



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	08.12.2021
PRONOUNCED ON	17.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

CIVIL REVISION PETITION NO.4087 OF 2016

Tarun Kumar Metha

... Petitioner

vs.

R.Sivakumar

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 16.06.2016 passed in I.A.1028 of 2015 in O.S.836 of 2014 on the file of the Additional District Munsif, Alandur.

For Petitioner : Mr.A.Thiyagarajan,
Senior Counsel
for M/s.Ramesh Kumar

For Respondent : Mr.K.Harishankar

ORDER

This Civil Revision Petition is filed challenging the order dated 16.06.2016 passed in I.A.No.1028 of 2015 in O.S.No.836 of 2014 on the file of the Additional District Munsif, Alandur.

2. The facts of the case in a nutshell:

The Petitioner is the defendant in the Suit. The Respondent/Plaintiff filed the Suit O.S.No.836 of 2014 for a decree and judgment against the defendants as follows:

(a) To direct the Defendant to finalize with the Plaintiff for the statement of accounts viz., M/s Shri Sai Anugrahaa Foundations and settle the profit and loss among the Plaintiff and Defendants, failing which the Court may ascertain the profit and loss account and settle the amount between the Plaintiff and Defendant.



(b) To dissolve the partnership firm of M/s Shri Sai Anugrahaa Foundations registered with Registrar of Firms, South Chennai, Saidapet bearing No.1672 of 2011 dated 13.10.2021.

3. There was a Deed of Partnership entered between the Petitioner/Defendant and Respondent/Plaintiff at Chennai on 05.05.2010. For better appreciation the relevant Clauses mentioned in the said Partnership Deed are extracted hereunder.

Clause-12: ARBITRATION:

It is mentioned that, any dispute or difference arising among the partners with respect to the construction or interpretation of this Deed or any other matter relating to the partnership affairs shall be referred to arbitration under the provisions of the Indian Arbitration Act, by appoint a sole arbitrator.

Clause:13-JURISDICTION:

Every matter arising out of the Deed and all transactions covered by its are subject to the Jurisdiction of Chennai Courts only.

4. The Petitioner/Defendant has filed the Petition I.A.No.1028 of 2015 under Order VII Rule 11 of Civil Procedure Code to reject the Plaint in O.S.No.836 of 2014 on the file of the Additional District Munsif, Alandur. The relevant portion of Order VII Rule 11 of C.P.C. is extracted below:

"11. Rejection of plaint.- The plaint shall be rejected in the following cases:

(a) Where it does not disclose a cause of action;

(b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9."

5. The learned senior counsel appearing for the Petitioner/Defendant contended as follows:



(i) Clause 12 in the Deed of Partnership dated 05.05.2010 between the Petitioner/Defendant and the Respondent/Plaintiff stipulates that, any dispute or difference arising among the partners with respect to the construction or interpretation of this deed or any other matter relating to the partnership affairs shall be referred to the arbitration under the provisions of Indian Arbitration Act, 1996 by appointing a sole arbitrator.

(ii) The Plaint is liable to be rejected on the ground of mis-jointer and non-jointer of the necessary parties.

(iii) As per Clause 13 of the Partnership Deed, the jurisdiction to decide the dispute was agreed at Chennai Courts only.

6. The learned counsel for the Petitioner further contended that, in paragraph 11 of the Plaint, it is stated that, the statement of accounts shown will disclose the loan as well as repayments arrived by the Respondent/Plaintiff. All of sudden, in the month of September 2013, the practice of counter signing cheques of M/s Shri Sai Anugrahaa Foundations were unilaterally stopped by the Defendant without assigning any valid reason. Hence, in view of Clause 12 of the Deed of Partnership which refers to the arbitration, the above issues arising among the partners shall be referred only to the arbitration under provisions of Indian Arbitration Act, 1996 by appointing a sole arbitrator.

7. The learned senior counsel further contended that, with regard to the ground of mis-jointer and non-jointer of parties, M/s Shri Anugrahaa Foundations, which the Respondent/Plaintiff seeks to dissolve, is not made a party in the above Suit O.S.No.836 of 2014, and the same is liable to be dismissed on this ground alone. Therefore, the prayer calling upon the Petitioner/Defendant to finalize the statement of accounts between the Respondent/Plaintiff and M/s Shri Anugrahaa Foundations is not maintainable. The cause of action for the Suit arose within the jurisdiction of this Hon'ble Court where the partnership firm was started and the partnership firm functioned, thereby the execution of other projects took place by the partnership firm, subsequently, the Defendant refused to co-operate with the Respondent/Plaintiff for the functioning of the partnership, thereby the Respondent/Plaintiff could not execute the projects, in turn, the defendants refused to co-operate with the plaintiff for functioning of the firm thereby it is necessary to settle the account between the Plaintiff and the Defendants and subsequently dissolve the partnership firm. According to the partnership deed, their jurisdiction to decide the dispute was



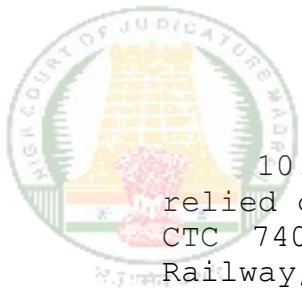
agreed as per Clause 13 at Chennai Courts only and the Respondent/Plaintiff filed the Suit before the Additional District Munsif, Alandur without referring to the conditions agreed in the partnership deed. Hence, the Additional District Munsif, Alandur has no jurisdiction to entertain the Suit and the Plaint is liable to be rejected and dismissed.

8. The learned counsel for the Petitioner contented that, In view of the provisions in Order I Rule 9 of Civil Procedure Code, the Suit is not maintainable in law and that the firm was not made a party and the Suit is liable to be dismissed, is not tenable and liable to be rejected.

9. The learned senior counsel for the Petitioner relied on the judgment of the Apex Court in the case of Sundaram Finance Limited Vs. T.Thankam, reported in 2015 (14) SCC 444 dated 20.02.2015, the relevant paragraphs are extracted below:

"8. once there is an agreement between the parties to refer the disputes or differences arising out of the agreement to arbitration, and in case either party, ignoring the terms of the agreement, approaches the civil court and the other party, in terms of Section 8 of the Arbitration Act, moves the court for referring the parties to arbitration before the first statement on the substance of the dispute is filed, in view of the peremptory language of Section 8 of the Arbitration Act, it is obligatory for the court to refer the parties to arbitration in terms of the agreement, as held by this Court in P.Anand Gajapathi Raju Vs. P.V.G. Raju"

"13. Once an application in due compliance with Section 8 of the Arbitration Act is filed, the approach of the civil Court should be not to see whether the court has jurisdiction . it should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction in terms or compliance with the procedure under the special statute. The general law should yield to the special law- generalia specialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court."



10. The learned senior counsel for the petitioner further relied on the judgment of this Hon'ble Court reported in 2008 (3) CTC 740 in the case of Union of India, owning the Southern Railway, rep. by its General Manager, Southern Railway, Chennai-2 Vs. Rajesh Damani, Proprietor, Allied General Sales Corporation, Chennai-3., dated 10.06.2008. For better understanding the relevant portion is extracted below:

"19. For the reasons aforesaid, I am of the view that the learned Trial Judge committed a serious error in rejecting the Application filed by the revision petitioners for reference to the Arbitrator and as such, the order of the learned Trial Judge is liable to be set aside."

11. Per contra, the learned counsel for the Respondent contented that the petition I.A.No.1028 of 2015 in O.S.No.836 of 2014 filed by the Petitioner/Defendant under Order VII Rule 11 of CPC is not maintainable for the following reasons:

(i) According to the Order I Rule 9 of the Civil Procedure Code, no Suit shall be defeated by reason of the mis-jointer or non-jointer of parties and the Court in further Suit deal with the matter in controversy so far as with regard to the rights and interest of the parties actually before it.

(ii) To invoke the arbitration Clause in a deed of partnership agreement, the provision of Section 8 of the Arbitration and Conciliation Act, 1996 has to be fulfilled and the same is extracted below.

8. Power to refer parties to arbitration where there is an arbitration agreement

(i) 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.

12. Learned counsel for the Respondent relied on the judgment rendered by the Calcutta High Court reported in 2004 SCC Online Cal 154 in the case of Pawan Bagaria Vs. Gontermann-Peilpers (India) Ltd., dated 10.03.2014 for better appreciation relevant paragraphs are extracted hereunder.



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"13. Regarding the arbitration clause M.Tiwari submits that the alleged general conditions of supply were never supplied to the plaintiffs firm. The parties never agreed to settle the disputes by arbitration. For the first time in this application the defendant has come out with the case of arbitration agreement. In the previous winding up petition for recovery of same dues the defendant never disclosed the existence of any arbitration agreement. The defendant has not filed any application under Section 8 of the Arbitration and Conciliation Act, 1996. It was required to file such an application before filing the present application for rejection of plaint. At this stage, even assuming there was an arbitration agreement, the parties, cannot be referred to arbitration. The defendant applied for extension of time to file written statement. Such application was allowed. As held in Sukanya Holdings Pvt. Ltd. Vs. Jayesh H.Pandya, (2003) 5 SCC 531, mere existence of an arbitration agreement does not oust the jurisdiction of the Civil Court."

"14. As to the contention regarding requirement of referring the parties to arbitration, after examining the facts and circumstances of the case I am of the view that there is no merit in it. The existence of an arbitration agreement has been disputed by the plaintiff. Admittedly, the defendant has not filed an application as contemplated in section 8 of the Arbitration and Conciliation Act, 1996. On the contrary it has filed the present application dealing with the substance of the disputes involved in the suit, in support of its prayer for rejecting of the plaint under Order 7 Rule 11 of the Code of Civil Procedure. It is only an alternative prayer that has been made in this application for referring the parties to arbitration, in the event this Court finds no merit in its contention that the plaint is liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. The alternative prayer is the prayer of second preference of the defendant."

"15. Section 8 of the Arbitration and Conciliation Act, 1996 provides that the party wanting reference to arbitration must apply to the judicial authority before submitting his first statement on the substance of the dispute. A party seeking reference to arbitration under this section is not entitled to invite the judicial authority to decide first the



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question of maintainability of the proceeding after considering the correctness of the disputes involved in the proceeding, and then to consider the question of referring the parties to arbitration if the proceeding is found to be maintainable. The party in such a situation does not have two options - that is, (1) to contest the maintainability of the proceeding before the judicial authority, and (2) on failing to get the proceeding dismissed, to seek reference to arbitration. It has to make up its mind whether it will seek reference to arbitration or contest the proceeding before the judicial authority from the stage of maintainability. If it chooses for the latter course, it loses the former. Once it submits to the jurisdiction of the judicial authority, thereafter it is precluded from seeking reference to arbitration, as there is no dispute that the mere existence of an arbitration agreement does not oust the jurisdiction of the Civil Court."

13. Heard both sides.

14. The points for consideration:

(i) In this case, whether the Suit O.S.No.836 of 2014 is maintainable in view of the Clause 12 and 13 of the Deed of Partnership dated 05.05.2010 between the Petitioner/Defendant and Respondent/Plaintiff.

(ii) Whether, the Petition I.A.No.1028 of 2015 filed under Order VII Rule 11 of Civil Procedure Code is maintainable or not.

(iii) In this case, even though the Clause 12 provides for arbitration, the same cannot be taken into consideration by this Court for the reason that, in order to invoke power of the Court to refer the parties to arbitration, where there is an arbitration agreement, Section 8 (1) of the Arbitration and Conciliation Act, 1996 has to be complied with.

(iv) According to Section 8 (1) 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. In the case on hand, the above condition is not complied by the Petitioner/Defendant.

15. This Court holds that the plaint cannot be rejected on the ground of arbitration clause in the partnership deed and for mis-jointer or non-jointer of the parties, in view of Order I



Rule 9 of the Civil Procedure Code.

16. In the result, the Suit is maintainable and the application I.A.No.1028 of 2015 filed under Order VII Rule 11 of Civil Procedure Code is liable to be rejected or dismissed.

17. In view of the above facts and circumstances of the case, findings and in the light of the decisions of the Apex Court, this Court do not find any grounds to interfere with the order passed by the learned Additional District Munsif, Alandur in I.A.No.1028 of 2015 in O.S.No.836 of 2014 dated 16.06.2016 and the same is hereby confirmed. Hence, the Civil Revision Petition stands dismissed. No costs. Consequently, connected C.M.P.No.20666 of 2016 is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vm

To:

The Additional District Munsif,
Alandur.

+2ccs to Mr.K.Harishankar, Advocate, S.R.No.67889

+1cc to M/s.S.Ramesh Kumar, Advocate, S.R.No.67841

C.R.P.No.4087 of 2016

RSV(CO)

RLP(30/12/2021)