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C.R.P.Nos.4 and 5 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.Nos.4 and 5 of 2023

and

C.M.P.Nos.36, 38, 39, 47, 48 & 51 of 2023

C.R.P.No.4 of 2023:

Kaveeya Shri Vahri Educational Trust,
Represented by its Trustee Mr.C.Radhakrishnan
#28, Madhar Nagar, Konerikuppam,
Kanchipuram, Tamil Nadu – 631 502
Represented by its Trustee
Mr.C.Radhakrishnan,
S/o.Chinnapaiyan

... Petitioner

Vs.

1.Lighthouse Learning Private Limited,
801, Windsor,
Off Vidyanagari Marg,
Kalina, Santacruz (East)
Mumbai – 400 098.

2.Kangaroo Kids Education Limited,
301, Mamta House,
231 S.V.Road,
Bandra (w),
Mumbai – 400 050.

3.Ms.Lina Ashar,
301, Mamta House, 231, S.V.Road,
Bandra (W), Mumbai – 400 005.

... Respondents



Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 15.12.2022 passed by the Learned Principal Sub-Judge, Kanchipuram in O.S.S.R.No.12849 of 2022 in Unnumbered O.S.No...../2022 and consequently number the suit by taking the plaint on record.

C.R.P.No.4 of 2023:

Shri Vahri Education Charitable Trust,
No.28, Madar Nagar, Ponnerikarai,
Kanchipuram, Tamil Nadu – 631 503
Represented by its Trustee
Mr.C.Radhakrishnan,
S/o.Chinnapaiyan

... Petitioner

Vs.

1.Lighthouse Learning Private Limited,
801, Windsor,
Off Vidyanagari Marg,
Kalina, Santacruz (East)
Mumbai – 400 098.

2.Kangaroo Kids Education Limited,
301, Mamta House,
231 S.V.Road,
Bandra (w),
Mumbai – 400 050.

3.Ms.Lina Ashar,
301, Mamta House, 231, S.V.Road,
Bandra (W), Mumbai – 400 005.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 21.12.2022 passed by the Learned



Principal Sub-Judge, Tiruttani in O.S.S.R.No.680 of 2022 in Unnumbered O.S.No...../2022 and consequently number the suit by taking the plaint on record.

For Petitioner : Mr.N.L.Rajah
Senior Counsel
For Mr.Arun C.Mohan
(in both C.R.Ps)

COMMON ORDER

The Civil Revision Petition in C.R.P.No.4 of 2023 has been instituted to set aside the order dated 15.12.2022 passed by the Learned Principal Sub-Judge, Kanchipuram in O.S.S.R.No.12849 of 2022 in Unnumbered O.S.No...../2022 and consequently number the suit by taking the plaint on record.

1.1. The Civil Revision Petition in C.R.P.No.5 of 2023 has been instituted to set aside the order dated 21.12.2022 passed by the Learned Principal Sub-Judge, Tiruttani in O.S.S.R.No.680 of 2022 in Unnumbered O.S.No...../2022 and consequently number the suit by taking the plaint on record.



2. The revision petitioner/Trust is the plaintiff, instituted Suits for injunction. The complaints presented before the Principal Sub Court, Kanchipuram and Principal Sub-Court, Tiruttani were returned on the ground that the Courts concerned have no jurisdiction to entertain the Suits, in view of bar under Section 5 of the Arbitration and Conciliation Act, 1996.

3. Perusal of the orders impugned reveal that the Principal Sub Court, Kanchipuram and Principal Sub-Court, Tiruttani have adjudicated the issues with reference to the provisions of the Arbitration and Conciliation Act, 1996.

4. The learned Senior Counsel appearing on behalf of the revision petitioner/Trust mainly contended that Section 5 of the Arbitration and Conciliation Act, 1996 enumerates that *“Notwithstanding anything contained in any other law for the time being in force, in matter governed by this Part, no judicial authority shall intervene except where so provided in this Part”*. However, the Section 8 of the Arbitration and Conciliation Act carves out the exceptions and provides power to refer parties to arbitration where there is an arbitration agreement. However, the issues in this regard with reference to the provisions of the Arbitration and Conciliation Act are to



be adjudicated elaborately and therefore, the plaints cannot be returned merely on the ground of jurisdiction.

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5. This Court is of the considered opinion that, while returning the plaint presented, the Court concerned is empowered to note down the defects, if any, found. However, adjudication of issues are impermissible, while scrutinizing the plaint by the Trial Courts or by the Appellate Courts. Adjudication of issues must be done only after numbering the case and by affording opportunity to the parties to the proceedings.

6. However, in the present cases, the Principal Sub Court, Kanchipuram and Principal Sub-Court, Tiruttani have adjudicated the issues, not only by relying on a judgement, but also by interpreting the provisions of the Arbitration and Conciliation Act, which is not in consonance with the established principles of law and such an exercise must be done only after issuing notice to the parties and by way of judicial hearing before the Court.

7. The findings for returning the plaint reveals that the Principal Sub-



Court, Kanchipuram, formed an opinion that Section 5 of the Arbitration and Conciliation Act operates as a bar against the plaintiff and such a finding if at all to be given, must be made after hearing the parties and after adjudication. Thus, the reason for returning of plaint is not in consonance with the established principles and thus, the Suits are to be numbered, if the papers are otherwise in order and the issues regarding the maintainability, jurisdiction are to be taken upon in the open Court by affording opportunity to all the parties.

8. The Courts concerned relied on Clause 13.8 of the Franchise agreement and returned the plaints on the ground that the Courts have no jurisdiction to entertain the Suits as they are barred. The Arbitration Clause can be relied upon for the purpose of forming an opinion only after hearing the parties and with regard to the jurisdiction. Thus, the Court cannot form an opinion in advance and furthermore, unilateral adjudication is contrary to the principles of law and all such grounds including jurisdiction, maintainability are to be adjudicated by affording opportunity to the parties. No doubt, in certain circumstances, Court can return the plaint, if it is expressly or impliedly barred under Section 9 of the Code of Civil Procedure. However, such express or implied clause would not lead for an



adjudication of certain issues based on the Arbitration agreement, contract, etc. Clauses in the agreement are to be adjudicated only after affording opportunity to all the parties. Therefore, the Court has to draw a distinction with reference to the maintainability of a Suit under Section 9 of the Code of Civil Procedure. Only if it is expressly or impliedly barred, then alone, the plaint is to be returned and in other cases, an adjudication is required.

9. In view of the facts and circumstances, the order dated 15.12.2022 passed by the Learned Principal Sub-Judge, Kanchipuram in O.S.S.R.No.12849 of 2022 in Unnumbered O.S.No...../2022 and the order dated 21.12.2022 passed by the Learned Principal Sub-Judge, Tiruttani in O.S.S.R.No.680 of 2022 in Unnumbered O.S.No...../2022 are set aside and consequently, the Principal Sub-Court, Kanchipuram and Principal Sub-Court, Tiruttani are directed to number the suits filed by the revision petitioner/Trust, if the papers are otherwise in order and issue notice to the respondents and hear the issues in the open Court and thereafter, dispose of the same in accordance with law.

10. Accordingly, both the Civil Revision Petitions stand allowed. No



costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes

Speaking order: Yes

Neutral Citation: Yes

Note: Registry is directed to return the original impugned order copies to the learned counsel for the revision petitioners on record.

To

1.The Principal Sub-Court,
Kanchipuram.

2.The Principal Sub-Court,
Tiruttani.



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S.M.SUBRAMANIAM, J.

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