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W.P.Nos.28109 and 28110 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.28109 and 28110 of 2016

And

W.M.P.Nos.24252 and 24253 of 2016

Maveric Systems Limited ... Petitioner in both W.Ps.

Vs.

1.Ajit Ashutosh Kalle ... Respondent in W.P.28109/2016

1.Sridhar Parthasarathy ... Respondent in W.P.28110/2016

2.The Joint Commissioner of Labour
(Authority constituted under Sec.41
of Shops and Establishments Act, 1941)
DMS, Labour Building,
Teynampet,
Chennai – 600 006. ... Respondent in both W.Ps.

Common Prayer:

Petitions filed under Article 226 of the Constitution of India to issue Writ of Mandamus directing the second respondent to frame a preliminary issue as to the maintainability of the appeal in TNSE Case Nos.I/1 of 2015 and I/2 of 2015 respectively, filed under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 and render a finding in the same before proceeding with the said appeal on merits.



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For Petitioner : Mr.D.Muthukumar
for M/s.Paul and Paul

For Respondents : Mr.Jayesh B.Dolia for R1
Senior Counsel
for Mr.S.Kalyanaraman
for M/s.Aiyar and Dolia
Mr.S.John J.Raja Singh for R2
Additional Government Pleader

COMMON ORDER

The petitioner has filed these writ petitions seeking issuance of Writ of Mandamus directing the second respondent to frame a preliminary issue as to the maintainability of the appeal in TNSE Case Nos.I/1 of 2015 and I/2 of 2015 respectively, filed under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 and render a finding in the same before proceeding with the said appeal on merits.

2.Since the issue involved in these writ petitions are interrelated, they are heard together and disposed of by way of a common order.

3.The case of the petitioner is that the petitioner is a company registered under the Companies Act, 1956 and is involved in the business of software consultancy. The respective first respondent was recruited as consultant by the petitioner and the terms of relationship



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inbetween them were set out in the agreement dated 06.08.2012.

The agreement *inter alia* stipulates among various conditions and liabilities inbetween the parties and the contract is fixed from 01.04.2012 to 31.03.2017 for a period of five years.

4.The further case of the petitioner is that since the respective first respondent did not meet out the target set for them under the agreement despite extension of time, the petitioner was constrained to terminate them vide letter dated 21.03.2014 in terms of Clause 8 of the agreement dated 06.08.2012. Aggrieved by the same, the respective first respondent invoked the jurisdiction of the second respondent under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 as against the petitioner. The petitioner requested the second respondent to frame a preliminary issue to decide on the maintainability of the appeal and since the same was not considered, the petitioner has filed these writ petitions.

5.The learned counsel appearing for the petitioner submitted that the respective first respondent filed appeal before the second respondent under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 as against the petitioner. The petitioner



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raised preliminary issue with regard to the maintainability of the appeals on the ground of jurisdiction, however, that preliminary issue was decided improperly, which is not sustainable. He further submitted that this Court may permit the petitioner to canvass the preliminary issue along with the main issue and issue direction to the second respondent to decide the preliminary issue first and to pass appropriate orders.

6.The learned Senior Counsel appearing for the respective first respondent raise no serious objection.

7.Heard the arguments advanced on either side and perused the materials available on record.

8.The facts in the present case is not in dispute. As against their termination, the respective first respondent filed appeal under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947, before the second respondent. The grievance of the petitioner is that the second respondent have no jurisdiction to entertain the appeals filed by the respective first respondent. The petitioner can very well canvass all the issue along with the main issue before the second respondent.



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However, filing these writ petitions and stalling the entire proceedings is not sustainable one. Hence, the prayer sought for in these writ petitions cannot be granted.

9.However, liberty is granted to the petitioner to canvass all the issue including the preliminary issue along with the main issue before the second respondent. The second respondent is directed to provide opportunity to the petitioner and the respective first respondent and conclude the proceedings including the preliminary issue and the main issue and pass appropriate orders, as expeditiously as possible.

10.With the above observations, these writ petitions stand disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

06.07.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No



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M.DHANDAPANI,J.
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To

- 1.The Joint Commissioner of Labour
(Authority constituted under Sec.41
of Shops and Establishments Act, 1941)
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