Agreement otiose.

15. Any dispute that stems out of the employment even after its termination would still be governed by the provisions of the agreement. If the restricted interpretation of the learned counsel for the petitioner is to be accepted, the parties to an employment agreement will be left high and dry, if a violation of the agreement terminates not only the Employer-Employee relationship but also the rights that would flow out of such termination.

16. The third contention of the learned counsel appearing for the petitioner is that the suit being one for permanent injunction restraining invocation of Bank Guarantee, the Court should only look into the contents of the Bank Guarantee and not the Fixed Term Employment Agreement. This contention also should be rejected, inasmuch as, the Bank Guarantee itself is given for performance of the conditions fixed under the Fixed Term

Employment Agreement. Therefore, when an injunction is sought for restraining invocation of the Bank Guarantee necessarily the terms of the agreement between the parties, pursuant to which the Bank Guarantee was given will have to be looked into.

17. I am therefore of the considered opinion that none of the contentions raised by the learned counsel appearing for the petitioner deserve acceptance. I therefore conclude that the Trial Court was perfectly justified in accepting the objection to the territorial jurisdiction and concluding that it has no jurisdiction to try the suit. However, I must point out that the Trial Court erred in dismissing the suit after having reached the conclusion that it has no jurisdiction to try the suit. Once a Court finds it has no territorial or pecuniary jurisdiction its duties are governed by Rule 10 of Order 7 of the Code of Civil Procedure.

Rule 10 of Order 7 of the Code of Civil Procedure, reads as follows:

Order 7 Rule 10. Return of plaint.—

(1) Subject to the provisions of rule 10-A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

[Explanation.— For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule.]

(2) Procedure on returning plaint. —On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

In view of the aforesaid provision, the Trial Court was not right in dismissing the suit, after having held that it has no jurisdiction to entertain the suit. It ought to have returned the plaint under Order 7 Rule 10 of the Code of Civil Procedure, to enable the plaintiff to present before the proper Court.

18. Adverting to the claim of the second respondent under Section 8 of the Arbitration and Conciliation Act, 1996, I must point out that applicability of Section 8 would arise only when there is a validly instituted judicial proceeding

pending before the Judicial Authority.

Section 8 of the Arbitration and Conciliation Act, 1996, reads 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 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.

The plain reading of Section 8 would show that it does not contemplate dismissal of the suit. It only requires the judicial Authority before which an action is brought to refer the parties to arbitration, if it finds that the matter

which is subject of the action is also a subject of an arbitration agreement.

19. The only question that will have to be addressed by the judicial authority is, as to whether, there exists a valid arbitration agreement. It is also fundamental principle of law that a Court which has no jurisdiction to entertain a suit cannot decide or pronounce upon the merits of the claim. Therefore, the Sub Court, Tambaram, which had held that it had no jurisdiction to entertain the suit, ought not to have gone into the question of the existence of a valid Arbitration Agreement or otherwise and pronounced upon it. Hence I find that the Trial Court was not justified in going into the issue relating to the validity or otherwise of the Arbitration Clause in the Fixed Term Employment Agreement.

20. In view of the above conclusions, the Civil Revision Petitions are disposed of as follows:

- (i) CRP NPD No.1536 of 2018 will stand **partly allowed** confirming the order of the Trial Court with reference to the jurisdiction of the Court to entertain the suit;*
- (ii) The findings regarding the validity of the Arbitration*

*Clause in the Fixed Term Employment Agreement will
stand vacated;*

- (iii) The consequential order dismissing the suit is set
aside. The Sub Court, Tambaram, is directed to return
the plaint to the plaintiff strictly adhering to the
provisions of Rule 10 of Order 7 of the Code of Civil
Procedure; and*
- (iv) CRP NPD 1537 of 2018 tands **dismissed** as
unnecessary, in view of the disposal of CRP NPD 1536
of 2018.*

No costs. Consequently, the connected miscellaneous petition is closed.

19.08.2020

jv

Index: Yes/No

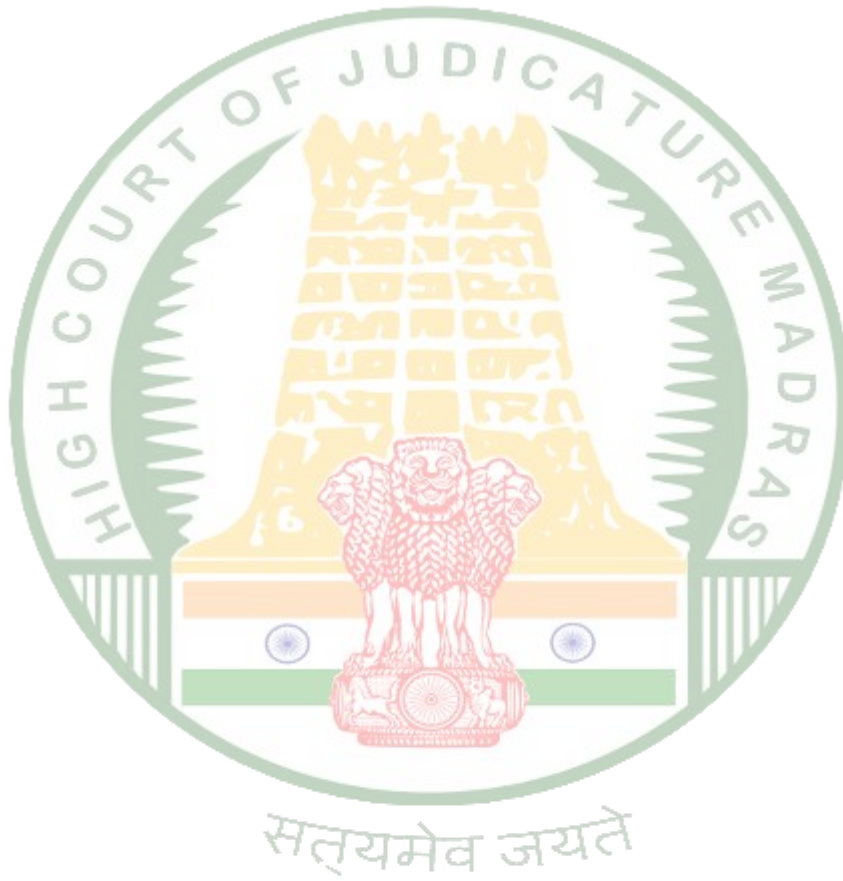
Internet: Yes/No

speaking order/Non speaking order

To

The Sub Judge,
Tambaram.

CRP. NPD.Nos.1536 &1537 of 2018
and CMP No.8210 of 2018



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CRP. NPD.Nos.1536 &1537 of 2018
and CMP No.8210 of 2018

R.SUBRAMANIAN, J.

jv



Pre Delivery Order

CRP. NPD.Nos.1536 &1537 of 2018
and CMP No.8210 of 2018 in CRP No.1536 of 2018

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