



C.R.P. No. 3237 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.3237 of 2017
and
C.M.P. No. 15158 of 2017

1. M/s.Srikar Transways,
rep. by its Partner M.Karthikeyan

2. M.Karthikeyan

... Petitioners

Vs.

1. M/s. Hinduja Leyland Finance Limited
No.1, Sadar Patel Road, Guindy,
Chennai-32.

2. R.Sampath Kumar,
Balamurugan Transport,
No.2, Rettaimalai Srinivasa Nagar,
Thirupathur.

3. M/s.Sundaram Finance Ltd.,
New By Pass Road,
Bus Owner's Association Building,
Vellore – 632 004.



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4. M/s.Sundaram Finance Ltd.,
H.O. 21, Pattulas Road,
Chennai-600 006.

... Respondents

PRAYER: Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the order passed in I.A.No.12492 of 2016 in O.S.No.1906 of 2016 dated 04.04.2016 on the file of VIII Asst. Judge incharge of VII Asst. City Civil Court at Chennai.

For Petitioners : Ms.R.V.Rukmani for
Mr.P.B.Balaji

For Respondents : Mr.K.B.Vivekanandan for R1
Mr.E.Tamilsharasan for
M/s. T.Srinivasa Raghavan & Asso.
for R3

R2 & R4 – No appearance

ORDER

The revision petitioners herein are the plaintiffs in the suit in O.S.No.1906 of 2016, on the file of VIII Asst. Judge, incharge of VII Asst. City Civil Court, Chennai. They have filed the suit against the defendants 1 to 4 for the relief of declaration to declare the notices dated 17.03.2016



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issued by the 1st defendant in respect of two trucks bearing Regn. Nos. TN-23 AK 2255 and TN 23 AK-2266 are null and void and consequently restraining the 1st defendant from proceeding against the plaintiffs including the sale of trucks and other consequential reliefs.

2. In the said suit, notices and summons were issued. On receipt of summons, the 1st defendant Hinduja Leyland Finance Ltd. filed an application in I.A.No.12942 of 2016 under Sec.8 and 5 of the Arbitration and Conciliation Act praying the court to refer the petitioner and the respondent to the arbitration proceedings under Sec.8 of Arbitration and Conciliation Act. In that application, the contention of 1st defendant is that the plaintiffs 1 and 2 approached the 1st defendant for obtaining a vehicle loan and they have entered into an agreement under Ex.P1 and as per clause 22 of the Agreement, which contains arbitration clause. As per clause 3.1 of loan agreement, the asset is hypothecated to the petitioner herein as a security for the repayment of loan amount and as per clause 22 of the said agreement, all disputes, differences and/or claim arising out of or in connection with the loan agreements shall be settled by arbitration.



Accordingly, as per Ex.P1, which is a loan agreement entered into between the plaintiff and 1st defendant, they can invoke Sec.8 of Arbitration Act.

Hence, the suit, as such is not maintainable and prayed to refer the matter for arbitration.

3. Per contra, the learned counsel for revision petitioners/plaintiffs contended that there was an agreement of hypothecation between them and the 1st defendant for availing finance and subsequently, in order to discharge the loan, there was another agreement with the 2nd defendant Sampathkumar, who assured to clear the dues to the 1st defendant. As per the negotiation, the 2nd defendant agreed to pay the balance dues to the 1st defendant. Accordingly, the dispute was resolved. So, the plaintiffs are not entitled to pay any dues to the defendants 3 and 4 viz., M/s.Sundaram Finance Ltd. But, they have falsely issued notice as if the plaintiffs are liable to discharge the dues. Therefore, they have filed a suit stating that after the execution of hypothecation agreement, there was a change in circumstances. Accordingly, the 2nd defendant Sampathkumar, entered into agreement with the 3rd and 4th defendants. Hence, the Arbitration and Conciliation Act cannot be invoked. Accordingly, they prayed to dismiss



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this Civil Revision Petition.

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4. On considering submissions of both sides, the trial judge held that as per the hypothecation agreement, the plaintiffs obtained loan to purchase two trucks from the 1st defendant and entered into agreement Ex.P1. On perusal of clause 22, if there is any dispute, it should be referred to arbitration. Accordingly, the said application was allowed. Challenging the said findings, the plaintiffs filed the present Civil Revision Petition.

5. The learned counsel for Revision Petitioners argued that the trial court failed to take note of the fact that after entering into hypothecation agreement, Ex.P1, the 2nd defendant agreed to settle the dues and as per the submission of 1st defendant, the 2nd defendant entered into such agreement with the defendants 3 and 4. Accordingly, he paid certain dues. Subsequently, due to the said change of circumstances, the arbitration clause cannot be invoked as per Ex.P1 hypothecation agreement. But, the trial court failed to take note of the said fact. In support of their contentions, they relied on the authority reported in **2003 (2) CTC 431** in the case of



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Sukanya Holdings Pvt. Ltd. vs. Jayesh H. Pandya and another, wherein

WEB CO Hon'ble Apex Court held as follows :-

“Arbitration & Conciliation Act, 1996 Section 8 – Power of judicial authority to refer parties to Arbitration – Conditions to be satisfied for exercise of such power - when such power is not required to be exercised – when parties do not take steps as contemplated by this section matter is not required to be referred to Arbitration – When parties to arbitration agreement have not filed any application for referring dispute to arbitrator and in pending suit such application was not filed before submitting first statement on substance of dispute or such application is not accompanied by original arbitration agreement or certified copy thereof then matter is not required to be referred to Arbitration – When subject matter includes subject matter of arbitration agreement as well as other disputes matter is not required to be referred to arbitration as there is no provision for splitting cause of parties and to refer subject matter of suit to arbitrators – when some of the parties to dispute are not parties to Arbitration Agreement no direction can be given for referred matter to Arbitration – In such cases jurisdiction of civil court is not ousted – Court is required to refer parties to arbitration only when entire subject matter of the suit is subject to arbitration agreement –



Where suit is commenced as to matter which partly lies outside arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, matter cannot be referred to arbitration.”

They further relied on the authority reported in **2008 (4) CTC 275** in the case of **Ceebros Property Development Pvt. Ltd. vs. Vanisri and another**, wherein Hon'ble Apex Court held as follows :-

“Arbitration and Conciliation Act, 1996 (26 of 1996), Section 8 – Reference of subject matter of suit to arbitration – Memorandum of Understanding entered into by parties wherein Arbitrator appointed to decide any disputes – Subsequently, another agreement entered into when there is no clause for arbitration, but default clause contemplated – Memorandum of Understanding stood superseded by subsequent Agreement and Arbitration Clause found in Memorandum of Understanding cannot be invoked – Splitting up of cause of action and reference to Arbitrator – Permissibility – Held, No – Suit is laid against 1st defendant and 2nd defendant for recovery of money – Memorandum of Understanding between plaintiff and 1st defendant and 5 other parties – Other parties to Memorandum of Understanding not parties to Suit and 2nd defendant not party to Memorandum of understanding which contemplated



Arbitration Clause – Reference to arbitration does not arise.”

6. As per the ratio laid down in the above referred authorities, when the subject matter includes subject matter of arbitration agreement as well as other disputes, matter is not required to be referred to arbitration as there is no provision for splitting cause of parties and when some of the parties to dispute are not parties to arbitration agreement, no direction can be given for referring matter to Arbitration. However, coming to the facts of the case, though the plaintiffs contended that there was an agreement with the 2nd defendant Sampathkumar and the 1st defendant with regard to payment of dues as per the agreement subsequent to Ex.P1 Hypothecation Agreement, on perusal of plaint, it reveals that there was no written agreement between the parties and no such document was also filed before the trial court. So, as per the records, only Ex.P1 Hypothecation agreement between plaintiffs and 1st defendant alone is alive. On considering the same, the trial court rightly appreciated the arbitration clause in the hypothecation agreement and referred the matter to the arbitration, as such, is maintainable in law. Therefore, the authorities referred by the Revision Petitioners are not

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applicable to the facts of the present case for the reason that there is no document to show that there was an agreement with the 2nd defendant and other defendants. Therefore, the reference made by the trial judge, as such is maintainable. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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

VIII Asst. Judge
i/c. of VII Asst.
City Civil Court
Chennai.



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T.V.THAMILSELVI, J.

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