

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.Nos.1607 of 2014 & 2794 of 2013 and
MP.Nos.1 of 2014 & 1 of 2013

CRP.PD.No.1607 of 2014

- 1.The Cotton Corporation of India Ltd.,
having its Office at Coimbatore rep.
by the Branch Manager, Branch Office,
Coimbatore
 - 2.The Cotton Corporation of India Ltd.,
having its office at Navi Mumbai, rep
by the Branch Manager, Branch Office,
Coimbatore
 - 3.The Cotton Corporation of India Ltd.,
having its office at Guntur. rep. by
by the Branch Manager, Branch Office,
Coimbatore
- ..Petitioners

Sree Kailaii Spinners (P) Ltd.,
Represented by its Director,
Sri S Mohan Shankar,
Vellakinar, Coimbatore-29

Vs.

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order dated 10.10.2012 passed in IA.No.331 of 2012 in OS.No.2050 of 2011 on the file of the I Additional District Munsif, Coimbatore.

For Petitioners : Mr.T.R.Sundaram

For Respondent : Mr.D.Rajagopal

CRP.PD.No.2794 of 2013

M/s.Sree Kailali Spinners Private Ltd.,
SF.126, Vellakinar,
Vellakinar, Coimbatore-29

..Petitioner

Vs.

1.The Cotton Corporation of India Ltd.,
by it General Manager, Branch Office,
Coimbatore

2.The sole Arbitrator,
Cotton Corporation of India P. Ltd.,
Coimbatore (formal party)

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to reject the claim application filed by the first respondent herein filed before the Arbitral Tribunal of Sole Arbitration Sri Shanmugam Dist and Session Judge "Retired" Vedavalli, Coimbatore in Arbitration petition No.05 of 2012.

For Petitioner : Mr.D.Rajagopal

For Respondents

For R1

: Mr.T.R.Sundaram

For R2

: Notice served

ORDER in CRP.PD.No.1607 of 2014

The Civil Revision Petition is directed as against the fair and decretal order passed in IA.No.331 of 2012 in OS.No.2050 of 2011 on the file of the I Additional District Munsif, Coimbatore thereby dismissing the petition filed by the petitioners to order that the parties be referred to arbitrator appointed by the petitioners.

2. The petitioners are defendants 1 to 3 in the suit filed by the respondent herein for declaration declaring that the contract dated 05.04.2011 executed between the petitioners and the respondent herein as null and void and permanent injunction restraining the petitioners from disturbing their business by way of blacklisting them in the business community and ban their business dealing or disturbing their business in any other manner. The respondent is doing spinning business and running a spinning mill in the name and style of Sri.Kailali Spinners Private Limited. In the course of their business they used to buy cotton from the sellers. They entered into an agreement with the petitioners on 05.04.2011 with terms and conditions with regard to their transaction. Accordingly, the respondent agreed to lift 600 bales of cotton from the petitioners

herein. Thereafter, the respondent lifted 200 bales out of 600 bales and the remaining 400 bales of cotton were not lifted by the respondent herein for the reason that the petitioners failed to supply the bales of cotton to the specification and the quality mentioned in the agreement. In this regard, there is a dispute between them and as such the respondent along with others who entered into an agreement with the petitioners filed writ petition before this court in WP.No.19447 of 2011 and batch for declaration declaring that the contract entered between the respondent and the petitioners herein as null and void. This Court by order dated 30.09.2011 ordered as follows:

"15.in view of the above findings, I am of the firm view that these writ petitions are not maintainable and the petitioners have to go for arbitration in terms of clause 12 of the contract, if they have any grievance. Since the writ petitions are dismissed only on the ground of maintainability, the observations made herein or the contentions raised as stated in this order shall not be construed as giving any finding in favour of either party."

Further observed that all the factual aspects can be raised only before the Arbitrator in an arbitration proceedings which is also provided under Clause 12 of the terms and conditions of the contract entered between the parties.

3. Though this Court specifically directed the respondent to initiate arbitration proceedings, the respondent filed suit in OS.No.2050 of 2011 for the very same relief along with the prayer of permanent injunction restraining the petitioners herein from disturbing their business by way of blacklisting them in the business community and ban their business dealings or disturbing their business in any other manner whatsoever it may be. After receipt of summons from the said suit, the petitioners herein filed petition to order that the parties be referred to arbitration appointed by the petitioners herein as per the agreement dated 05.11.2011 in clause 13 and it is relevant to extract clause 13 of the contract entered between the respondent and the petitioners as follows:

"In case of any dispute or difference arising out of or in relation to the contract, except any dispute regarding the quality of cotton which is specifically excluded under clause 2 of the Contract, will be referred to an Arbitrator (other than an employee of the Seller) to be appointed by the Director (Marketing) or the Director (Finance) of the Seller and the decision of the arbitrator shall be final and binding upon the parties hereto. The Arbitration will be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments or re-enactment thereof."

After having been failed before this Court, the respondent filed the

above suit suppressing the fact that already the petitioners filed writ petition before this Court and the same was dismissed with a direction that they are directed to initiate arbitration proceedings. On receipt of summon from the said suit, the petitioners filed the above petition and the same was dismissed by the trial court for the reason that in the clause 13 of the agreement clearly says that any dispute arise, may referred to arbitration except the quality of the cotton. But the dispute between them is quality of cotton bales. It shall be decided by civil court.

4. The learned counsel for the petitioner pointed out that the writ petition is much earlier to the suit filed by the respondent herein. This court by order dated 30.09.2011 dismissed the writ petition filed by the petitioners and directed to initiate the arbitration proceedings before the arbitrator. Whereas the respondent filed suit only on 15.10.2011, that too suppressing the dismissal of the writ petition filed by the respondent herein. While pending the suit, the petitioners filed petition to order for arbitration proceedings. Before passing the orders in the said petition, the petitioners initiated arbitration proceedings as directed by this Court in WP.No.19447 of 2011. In fact, the petitioners categorically stated in their affidavit that already the respondent filed

writ petition before this Court and the same was dismissed with the above direction to initiate arbitration proceedings. Further stated that the petitioners already initiated arbitration proceedings and it is pending in AP.No.5 of 2012. Even then, the trial court without looking into the above facts, dismissed the petition filed by the petitioners herein. When the petitioners objected to the notice of the trial court that the respondent herein already approached this Court by way of writ petition in WP.No.19774 of 2011 and this Court dismissed the writ petition and directed the respondent to initiate arbitration proceedings, the trial court should have ordered for arbitration proceedings. Further the petitioners already initiated arbitration proceedings and it is pending. Only because of the impugned order, the arbitrator could not proceed further.

5. In view of the above discussion, this civil revision petition is allowed and the order passed in IA.No.331 of 2012 in OS.No.2050 of 2011 dated 10.10.2012 on the file of the I Additional District Munsif, Coimbatore is set aside. The Arbitrator is directed to proceed with the claim petition in AP.No.5 of 2012 on merits and in accordance with law. Consequently, connected miscellaneous petition is closed. No order as to costs.

ORDER IN CRP.PD.No.2794 of 2013

In view of the order passed in CRP.PD.No.1607 of 2014 dated 04.01.2021, this civil revision petition is devoid of merits. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

04.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok



WEB COPY

To

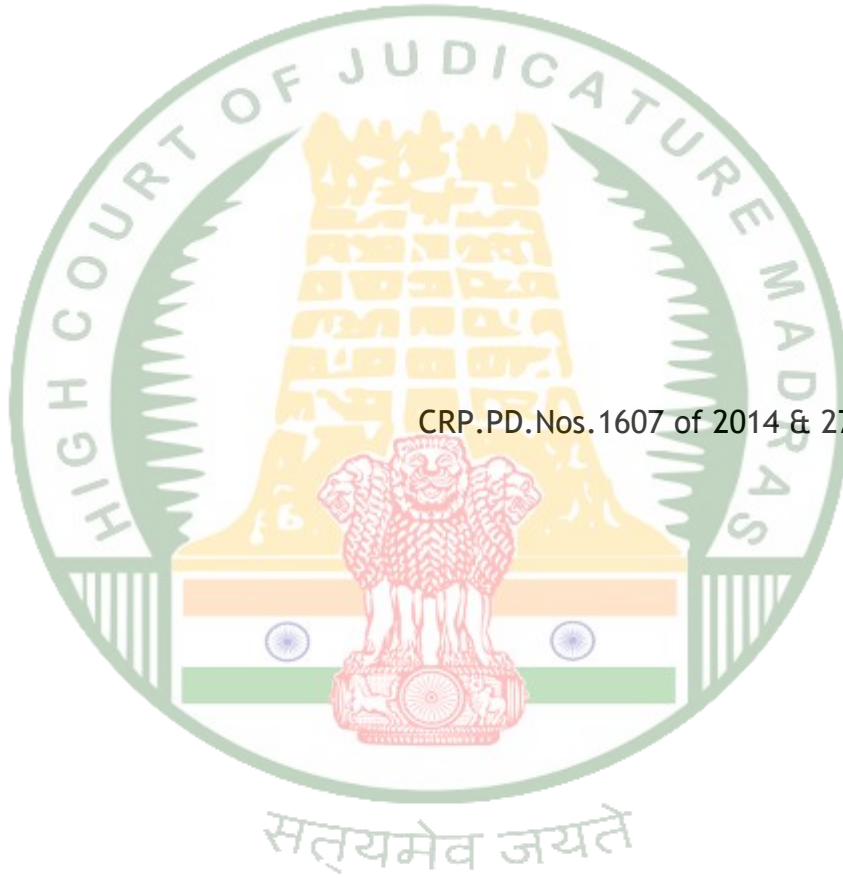
- 1.The I Additional District Munsif,
Coimbatore.
2. The Arbitral Tribunal of Sole Arbitration
Sri Shanmugam Dist and Session Judge "Retired"
Vedavalli, Coimbatore



WEB COPY

G.K.ILANTHIRAIYAN,J.

lok



CRP.PD.Nos.1607 of 2014 & 2794 of 2013

WEB COPY

04.01.2021