



OSA No.74 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

OSA No.74 of 2020 and

CMP No.2894 of 2020

1. S.P.Velayutham
2. Amar

... Appellants

Vs.

M/s Emaar MGR Land Limited,
rep. by Mrs. Anjana Bali,
306-308, Square one, District Centre,
Saket, New Delhi 110 017.

... Respondent

Prayer: Original side appeal filed under Order 36 Rule 1 of Original Side Rules r/w Clause 15 of the Letter Patent to set aside the order passed by the learned Single Judge in C.S.No.169/2018, dated 04.12.2018.

For appellants : Mr.Xavier Felix

For respondent : Mr.R.Parthasarathy, Senior Counsel
for Mr.Madhan Babu



OSA No.74 of 2020

WEB COPY

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This original side appeal has been preferred to set aside the order passed by this Court in C.S.No.169/2018, dated 04.12.2018.

2. The above said suit has been filed by M/s Emaar MGR Land Limited, the respondent herein, for recovery of a sum of Rs.452,17,26,360/- from the appellants herein and it was listed before the learned Single Judge under the caption " to determine jurisdiction ". After hearing both side counsel and elaborate discussion, the learned Single Judge, has determined that this Court is having jurisdiction to entertain the suit and the above said order is impugned herein.

3. The learned Senior Counsel appearing for the respondent, by relying upon the provisions of Section 12(3), 13(2) and 16(3) of the Commercial Courts Act, submitted that the present appeal is not maintainable before this Court. He also submitted that the learned Single Judge has passed the order assuming that this Court is having jurisdiction



OSA No.74 of 2020

and hence as against the above order, the remedy is only before the Hon'ble Supreme Court and not before this Court.

4. In reply to the above said contentions, the learned counsel for the appellants made objection and submitted that, the appellants have preferred an appeal before the Hon'ble Supreme Court in SLP (civil) No.37485/2019, as against the order passed by the learned Single Judge and the Hon'ble Supreme court, vide order dated 29.11.2019 has passed an order, as extracted hereunder.

" Delay condoned"

The impugned order has been passed by the learned Single Judge of the Madras high Court, against which the appeal is to be filed only before the Division Bench of the Madras High Court. The special leave petition is disposed of by giving liberty to the petitioner to work out their remedy in accordance with law."

Pending application(s), if any, shall also stand disposed of"

He further submitted that pursuant to the above said order passed by the Hon'ble Supreme court, the present appeal has been filed before this Court. Therefore, this appeal is maintainable.



WEB COPY

4.1. He further submitted that, subsequent to the above said order of the Supreme Court and also pending appeal before this Court, the appellants have filed miscellaneous application No.856/2020 in SLP (C) No.28245/2019 before the Hon'ble Supreme Court to clarify the order dated 29.11.2019 passed on the above said special leave petition. The Hon'ble Supreme Court, vide order dated 20.05.2020, has clarified as follows.

" Mr.K.V.Vishwanathan, learned senior counsel submits that as against the order passed by the High Court dated 04.12.2018, the appeal is not maintainable under the Commercial Courts Act and therefore, seeks a clarification from Court that this court has not expressed any opinion on the maintainability of appeal.

The order dated 29.11.2019 is clarified that we have not expressed any opinion on the merits of the matter or on the question of admissibility of the appeal before the Division Bench. ***Both parties are at liberty to raise all the contentions before the High Court on the maintainability of the appeal, as well as on merits.***

We make it clear that, we have not expressed any opinion either on maintainability of the appeal or on the merits of the matter.

If any party is aggrieved by the order passed by the High Court, either party is at liberty to approach the Supreme Court.

Miscellaneous application is disposed of. "



OSA No.74 of 2020

Therefore he submitted that, in view of the above said order of the Hon'ble Supreme Court, in this appeal, the issue of maintainability has to be decided at the first instant.

5. Heard the learned counsel for the appellants and the learned Senior Counsel appearing for the respondent.

6. In the light of the above orders passed by the Hon'ble Supreme Court as stated supra and also the submission made by the learned counsel on either side, we are of the opinion that, before going into the merits of the appeal, the preliminary issue as to the maintainability of the appeal, has to be determined in this case. Accordingly, the issue to be decided is,

Whether the appeal, as against the order passed by the learned single Judge (commercial Division) on jurisdictional point, is maintainable or not?

7. It is the contention of the learned Senior Counsel appearing for the respondent that, as per the proviso to Section 12(3), 13(2) and 16(3) of the Commercial Court Act, this appeal is not maintainable before this Court. At



OSA No.74 of 2020

this juncture, it is worthwhile to extract the above provisions, which reads as
be.

Section 12: Determination of Specified value

Section 12(3): No appeal or civil revision application under Section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Act.

Section 13: Appeals from decrees of Commercial Courts and Commercial Divisions

Section 13(2): Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

Section 16 Amendments to the Code of Civil Procedure, 1908 in its application to commercial dispute.

Section 16(3): Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.



OSA No.74 of 2020

WEB COPY

8. As per Section 12(3) of the Commercial Courts Act, no appeal shall lie as against the order passed by the Commercial Division, finding it has jurisdiction to hear a commercial dispute. Likewise, as per Section 13(2) of the Commercial Act, no appeal shall lie from any order of a commercial division, otherwise than in accordance with the provisions of the Act. On facts of the case, the learned Single Judge has determined the jurisdiction before the Commercial Division. Challenging the order determining the jurisdiction, the appellant has filed this appeal. The order passed by the learned Single Judge is not an appellable order, in view of Sections 12(3) and 13(2) of the Commercial Courts Act, 2015. Therefore, in view of the provisions of the Commercial Courts Act as well as the Code of Civil Procedure, we safely come to the conclusion that the impugned order under appeal is not an appellable order and therefore, the instant appeal is liable to be dismissed, as not maintainable. Hence, this appeal is not maintainable. It is for the appellant to seek his remedy before the Hon'ble Supreme Court.

9. Accordingly, this original side appeal is dismissed, as not



OSA No.74 of 2020

maintainable with the above liberty. No costs. Consequently, connected

miscellaneous petition is closed.

(D.K.K.J.)

(P.D.B.J.)

06.11.2023

Internet: Yes/No

Index : Yes/No

mst



WEB COPY



OSA No.74 of 2020

D.KRISHNAKUMAR, J.

and

P. DHANABAL, J.

mst

OSA No.74 of 2020

06.11.2023