



A.No.3364 of 2022
in
C.S.No.354 of 2021

C.V.KARTHIKEYAN,J.

The application has been filed under Section 8 of the Arbitration and Conciliation Act, 1996, seeking to refer the disputes raised in the plaint to Arbitration.

2. It is claimed that a memorandum of understanding had been entered into between the plaintiff and the defendants for which, very strangely, in the affidavit, the date has not been given.

3. However, it is stated by Mr.R.Thiagarajan, learned counsel for the defendants that the document had been enclosed and therefore reference can be made to the document relating to the date.

4. In the counter affidavit, it had been very specifically stated that the plaintiff had not signed in the memorandum of understanding and that he is not aware of any memorandum of understanding and that the said memorandum of understanding had been introduced as a document after initiation of criminal proceedings between the two parties.

5. It is however insisted by Mr.R.Thiyagarajan, learned counsel for the plaintiff that the document is available and reference to the same would



show that any dispute should be referred to arbitration.

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6. In the counter, quite apart from denying or disputing the memorandum of understanding, it had also been stated that the defendants have also filed their written statement with application to condone the delay in filing the written statement and therefore, the suit can proceed by putting to test the averments made during the trial process.

7. In this application, there is reference to three separate memorandums of understandings between the parties dated 05.12.2018, 12.09.2019 and 23.10.2019.

8. In the memorandum of understanding dated 05.12.2018, there is no reference that the disputes should be referred to arbitration.

9. In the memorandum of understanding dated 12.09.2019, again, there is no reference that any disputes should be referred to arbitration.

10. In the third memorandum of understanding which is dated 23.10.2019, it had been stated that if there are disputes, then such dispute should be referred to a sole Arbitrator and the award made in pursuant of the said agreement would be binding on the parties.



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11. In view of the counter filed by the plaintiff, the issue whether the dispute is arbitrable itself has to be put to test. The further issue is whether the memorandum of understanding is a bonafide document and had been entered into by all the parties since consensus ad idem should also be determined.

12. These are the issues which the learned Arbitrator may take up as preliminary issues and render a finding.

13. It was stated by the learned counsels that this Court should examine the arbitrability of the nature of disputes. However the Hon'ble Supreme Court, the Judgment reported in **2021 (2) SCC 1 [Vidya Drolia vs Durga Trading Corporation]** had stated that the issue of arbitrability should also be examined and decided only by the arbitrator.

14. The issue whether the memorandum of agreement itself is a genuine document or not, can also be examined by the Arbitrator and liberty is granted to the plaintiff in the suit/respondent herein, to raise that particular issue before the Arbitrator and after due process and in manner known to law that issue can also be examined and a finding may be given by the learned Arbitrator.



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15. Placing such caveat, Mr.M.K.Subramanian, Enrollment No.MS1055/1989, No.83/44, R.K.Mutt Road, Mylapore, Chennai-600 004 and office address at No.464, New Additional Law Chambers, High Court Campus, Chennai, Mobile No.9444018210, is appointed as arbitrator to examine the issues and to give a finality and pass an award at the earliest.

16. The initial remuneration of the learned Arbitrator is determined at Rs.1/- lakh to be paid by the applicants herein and thereafter, the learned Arbitrator may determine such further fees to be paid by the parties. The initial remuneration may be adjusted when such fees is determined and the total fees should be shared equally by both the parties.

17. The application stands disposed of with the above observation.

03.11.2022
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