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O.A.Nos.154 & 155 of 20



O.A.Nos.154 & 155 of 2024

**RESERVED ON
21.08.2024**

**PRONOUNCED ON
09.09.2024**

K.KUMARESH BABU, J.

Application in A.No.154 of 2024 has been filed to grant ad interim injunction restraining the respondent or its employees or their men or servant or agents or sub-dealers or any other person claiming under/ through the respondent not to sell the finished product yarn to any third-party.

2. Application in A.No.155 of 2024 has been filed to grant ad interim injunction restraining the respondent or its employees or their men or servant or agents or sub-dealers or any other person claiming under/ through the respondent not to use the raw materials supplied by the applicant to any third-party.

3. Heard Mr.R.Prabhhakaran, learned counsel for the applicant and Mr.T.Gowthaman, learned Senior Counsel for Mr.R.Swarnavel, learned counsel for the respondent.

4. When the matter was taken up for hearing, an objection had been raised by the learned Senior Counsel appearing on behalf of the respondent with regard to the jurisdiction of this Court to entertain these applications.



Hence, the learned counsel for the applicant was directed to address the issue with regard to the jurisdiction.

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5. The learned counsel for the petitioner would submit that clause M13 of the Agreement, only indicates that the agreement is subject to Dindigul jurisdiction which cannot be considered as a jurisdictional Court in respect of arbitrations. He would submit that arbitration is a separate agreement dehors the main agreement. Even though, the said Clause is in combination of vesting jurisdiction, the terms indicated with regard to the jurisdiction of the Dindigul is only with reference to the agreement and not the arbitration. With regard to the arbitration, he would submit that the parties have agreed to approach the jurisdiction Court. He had also relied upon the judgment of the Hon'ble Apex Court in the case of *State of Maharashtra Vs Atalanta Limited* reported in **2014 (11) SCC 619** and in the case of *BBR (INDIA) Private Limited Vs S.P.Singla constructions Private Limited* reported in **2023 (1) SCC 693** to support his contention. He would further submit that even though the cause of action in this case, according to him would arise at any place pursuant to the said agreement. He would submit that there are transactions between the parties at Pondicherry and therefore, he would submit that this Court has jurisdiction to deal with the Section 9 Application.



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6. On the other hand, learned Senior Counsel appearing on behalf of the respondent would contend that firstly, there was no cause of action whatsoever for this Court to entertain this present Section 9 Application. He would submit that Section 2(e)(1) defines '*Court*'. Section 2(e)(1) mandates that the jurisdictional Court would be a civil Court of original jurisdiction in a District and also includes the High Court which exercises its original civil jurisdiction. In the present case, he would submit that the agreement itself is subject to the Dindigul jurisdiction and that even the jurisdiction cannot be extended to for and convenience of the party to initiate a Section 9 Application, but the applicant would show that apart no cause action had arisen within the jurisdiction of this Court to deal with such Section 9 Application. He had also placed reliance upon the judgment of the Division Bench of this Court, dated 31.01.2024 in ***O.S.A.(CAD) No.172 of 2023***.

7. I have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on record.

8. Clause M-13 of the Agreement which deals with the arbitration Clause. For better appreciation, the said Clause is extracted hereunder:-

“M-13.The agreement is subject to Dindigul

Jurisdiction. Any dispute will be referred to an



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arbitrator, who will be appointed on mutual agreement of both parties failing which the matter would be presented in Courts of suitable jurisdiction.”

9. The said Clause as submitted by the learned counsel for the applicant would have to be read in two parts that is vesting the jurisdiction to Dindigul in respect of the agreement and the arbitration Clause to be independent of vesting of jurisdiction. But, however, the words “suitable jurisdiction” is sought to be extended by the learned counsel for the applicant to institute a suit before any Court of his convenience. I am entirely in disagreement with such a contention made by the learned counsel for the applicant. Further the judgment relied upon by the learned counsel for the applicant reported in **2014 (11) SCC 609** cannot be made applicable to the facts of the case as it deals with a situation where a concurrent jurisdiction of two Courts was in issue. Similarly the other judgment relied upon by the learned counsel for the petitioner reported in **2023 (1) SCC 693** also do not support the case of the petitioner. The issue there even though was with regard to the jurisdiction of the Court, in that case, the arbitrator had indicated that the seat of arbitration would be at Panchkula, Haryana. But, however, conducted various proceedings at Delhi and also passed an Award at Delhi. In such an event, the Hon'ble Apex Court had held that the Courts in Panchkula, Haryana would only have jurisdiction, as the seat of arbitration was in Panchkula, Haryana and not in Delhi.



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10. On the other hand, the Division Bench judgment of this Court which had been relied upon by the learned Senior Counsel appearing on behalf of the applicant, after analysing the Provision of Section 2(e)(1) had held that a Court which has a jurisdiction to decide a suit on the subject matter of arbitration, is a civil Court within whose jurisdiction the dispute has arisen. In such event, analysing the facts of the case, there has not even a part of cause of action that had arisen before this Court, for this Court to entertain the present Application under Section 9.

11. In view of the same, the present applications are dismissed. However, with a liberty to the applicant to make appropriate application under Section 17 of the Arbitration and Conciliation Act, 1996 in view of the appointment of the order in the petition filed by the applicant in Arb.O.P.(Com.Div.)No.153 of 2024.

Gba

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(2/2)

Index : Yes/ No

Speaking/ Non-speaking order

Neutral Citation : Yes/ No



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