



A.No.1881 of 2024
in
C.S.(Comm Div) No.332 of 2023

P.VELMURUGAN, J.,

This application has been filed by the applicant/defendant to refer the parties to arbitration in terms of section 8 of the Arbitration and Conciliation Act, 1996 in accordance with Clause 11 of the Assignment Agreement, dated 02.05.2018.

2. Learned Senior Counsel for the applicant/defendant submitted that before filing written statement in the suit, the applicant/defendant has filed the present application invoking Section 8 of the Arbitration and Conciliation Act, 1996. Further, without in any manner conceding that the present suit raises any genuine or legitimate grievance or admitting any of the contentions made by the respondent/plaintiff and without prejudice to the applicant/defendant's right to raise objections, including objections as to the validity of the agreement, dated 02.05.2018, it is submitted that the suit is not maintainable and that the disputes between the parties are to be referred to arbitration, pursuant to Clause 11 of the agreement entered into between the parties. The respondent/plaintiff has filed the suit based on the abovesaid agreement. All the requirements of Section 8 are met out in the present case, as (i) this Court constitutes a judicial authority within the meaning of Section 8 of the Arbitration and Conciliation Act, (ii) the



Agreement based on which the respondent/plaintiff has filed the suit contains arbitration Clause and (iii) the applicant/defendant has filed the present application not later than when submitting their first statement on the substance of the dispute. The respondent/plaintiff, suppressing the arbitration Clause, has filed the present suit, without admitting the validity of the agreement, even assuming without admitting that the agreement is a correct agreement or relevant to the suit claim that the agreement dated 02.05.2018 filed by the respondent/plaintiff contains the arbitration Clause. The present suit is barred on law. However, the applicant/defendant has invoked Section 8 of the Arbitration and Conciliation Act.

3. Learned counsel for the respondent/plaintiff submitted that the application filed by the applicant/defendant is not maintainable. The application has been filed by the applicant/defendant to refer the case to Arbitration under Section 8 of the Arbitration and Conciliation Act, which is highly misconceived and ex-facie not at all maintainable, either in law or on facts. The suit has been filed for recovery of a sum of Rs.5,24,10,423/- towards reimbursement of the GST dues paid by the respondent/plaintiff, since the applicant/defendant being the recipient of the services under the agreement dated 02.05.2018, failed and neglected to pay GST to the Government being the statutory liability payable by him as per the GST statutes. The applicant/defendant has not accepted the suit



agreement dated 02.05.2018 as a valid agreement and it cannot be countenanced in any manner whatsoever for the simple reason that the respondent/plaintiff had filed the xerox copy of the said agreement by self-attesting the same as 'true copy' along with the application itself. Hence, the dwell condition of Section 8 of the Arbitration Act has not been complied with. The applicant/defendant has not accepted the suit agreement dated 02.05.2018 as a valid agreement and further, the applicant/defendant has not filed either the original agreement or certified copy of the agreement.

4. He further submitted that written statement has to be filed within 30 days from the date of receipt of summons, whereas the applicant/defendant has not filed the written statement and hence, he ought to have filed this application before expiry of 30 days from the date of receipt of summons. The suit has been filed only for recovery of sum of Rs.5,24,10,423/-, which claims to be the GST dues towards assignment of certain rights relating to the movie "Sandakozhi 2", on the basis of the assignment agreement, dated 02.05.2018. But the dispute is not covered under Clause 11 of the agreement and therefore, Section 8 of the Arbitration and Conciliation Act would not attract. Hence, the application is liable to be dismissed.

5. In support of his contentions, the learned counsel for the



applicant/plaintiff has placed reliance on the following decisions:

i. 2023 (7) Supreme Court Cases 193 [*Gujarat Composite Limited Vs. A Infrastructure Limited and Others*] and

ii. 2008 (2) CTC 856 [*Atul Singh and others Vs. Sunil Kumar Singh and others*]

6. Heard the learned counsel on either side and perused the materials available on record.

7. Admittedly, the respondent/plaintiff has filed the suit for recovery of money with principal and interest which claims to be the GST dues towards assignment of certain rights relating to the movie "Sandakozhi 2", on the basis of the agreement dated 02.05.2018.

Clause 11(b) of the agreement dated 02.05.2018 is extracted hereunder:

"11. Governing Law and Dispute Resolution:

.....

b) All disputes arising out of or in connection with this agreement shall be referred to and finally settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996, with each party appointing an arbitrator and two arbitrators appointing the third arbitrator as the presiding arbitrator. The arbitration proceedings shall be held at Chennai. The



arbitration proceedings shall be conducted in the English language. The arbitral award is final and binding on the parties.”

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8. In the light of the agreement dated 02.05.2018 entered into between the parties, Section 8(1) of the Arbitration and Conciliation Act grants power to referring the parties to the arbitration.

Section 8(1) of the Arbitration and Conciliation Act is extracted hereunder:

“8. Power to refer parties to arbitration where there is an arbitration agreement-

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.”

Though the applicant/defendant denied the agreement, however, the respondent/plaintiff has filed the suit based on the agreement dated 02.05.2018 and he has also placed a copy of the agreement along with the suit. Therefore, once the respondent/plaintiff has filed the suit based on the agreement and the said agreement provided the Arbitration Clause and if any dispute arises, the parties have to invoke the Arbitration Clause as incorporated in the agreement.



9. The validity of the said agreement dated 02.05.2018 itself is questioned by the applicant/defendant and cause of action in the suit is out of scope of Clause 11(b) of the agreement dated 02.05.2018. Further, the respondent/plaintiff has neither filed the original agreement, nor the certified copy of the agreement, for which the learned Senior Counsel appearing for the applicant/defendant contended that the respondent/plaintiff himself filed the suit based on the agreement and he has also placed a copy of the agreement and hence the applicant/defendant need not file either the original agreement or certified copy of the same.

10. Learned Senior Counsel for the applicant/defendant has placed reliance on the following decisions:

i. 2009 (10) Supreme Court Cases 103 [Branch Manager Magma Leasing and Finance Limited and another Vs. Pothuri Madhavalata and another]

ii. 2023 SCC Online Mad 1684 [G.T.L Infrastructure Limited (GIL) represented by its Authorised Signatory Vs. Amaladoss]

iii. 2007 (7) Supreme Court Cases 737 [Bharat Sewa Sansthan Vs. U.P.Electronics Corporation Limited]

iv. 2011 (5) Supreme Court Cases 532 [Booz Allen and Hamilton Inc.



Vs. SBI Home Finance Limited and Others]

v. 2007 (3) Supreme Court Cases 686 [*Agri Gold Exims Limited Vs. Sri Lakshmi Knits and Wovens and Others*]

vi. 2006 (7) Supreme Court Cases 275 [*Rashtriya Ispat Nigam Limited and another Vs. Veram Transport Company*]

vii. 2009 (2) CTC 234 [*Cash and Gain Finance and Investments, represented by its Managing partner, Vs. Manjula Udaya Shankar*]

11. The learned Senior Counsel appearing for the applicant/defendant has placed reliance on the above referred cases, which clearly stated that once the respondent/plaintiff himself filed the copy of the agreement, the applicant/defendant, while invoking Arbitration Clause under Section 8 of the Arbitration and Conciliation Act, need not produce the original/certified copy of the document and mere production of copy of the document itself is enough. Further, learned Senior Counsel submitted that copy of the agreement was served on the applicant/defendant by the respondent/plaintiff while filing the suit.

12. A reading of the materials, the plaint and annexed document as well as the affidavit and counter affidavit filed by the applicant/defendant and the respondent/plaintiff and also the arbitration Clause, it clearly shows that the



respondent/plaintiff filed the suit based on the agreement dated 02.05.2018 and he has also annexed a copy of the agreement.

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13. Therefore, under the facts and circumstances, the contention of the learned counsel for the respondent/plaintiff that non-filing of original agreement or certified copy of the same is not proper, is not sustainable.

14. Further, Clause 11(b) of the agreement dated 02.05.2018 clearly stated that all the disputes arising out of or in connection with the agreement shall be referred to and finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996.

15. The learned counsel for the respondent/plaintiff vehemently contended that now, the cause of action for filing the suit is entirely out of scope of the Arbitration Clause 11(b) of the suit agreement. However, Clause 11(b) of the said agreement dated 02.05.2018 is only for the disputes arising out of or in connection with the agreement which shall be referred to finally settled by the arbitration. Therefore, whatever the dispute, though it is recovery of money or whether the agreement is valid or not, that can be decided by resorting to arbitration. Once the suit has been filed based on the agreement, if the agreement provided the Clause “arbitration” under Section 8 of the Arbitration and Conciliation Act, the applicant/defendant can invoke Section 8 of the



Arbitration and Conciliation Act before submitting the first statement. The language of Section 8 of the Arbitration Act is very clear that party so applies but not later than when he is submitting his first statement. In this case, application has been filed even prior to filing of the written statement. Therefore, on a reading of the entire materials and also considering the submissions made by the learned counsel on either side, the decisions referred to by the learned counsel for the applicant/defendant, are applicable to the present case on hand. The decisions referred to by the learned counsel for the respondent/plaintiff are not applicable to the present case on hand, which are distinguishable on facts.

16. Under the above facts and circumstances, this Court finds that the suit has been filed based on the agreement dated 02.05.2018 and in that agreement, Clause 11(b) provides “arbitration”, and the applicant has also filed the application not later than submitting the first statement and the applicant is entitled to invoke Section 8 of the Arbitration Act.

17. In the result, the application is allowed.

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