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A.No.1762 of 2022

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in
C.S.(Comm.Div.)No.123 of 2021
C.SARAVANAN.J.

The defendant has filed this application under Section 8 of the Arbitration and Conciliation Act,1996. The plaintiff has filed a suit for recovery of an amount of Rs.3,43,61,959/-, pursuant to an award passed by the Arbitrator in a collateral arbitration proceedings, in a Joint Venture between the plaintiff and the defendant Nos.1 to 3 named as M/s.Ircon – Sree Bhavani Builders.

2.The facts on record indicates that the plaintiff and the first defendant represented by the second and third defendants had entered into a Joint Operation Agreement dated 07.04.1998. The aforesaid agreement was a pre-cursor for making a Joint bid for a contract for certain services to the Chennai Port for “Further extension of the Container Terminal at Bharathi Dock” at Chennai Port.

3.The plaintiff and the first defendant had entered into a Joint Operation supplementary agreement. Thereafter on 02.01.2004, wherein,



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certain arrangements were agreed upon. It was also agreed that in case of any dispute between the parties all other terms and conditions of the Joint Operation of Agreement dated 07.04.1998 will continue to hold good. Clause 9.0 of the Joint Operation Supplementary Agreement dated 02.01.2004 reads as under:-

“9.0. Apart from the issues agreed above, all other terms and conditions of Joint Operation Agreement dated 07.04.1998 will continue to hold good.”

4.The facts on record also indicates that in the Joint Venture between the plaintiff and the first defendant represented by the second and third defendants certain disputes arose with the Chennai Port Trust. Ultimately, Arbitration Clause under the Agreement with Chennai Port Trust was invoked. Eventually, an award came to be passed in the Arbitration proceedings with the Chennai Port Trust on 21.02.2015, whereby, a sum of Rs.1,83,22,891/- was awarded by the arbitrator.

5.Thereafter, the parties have exchanged communication with each other, whereby, the plaintiff called upon the first defendant to pay a sum of Rs.79,43,822/-. The first defendant on the other hand, has



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disputed the liability and thus has written letter to the plaintiff stating that it is the plaintiff who is otherwise liable to pay an amount to the first defendant. The defendant, has thus filed this application for terminating the mandate in terms of Section 8 of the Arbitration and Conciliation Act, 1996. The last communication of the defendant where the defendant disputed the claim of the plaintiff was on 09.06.2016 and therefore the limitation for filing the suit according to the defendant would have expired on 05.06.2019 and therefore not only the suit was time barred, but, also the suit was without jurisdiction as the parties are governed by the Arbitration Clause.

6.In support of the plea, the application filed under Section 8 of the Arbitration and Conciliation Act, 1996, the learned counsel for the defendant submits that the issue is now squarely covered by the decision of the Hon'ble Supreme Court in **Vidya Drolia Vs. Durga Trading Corporation** (2021) 2 SCC 1, which has been followed by the Hon'ble Supreme Court recently in **Bharat Sanchar Nigam Limited and another Vs. Nortel Networks India Private Limited** (2021) 5 SCC 738.



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7.The learned counsel for the defendant has referred to few passages particularly Para 45 to 51 to state that the claim of the plaintiff was time barred and therefore no useful purpose will be served by relegating the parties to work out their remedy under the Arbitration Clause.

8.Per contra, the learned counsel for the plaintiff has drawn attention to language in Section 8 of the Arbitration and Conciliation Act, 1996. It is submitted that the scope of enquiry under Section 8 is only to ascertain whether any arbitration Clause exist or not and beyond that it is for the parties to work out their remedy before the Arbitration.

9.That apart, the learned counsel for the plaintiff submits that the amount awarded by the arbitrator in the arbitration with the Port Trust on 21.02.2015 is still lying in the credit of the account maintained by the Joint Venture namely M/s.Ircon - Sree Bhavani Builders and that as of 05.10.2021 a sum of Rs.1,25,72,045/- is still lying in the aforesaid account which is to be jointly operated by the plaintiff and the defendant



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and therefore there is the relationship between the plaintiff and the defendant cannot be said to have snapped and even if the suit is dismissed and mandate terminated as was submitted by the learned counsel for the defendant, this amount will be out of bounds of both the plaintiff and the defendants and therefore it would be incorrect to conclude that the mandate can be terminated.

10.I have considered the arguments advanced by the learned counsel for the plaintiff and the defendant and perused the affidavit filed in support of the application under Section 8 of the Arbitration and Conciliation Act, 1996 and also the decision cited by the learned counsel the defendant who was filed this application under Section 8 of the Arbitration clause.

11.The relationship between the plaintiff and the defendant continues to exist as per the agreement. The Joint Venture between them still continue for the limited purpose of sharing of the award amount, pursuant to the award, passed by the arbitrator in the arbitration with the Port Trust. The amount is lying in an account which is to be jointly



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operated by the plaintiff and defendant. The plaintiff has been writing several letters to the defendant asking the defendant to settle plaintiff's share of the amount.

12.On the other hand, the defendant has denied that the plaintiff is entitled for any amount. The last communication was sent by the defendant denying his liability on 09.06.2016. Ordinarily the limitation would have originally expired on 05.06.2019. However, the fact remains that on 06.08.2019, the defendant has also sent a letter to the plaintiff.

13.Thus, the parties were in dialogue. There is no finality attached to the claim between the plaintiff and the defendant. When the parties are in dialogue, the question of limitation would not arise. As per the decision of the Hon'ble Supreme Court in **Duro Felguera, S.A Vs. Gangavaram Port Limited**, (2017) 9 SCC 729, it is for the parties to persuade the arbitrator to decide the issue regarding the jurisdiction.



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14. Under these circumstances, I am inclined to partly allow this application filed by the defendant by relegating the parties to work out their remedy before the Arbitrator in terms of the provisions of the Arbitration and Conciliation Act, 1996. It is made clear that the observations pertains herein are not intended to give a finality to the issue. All the issues are left open to be canvassed before the learned Arbitrator.

07.12.2022

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