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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1929 of 2018
and C.M.P.No.14878 of 2018

K.Vaidyalingam ... Appellant/Petitioner

Vs.

S.K.Ganesan ... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 seeking to set aside the fair and decreetal order dated 08.02.2018, made in A.O.P.No.36 of 2013, on the file of the Principal District Judge, Namakkal.

For Appellant : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For Respondent : Mr.R.Saravanakumar

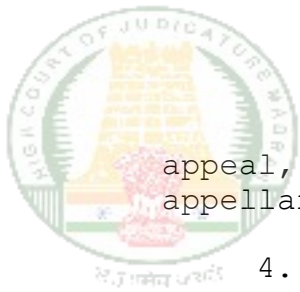
J U D G M E N T

(The case has been heard through video conference)

This appeal has been filed challenging the order dated 08.02.2018, passed by the learned Principal District Judge, Namakkal under Section 9 of the Arbitration and Conciliation Act in A.O.P.No.36 of 2013.

2. Under the impugned order, the application filed by the appellant was dismissed on the ground that the Arbitration agreement between the parties has been cancelled and as such there is no arbitration clause.

3. The learned counsel appearing for the appellant, on instructions, would fairly submit that subsequent to the passing of the impugned order, there has been no progress in the arbitration. Under the provisions of the Arbitration and Conciliation Act, there is a time schedule fixed for appointment of Arbitrator and for completion of the arbitration proceedings. As seen from the documents filed by the appellant in this



appeal, till date, no claim statement has been filed by the appellant before the alleged Arbitrator.

4. The appellant and the respondent are brothers and there seems to be a property dispute among themselves. Arbitration is meant for early disposal of dispute between the parties, but in the instant case, till date, the appellant himself has not filed any claim statement before the alleged Arbitrator.

5. The learned Principal District Judge, Namakkal has dismissed the application filed by the appellant under Section 9 of the Arbitration and Conciliation Act, seeking for injunction against the respondent from alienating the disputed properties, which has been dismissed under the impugned order. When the appellant has not even filed claim statement before the alleged Arbitrator and there is dispute as to whether there exist arbitration clause or not, this Court finds no merit in this appeal as prima facie the appellant has not taken further steps in the alleged Arbitration Proceedings by filing his claim statement. Even though the Memorandum of Understanding which is the subject matter of the dispute between the parties is dated 20.07.2011 and the application filed by the appellant under Section 9 of the Arbitration and Conciliation Act in A.O.P.No.36 of 2013, before the learned Principal District Judge, Namakkal was filed as early as in the year 2013, which came to be dismissed under the impugned order on 08.02.2018, no useful purpose will be served if this appeal is entertained at this stage and that too when the appellant has not even filed his claim statement before the alleged Arbitrator till date. Therefore, there is no merit in this appeal and accordingly this appeal is dismissed. However liberty is granted to the appellant, if so advised, to file an application under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator before the concerned Court. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kk
To

1. The Principal District Judge,
Namakkal.



2. The Section Officer,
VR Section, High Court,
Madras.

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+1cc to M/s.Sarvabhuman Associates, Advocate Sr.46403
+1cc to M/s.E.Veda Bagath Singh, Advocate Sr.46340

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