



ARB O.P.(Com.Div) N.678 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No.678 of 2022

Mr. T. Rajesh Prasad,
Partner of M/s. R.K.Properties ... Petitioner

vs.

Mr. K.Saji Kumar ... Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the arbitration clause in Partnership Deed dated 27.04.2011 and b) Direct the respondent to pay the costs

For petitioner : Mr. A. M. Nataraj
For respondent : Mr. P. Selvaraj

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator.

2. The issue that arises for consideration in this petition is whether parallel Proceedings under Section 8 of the Arbitration and Conciliation



Act, 1996 seeking for reference of the dispute to Arbitration and Proceedings under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator can be filed by the very same petitioner.

3. In the instant case, the following are the undisputed facts :-

a) A suit has already been filed by the respondent against the petitioner in O.S. No.45 of 2022 seeking for declaration and injunction which is pending on the file of Additional District Court, Kuzhithurai, Kanyakumari District.

b) The parties to the suit in O.S. No.45 of 2022 and the parties to the present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 are one and the same.

c) Based upon the arbitration clause contained in the Partnership Deed dated 27.04.2011, the instant petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996.

d) The respondent, who is the plaintiff in the suit in O.S. No.45 of 2022 as seen from the plaint has alleged that



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the Partnership Deed dated 27.04.2011 which contains an arbitration clause is a fabricated document. In the counter affidavit filed in this petition, the respondent has also alleged that there is no valid arbitration agreement between the parties.

e) The petitioner who is the defendant in the suit O.S. No.45 of 2022 on the file of Additional District Court, Kuzhithurai, Kanyakumari District, has even prior to the filing of this petition under Section 11 has filed I.A. No.3 of 2022 in O.S. No.45 of 2022 under Section 8 of the Arbitration and Conciliation Act, 1996 seeking for reference of the dispute arising out of the Partnership Deed dated 27.04.2011 to arbitration. A counter affidavit has also been filed by the respondent in I.A. No.3 of 2022 filed by the petitioner.

f) I.A. No.3 of 2022 in O.S. No.45 of 2022 filed under Section 8 of the Arbitration and Conciliation Act, 1996 is yet to be adjudicated by the Additional District Court, Kuzhithurai, Kanyakumari District and the said application is pending consideration by the said Court.



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g) The respondent has raised several contentions in his plaint filed in support of O.S. No.45 of 2022 on the Additional District Court, Kuzhithurai, Kanyakumari District. One of the contention is that the alleged Partnership Deed, dated 27.04.2011 which contains arbitration clause and relied upon by the petitioner is a fabricated document.

h) The respondent, who is the plaintiff in the suit O.S. No.45 of 2011 seeks for a declaration and injunction in respect of a property which the petitioner claims belongs to the Partnership Firm which was constituted pursuant to the Partnership Deed, dated 27.04.2011. The respondent in the suit contends that the property does not belong to the Partnership Firm and is his exclusive property, which is denied by the petitioner.

4. Section 8 and Section 11 of the Arbitration and Conciliation Act, 1996 are complimentary in nature. The former is paramount to the initiation of arbitration proceedings. It empowers a judicial authority to refer parties to the arbitration, so long as it is not prima facie satisfied that there is no valid arbitration agreement between the parties.



Similarly, in initiating arbitral proceedings, Section 11 plays an equally important role as it facilitates the appointment of Arbitrators.

5. The respondent who is the plaintiff in the suit in O.S. No.45 of 2022 on the file of Additional District Court, Kuzhithurai, Kanyakumari District has made several allegations against the petitioner, who is the defendant in the said suit. One of the allegation is that the Partnership Deed dated 27.04.2011 which contains the arbitration Clause and which is relied upon by the petitioner for filing this petition is a fabricated document. It is to be noticed that any order passed under Section 11 of the Arbitration and Conciliation Act, 1996 is not an appealable order, whereas an order refusing to refer the parties to the dispute to arbitration in an application filed under Section 8 of the Arbitration and Conciliation Act, 1996 is an appealable order under Section 37 of the Act. In case, the petitioner succeeds in this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 and this Court appoints an Arbitrator, the suit in O.S. No.45 of 2022 on the file of Additional District Court, Kuzhithurai, Kanyakumari District, which has raised several contentions including the contention that the Partnership Deed, dated 27.04.2011 which contains an arbitration clause will become meaningless. If this petition is allowed, even before the adjudication of



an application filed under Section 8 of the Arbitration and Conciliation Act, 1996, the rights of the respondent questioning the arbitrability of the dispute due to his contention that the Partnership Deed, dated 27.04.2011, which contains an arbitration clause is a fabricated document will be defeated. It will also amount to the petitioner obtaining the relief which he may not have achieved in a Section 8 application filed under the Arbitration and Conciliation Act, 1996, though Section 8 and Section 11 of the Act are complimentary in nature.

6. The expression parallel Proceedings has been used in a sense to describe a set of Proceedings that a litigant is prohibited to pursue simultaneously. Such set of Proceedings either includes Proceedings that are identical in effect or a set of Proceedings that are inherently inconsistent so as a pursuit of one, negates the other. In the former case, the Proceedings must be similar in three aspects a) the Parties; b) issues involved and c) the relief claimed. In cases where Proceedings are similar in these material aspects, it is obvious that the result of one would render the other meaningless. Therefore, permitting parallel Proceedings initiated by the very same party would amount to permitting meaningless litigation. The outcome of a Section 8 application is paramount to the



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initiation of the arbitration. When an application under Section 8 of the Arbitration and Conciliation Act, 1996 filed by the very same petitioner is pending consideration by the Civil Court in O.S. No.45 of 2022 and also prior in point of time, the very same petitioner cannot parallely file an application under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator by this Court, which would defeat the rights of the respondent, who has questioned the very existence of the Partnership Deed, dated 27.04.2011 which contains an arbitration clause on the ground that it is a fabricated document in his suit filed in O.S. No.45 of 2022.

7. For the foregoing reasons, this Court is of the considered view that this petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 prematurely by the petitioner, even before a decision is taken by the Additional District Court, Kuzhithurai, Kanyakumari District in his application filed under Section 8 of the Arbitration and Conciliation Act, 1996 in I.A. No.3 of 2022 in O.S. No.45 of 2022, which is paramount for consideration of an application under Section 11 of the Arbitration and Conciliation Act, 1996.

8. In the result, this petition is disposed of on the ground that the



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petition has been filed prematurely but however, liberty is granted to the petitioner to file a fresh petition under Section 11 of the Arbitration and Conciliation Act, 1996 in case he succeeds in his application filed under Section 8 of the Arbitration and Conciliation Act and there is no consensus between the parties with regard to the appointment of the Arbitral Tribunal.

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Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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ABDUL QUDDHOSE, J.

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