

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Civil Revision Petition No.3013 of 2018 &
C.M.P.No.17493 of 2018

1. M/s.Jain Housing and Constructions Ltd.,
represented by its Managing Director,
Mr.Sandeep Mehta,
having registered Office at
No.11, Somasundaram Street,
T.Nagar, Chennai - 600 017.
 2. Mr.Sandeep Mehta,
Managing Director,
M/s.Jain Housing and Constructions Ltd.,
having registered Office at
No.11, Somasundaram Street,
T.Nagar, Chennai - 600 017.
 3. Mr.Johny Rapheal,
Senior General Manager,
M/s.Jain Housing and Constructions Ltd.,
having registered Office at
No.11, Somasundaram Street,
T.Nagar, Chennai - 600 017.
- ...Petitioners

Versus

1. M/s.Jain Camkbrae East,
Flat Owners Association,
represented by its President
Mr.V.Subramaniam,
No.115, Thirumagal Nagar, First Cross,
Peelamedu, Coimbatore - 641 004.
 2. The Member Secretary,
The Local Planning Authority,
Coimbatore - 641 018.
- ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal Order dated 16.09.2017 passed in I.A.No.2114 of 2010 in O.S.No.52 of 2010 on the file of the I Additional District Munsif, Coimbatore.

For Petitioners: Mr.S.Balasubramaniam
For Respondents: Mr.K.S.Karthik Raj - R1

Mr.Y.T.Arvind Ghosh
AGP (CS) for R2

ORDER

Aggrieved over the Order of the I Additional District Munsif Coimbatore in rejecting the application filed under section 8 of the Arbitration and Conciliation Act to refer the matter to arbitration, the present Civil Revision Petition is filed.

2. Brief facts leading to filing of this petition is as follows :

The plaintiff, being flat owners association filed a suit against the defendants for permanent injunction restraining the defendants 1 to 3 from alienating or encumbering the suit property. As there is a dispute arose regarding usage of the 30 ft road in the entire complex, the suit came to be filed. The written statement has also been filed by the defendants. In the meanwhile, an application under section 8 of the Arbitration and Conciliation Act has been filed to refer the dispute to arbitration, since the parties are governed by the arbitration clause. The learned District Munsif by holding that dispute arising out of the agreement is not only reserved for arbitration but also it can be settled through Courts of law in the city of Chennai and in such view of the matter, there is no bar in entertaining the suit and dismissed the application. As against which, the present revision is filed.

3. The learned counsel for the petitioner submitted that the parties are governed by the clauses in the agreement wherein they have specifically agreed for referring to arbitration or to resolve their disputes through the Courts of Law in the city of Chennai. But the suit has been filed in Coimbatore. In view of the fact that the parties have agreed to resolve their disputes through arbitration or through the Court at Chennai, the suit filed in Coimbatore is not maintainable. Hence, it is their contention that the dispute has to be referred to arbitration.

4. The learned counsel appearing for the respondent submitted that the parties have agreed to resolve their dispute by referring the dispute to arbitration and also through Courts of Law in the city of Chennai. In such view of the matter, mere non referring the matter to arbitration is not a ground to allow this revision.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials on record.

6. It is not in dispute that the parties are governed by the memorandum of agreements entered between the parties. Clause 38 of the Agreements reads as follows :

"Any dispute arising out of the agreement will be settled through Court of Law in the City of Chennai or by arbitration." Though the immovable properties are situated at Coimbatore, parties have submitted to the jurisdiction of the Courts situated at Chennai, though there is no cause of action arose at Chennai. In fact, they also specifically agreed for reference to arbitration. In otherwise, they agreed to resolve the disputes through the Courts of Law in the city of Chennai or by referring to arbitration. The parties have submitted to the jurisdiction to the Court at Chennai. But no part of cause of action, whatsoever, arose at Chennai. Therefore, when the immovable properties are not within the jurisdiction of Chennai and no part of cause of action arose at Chennai and having agreed to refer the dispute to the Courts of Law in the City of Chennai or by arbitration, this Court is of the view that this matter has to be referred to arbitration.

7. The suit has been filed for permanent injunction restraining the defendants from alienating or encumbering the suit property on the ground that the Flat Owners Association and its members are entitled to use the 30 feet road. The entire dispute seems to be with regard to the usage of the alleged 30 feet road. Since the parties have agreed to refer the dispute to arbitration, it cannot be said that the matter cannot be referred to arbitration. The very purpose of providing alternative to refer the dispute to arbitration is for speedy disposal of the dispute, without the intervention of the Court. Further, the application has been filed before filing of the written statement. In such view of the matter, the Order rejecting the application filed by the petitioner, in my view, suffers from legal infirmity and is liable to be set aside.

8. Having regard to the fact that the suit has been filed in the year 2010 and already 10 years have lapsed, this Court instead of directing the parties to file an application for appointment of an Arbitrator, this Court invokes its jurisdiction under Article 227 of Constitution of India, Orders as follows :

(i) Mr.J.V.Raj, District Judge (retired) No.E-10, Sangmithra Garden, Nehru Nagar West, Kalapatti Main Road, Coimbatore - 641 048 mobile No.9445436345 is nominated as an Arbitrator to enter upon reference and

adjudicate the disputes inter se the parties. Both sides also consented to have above name Learned Arbitrator to resolve the issues.

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. Both sides shall file claim and counter claim

iii) That the learned Arbitrator appointed herein shall be at liberty to fix his remuneration and other incidental expenses, which shall be borne by both the parties equally.

Consequently, the Civil Revision Petition is allowed and connected civil miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vrc

To

1.Mr.J.V.Raj, District Judge (Retired),
No.E-10, Sangmithra Garden, Nehru Nagar West,
Kalapatti Main Road,Coimbatore - 641 048.
Mobile No.9445436345

2.The I Additional District Munsif Court
Coimbatore

3. The Member Secretary,
The Local Planning Authority,
Coimbatore - 641 018.

WEB COPY

Civil Revision Petition No.3013 of 2018

VSNI (CO)
SP(01/12/2020)