



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2637 of 2010

and

M.P(MD)No.1 of 2010

M/s.Shriram Transport Finance Company Ltd.,
Represented by it's Branch Manager. ... Petitioner/
2nd Defendant/
Petitioner

Vs.

Senthil Kumar ... Respondent/Plaintiff
Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India as against the fair and decreetal order, dated, 07.09.2010 passed in I.A.No.296 of 2010 in O.S.No.4 of 2010 on the file of the learned Principal District Munsif, Paramakudi.

For Petitioner : Mr.Ananth C.Rajesh
For Respondent : Mr.K.Sudalayandi

ORDER

The plaintiff in the suit has entered into a Loan cum Hypothecation Agreement with the defendant Finance Company on 25.09.2008. As per Clause 15 of the said agreement, there is an arbitration clause touching upon the dispute between the parties.

2. The plaintiff filed O.S.No.4 of 2010 as against the Financier with a prayer that the defendant or his men should not illegally recover any amount from him. A reading of the plaint clearly shows that the plaintiff had borrowed a loan from defendant Finance Company and the said loan is also supported by Loan cum Hypothecation Agreement, under which, there is a Clause for Arbitration.

3. Pending suit, the defendants before filing their written statement, filed I.A.No.296 of 2010 under Section 8 of the Arbitration and Conciliation Act, 1996 with a prayer to reject the plaint and to refer the matter for arbitration.

4. The trial Judge, vide order, dated, 07.09.2010, has held that the said issue should be decided only after trial.



5. Section 8 of the Arbitration and Conciliation Act reads as follows:

"8. Power to refer parties to arbitration where there is an arbitration agreement- (1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

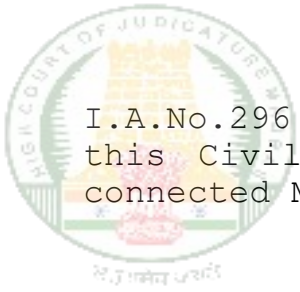
(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

6. When admittedly, there is an arbitration clause in the Loan cum Hypothecation Agreement between the plaintiff and the defendant, the civil Court will not have any jurisdiction to entertain the suit, on which, it touches upon the dispute between the borrower and the Financier. Hence, the application has been filed with the prayer to refer the matter for Arbitration, even before filing of the written statement. The application has been accompanied by original Loan cum Hypothecation Agreement. Hence, all the conditions as specified under Section 8 of the Arbitration and Conciliation Act, 1996, have been satisfied. However, the trial Court has erroneously arrived at a conclusion that the said issue is to be decided only after trial.

7. The order of the learned trial Judge is set aside. The application filed under Section 8 of the Act, by the defendant in



I.A.No.296 of 2010 in O.S.No.4 of 2010, stands allowed. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P&A)

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// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Principal District Munsif,
Paramakudi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.ANANTH C. RAJESH, Advocate (SR-17308[F] dated 07/04/2022)

+1 CC to M/s.K. SUDALAIYANDI, Advocate (SR-17333[F] dated 07/04/2022)

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SRR(CO)
KB(26.04.2022) 3P 6C