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A.Nos.2888, 2948 and 4546 of 2021
and 385 of 2022
in C.S.No.178 of 2021

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Orders Reserved on : 2.3.2022

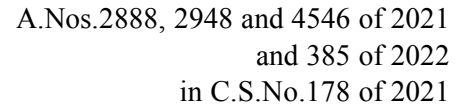
Orders Pronounced on : 17.08.2022

P.VELMURUGAN, J.

The defendants 2, 3, 5 and 9 have filed these applications under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the parties to arbitration in respect of the dispute that arose in the Loan Agreements.

2. Though the cause of action is different, the applicants 1 and 2 have filed a common suit against the respondents. Further, each loan agreement mentions an arbitration clause. Therefore, by invoking Section 8 of Arbitration and Conciliation Act, the applicants seek indulgence of this Court to refer the matter to arbitration.

3. The learned counsel for the applicants/defendants 2, 3, 5 and 9 submitted



4. He further submitted that it is settled proposition of law that mere allegation of fraud simpliciter is not a ground to nullify the effect of arbitration agreement between the parties. Arbitration clause need not be avoided and parties are not to be relegated to arbitration where simple allegations of fraud touching upon the private affairs of party inter-se that has no implication in a public domain. Therefore, mere allegations of the respondents 1 and 2 herein/plaintiffs are not sufficient to avoid the arbitration, since they are parties to the arbitration agreement. The arbitrator has every right to decide the dispute between the parties, including denial of the signatures. Therefore, the applications have to be rejected and the matter has to be referred to the arbitrator and the suit may be dismissed.

5. In support of his contentions, the learned counsel for the applicants



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WEB COPY relied upon the judgments of the Hon'ble Supreme Court in the cases of

- (i) ***A.Ayyasamy Vs.A.Paramasivan reported in 2016 (10) SCC 386;***
- (ii) ***Rashid Raza Vs. Sadaf Akhtar reported in 2019 (8) SCC 710; and***
- (iii) ***Avitel Post Studios Ltd., Vs. HSBC reported in 2021 (4) SCC 713***

6. The learned Senior Counsel appearing for the respondents 1 and 2 submitted that the respondents 1 and 2 have filed the suit for declaration and for permanent injunction, since on the allegation of fraud, the tenth defendant forged the signatures of the respondents 1 and 2 with the connivance of the applicants herein and other defendants and obtained loan. The respondents 1 and 2 have vehemently denied the loan transaction and also the signatures found in the said documents and hence, the Court may refuse to refer the matter to the arbitration and proceed with the suit on merits. He further submitted that when the Courts find very serious allegations of forgery that makes a virtual case of criminal offence or where the allegation of fraud is so complicated that it becomes essential that such complex issues can be decided only by the Civil Court on appreciation of voluminous evidence or offence of serious allegations of forgery/fabrication of documents in support of the plea of fraud. Therefore, in this case, the respondents/plaintiffs have raised serious allegations of fraud which also touches



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upon the criminal case and a complaint was also preferred, and therefore, under these circumstances, these applications have to be dismissed. The suit has to be tried on merits and in accordance with law.

7. Heard both sides and perused the materials available on record.

8. Admittedly, the applicants are shown as defendants 2, 3, 5 and 9 and they have filed the present applications invoking Section 8 of the Arbitration and Conciliation Act, stating that each of the loan agreement contains arbitration clause and hence, they have filed the present application to refer the matter to the arbitrator and settle the issues between the parties.

9. Though the learned counsel for the applicants vehemently contended that mere allegations of forgery is not a ground to nullify the effect of arbitration agreement between the parties, Arbitration clause need not be avoided and parties can be relegated to arbitration, when simple allegations of fraud touching upon internal affairs of party inter-se has no implication in public domain.

10. On a perusal of the averments made in the plaint and other applications



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filed by the respondents 1 and 2 herein/plaintiffs and also the counter affidavit filed by the respondents 1 and 2 in applications in A.No.2948 and 2888 of 2021, it reveals that very serious allegations of forgery and fraud were committed by the tenth defendant, which cannot be dealt with by the arbitrator and only this Court shall decide the same. In the plaint, the plaintiffs have vehemently denied the loan transactions and denied the signatures found in the loan agreements and they raised a plea of forgery and therefore, the plea of forgery has to be decided on merits in the manner known to law. When the plaintiffs have denied the signatures found in the loan transactions and loan agreements are forged by the tenth defendant, which has an implication in public domain and therefore, the Court cannot take that the said allegations as only mere allegations. Therefore, considering the facts and circumstances of the case and the averments made in the plaint, the stand taken by the plaintiffs is justified. The decisions referred to by the learned counsel for the applicants are not applicable to the present case on hand which are distinguishable on facts.

11. The plaintiffs have filed applications in Appln.Nos.1952 and 1953 of 2021 to direct the respondents 1 to 9 to produce the original documents of the loan agreements, which contains the signatures of the plaintiffs for enabling them to



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take steps to send the same to forensic laboratory to get opinion of the hand writing experts. At this stage, if the case is referred to arbitrator, prejudice would be caused to the plaintiffs. Hence, till the outcome of the opinion of the hand writing expert, if these applicants wait, no prejudice would be caused to them. This Court, by common order, had allowed A.Nos.1952 and 1953 of 2021.

12. For the reasons stated above, these four applications are dismissed. However, the plaintiffs are directed to take steps to send the loan agreements after receipt of the documents before this Court along with contemporary documents, which contains the admitted signatures of the plaintiffs and after getting opinion from the hand writing expert, the applicants are at liberty to file a fresh application on merits and in accordance with law.

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Pre-delivery Order in

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