



C.R.P.No.790 of 2023
and C.M.P.No.6076 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.790 of 2023
and C.M.P.No.6076 of 2023

1.T.Mariappan
2.M.Mythili

.. Petitioners

Vs.

K.Kumaran
Respondent

..

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order and decretal order dated 18.11.2022 passed in I.A.No.2 of 2022 in O.S.No.76 of 2017 on the file of III-Additional District Judge, Tiruvallur at Poonamallee dismissing the petition under Section 8(1) of the Arbitration and Conciliation Act, 1996.

For Petitioner : M/s.B.Asvini
For Respondents : Mr.M.V.Sivachari

ORDER

This Civil Revision Petition has been filed against the order and



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decreetal order dated 18.11.2022 passed in I.A.No.2 of 2022 in O.S.No.76 of 2017 on the file of III-Additional District Judge, Tiruvallur at Poonamallee dismissing the petition under Section 8(1) of the Arbitration and Conciliation Act, 1996.

2.The case of the petitioners is that the suit has been filed by the respondent in O.S.No.76 of 2017 on the file of the III Additional District Court, Poonamallee for recovery of sum of Rs.43,20,000/-. The petitioners being the defendants contested the suit and filed the written statement. Thereafter, the petitioners filed an application under Section 8(1) of the Arbitration and Conciliation Act. However, the same came to be dismissed. Hence, the present application has been filed.

3.The learned counsel for the petitioners submitted that only at the time of cross-examination of P.Ws.1 and 2, the petitioners came to know that there is an arbitration clause in the joint venture agreement and therefore, they filed an application seeking direction to refer the matter to the arbitration. However, the Court below after considering the application



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dismissed the same. Hence, he prayed to set aside the order dated 18.11.2022 passed in I.A.No.2 of 2022 in O.S.No.76 of 2017 on the file of III-Additional District Judge, Tiruvallur.

4.The learned counsel appearing for the respondent submitted that the Court below after considering the application filed by the petitioners has rightly dismissed the same, which does not requires any interference and he prayed for the dismissal of the present petition.

5.Heard the learned counsel appearing for the petitioners as well as the respondent and perused the materials available on record.

6.For better appreciation Section 8(1) of the Arbitration and Conciliation Act, 1996, is extracted hereunder:

“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



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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.”

7.From the above provision, it clear that the parties to the arbitration agreement cannot seek arbitration under Section 8(1) of the Arbitration and Conciliation Act, after filing a written statement. At the outset, the present Revision Petition itself is not maintainable. The petitioners ought to have exercised the arbitration clause before filing the written statement, which has not been done so. At the final stage of the proceedings, the matter cannot be referred to arbitration.

8.In view of the above, the Civil Revision Petition stands dismissed.
No costs. Consequently connected miscellaneous petition is also closed.

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rst

Index : Yes/No
Internet: Yes/No

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Speaking/Non-Speaking Order

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To:

The III-Additional District Judge,
Tiruvallur at Poonamallee.



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N.SATHISH KUMAR, J.

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