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C.R.P.No.1953 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.07.2024
PRONOUNCED ON : 06.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1953 of 2024
and
C.M.P. No.10304 of 2024

Dynamic SS Engineering
Company Pvt.Ltd.,
Rep. By its Managing Director
76/34, C4 Amuthini Flats,
Vinayagam Street, Venkatesh Nagar,
Virugambakkam
Chennai – 600 092 ... Petitioner / Plaintiff

Vs.

1.M/s. NTPC – BHEL Power
Projects Pvt.Ltd., (NBPPL),
Rep.by its Managing Director,
YSR Puram, Mannavaram,
Sri Kalahasti Mandal,
Chittoor – 517 620. ... 1st Respondent / 1st Defendant

2.Bank of India
Mylapore Branch,
Rep.By its Asst.General Manager,
174, Luz Church Road,
Mylapore,
Chennai – 600 004 ... 2nd Respondent / 2nd Defendant



C.R.P.No.1953 of 2024

WEB COPY

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Judgment and Decree of the trial Court, dated 21.02.2024 made in I.A.No.3 of 2022 in O.S.No.1508 of 2022 on the file of II Asst.Judge, City Civil Court at Chennai and restore the Suit in O.S.No.1508 of 2022.

For Petitioner : Mr.Ralplh V.Manohar
For R1 : Mr.S.Aravindan
For M/s.Mandal Associates
For R2 : Ms.Rachana

ORDER

Challenging the Judgment and Decree, dated 21.02.2024, made in I.A.No.3 of 2022 in O.S.No.1508 of 2022, on the file of learned I Assistant Judge (FAC), II Assistant City Civil Court, Chennai and to restore the Suit in O.S.No.1508 of 2022.

2. Briefly, the facts of the case are as follows:-

The Revision Petitioner – M/s.Dynamic SS Engineering Company Pvt. Ltd., Chennai, filed the Suit in O.S.No.1508 of 2022, on the file of the learned I Assistant Judge (FAC), II Assistant City Civil Court, Chennai, for the relief of permanent injunction, restraining the



1st respondent from in any way invoking the two Bank Guarantees, dated 23.02.2017 and 17.03.2017 raised by the plaintiff, drawn on the 2nd respondent Bank, in favour of the 1st respondent Company, for Rs.2,88,813/- and Rs.7,80,000/-. The 1st respondent issued Letter of Intent (LOI) on 09.01.2017 and subsequently, an Agreement was entered with the petitioner Company. As per clause 36 of the said agreement, all dispute, difference and claim have to be settled by reference to arbitration. As the dispute raised by the petitioner is with regard to the agreement then the dispute has to be referred to the Arbitrator. Hence, the 1st respondent filed an Application in I.A.No.3 of 2022 in O.S.No.1508 of 2022, on the file of learned I Assistant Judge (FAC), II Assistant City Civil Court, Chennai, to dismiss the Suit in O.S.No.1508 of 2022, and to refer the dispute to the Arbitration, as per the Agreement. The trial Court granted the relief, as sought for by the 1st respondent and dismissed the Suit. Aggrieved over the same, the petitioner is before this Court with the present Revision.

3. Mr.Ralph V.Manohar, the learned counsel appearing for the petitioner would submit that the 1st respondent has filed an application Section 8(1) of Arbitration and Conciliation Act, 1996 only



C.R.P.No.1953 of 2024

on 08.11.2022, which is after 241 days from the date of receiving the summons and the application under Section 8 of the Act, which is filed belated after the time for filing of the written statement is expired, the application is liable to be rejected. The belated filing of the Section 8 application by the defendant is to be construed as the defendant has no objection to participate in the suit proceedings. The trial Court below ignored the settled position of law that the expression in Section 8(1) of the Act “ so applies not later than the date of submitting his first statement on the substance of the dispute” means the outer limit for filing the written statement in a particular case. When the 1st respondent set ex-parte for not filing the counter affidavit in the application, the trial Court ought to have decided the issue of limitation in filing Section 8 application, which is a settled Law. The trial Court ought not to have entertained the application filed under Section 8 of the Act, as the respondent waived the Arbitration clause by unduly delaying in filing of the application under Section 8, which is ought to have been filed before the expiry of the period for filing of the written statement. Further, the trial Court, on 01.04.2022 recorded that summons to the 1st respondent was served. The 1st respondent ought to have filed his written statement within 90 days from the said date. The 90 days period expires on 29.06.2022



C.R.P.No.1953 of 2024

and the 1st defendant did not file their written statement before the expiry of 90 days time. Hence, the learned counsel prayed for setting aside the Judgment and Decree, dated 21.02.2024.

4. Mr.S.Aravindan, learned counsel appearing for the 1st respondent would submit that language used in Section 8 of the Act is peremptory in nature, and therefore in case, where there is an arbitration clause in the agreement, it is obligatory on the part of the Court to refer the parties to Arbitration in terms of the Arbitration Agreement and nothing remains to be decided in the dispute, except to refer the dispute to an Arbitrator. Thus, if the 1st respondent in its written statement mentions the fact that there is an arbitration agreement existing between the parties, which includes the subject matter of the suit, it will be in compliance with Section and the defendant need not file anything separately. Hence, the learned counsel prayed for dismissal of the Revision.

5. I have heard the learned counsels appearing on either side and perused the materials available on record.



C.R.P.No.1953 of 2024

WEB COPY

6. It is seen from the records that the Revision Petitioner filed the Suit in O.S.No.1508 of 2022, on the file of the learned I Assistant Judge (FAC), II Assistant City Civil Court, Chennai, for the relief of permanent injunction, restraining the 1st respondent from in any way invoking the two Bank Guarantees, dated 23.02.2017 and 17.03.2017 raised by the plaintiff, drawn on the 2nd respondent Bank, in favour of the 1st respondent Company, for Rs.2,88,813/- and Rs.7,80,000/-. An Agreement was entered into between the petitioner Company and the 1st respondent. As per clause 36 of the said agreement, all dispute, difference and claim have to be settled by reference to arbitration. As the dispute raised by the petitioner is with regard to the agreement then the dispute has to be referred to the Arbitrator. Hence, the 1st respondent filed an Application in I.A.No.3 of 2022 in O.S.No.1508 of 2022, on the file of learned I Assistant Judge (FAC), II Assistant City Civil Court, Chennai, to dismiss the Suit in O.S.No.1508 of 2022, and to refer the dispute to the Arbitration, as per the Agreement. The trial Court allowed the application filed by the 1st respondent and dismissed the Suit. Against which, the Revision.



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7. At this juncture it is relevant to refer Section 8(1) of Arbitration and Conciliation Act, 1996, which read as follows:-

“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 to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his 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.”

8. Section 8 of the Arbitration and Conciliation Act, 1996 deals with the power of the judicial authority to refer the parties to arbitration. If there is a valid arbitration agreement existing between the parties and a dispute arises which is a subject matter included in the said arbitration agreement, then the judicial authority before whom either of the parties has brought the case is obligated under Section 8 of the Arbitration and Conciliation Act, 1996 to direct the



parties to resolve their dispute through arbitration. This Section minimises judicial intervention by making it mandatory for the Court to direct the parties to go for arbitration, if they have included an arbitration clause in their agreement. To further increase the scope of arbitration, the 2015 Amendment to Section 8 of the said Act made it compulsory for the judicial authority to refer the parties to arbitration irrespective of any decree or court order or judgement of any court.

9. The respondent / 1st defendant issued the LOI, dated 09.01.2017, followed by an agreement entered between the petitioner / plaintiff and respondent / 1st defendant. As per Clause 36 of the said agreement, any dispute that arises between the parties, is to be referred to Arbitration. The petitioner / plaintiff for the reason best known not invoked Arbitration clause. Circumventing the same filed the Civil Suit to thwart the respondent in invoking the Bank Guarantee and filed the civil Suit in O.S.No.1508 of 2022, the respondents by invoking Section 8 of the Arbitration and Reconciliation Act, 1996 sought O.S.No.1508 of 2022 to be referred to Arbitration and the civil Court by judgment and Decreetal order dated 21.02.2024 in I.A.No.3 of 2022 in O.S.No.1508 of 2022, referred the case to Arbitration and dismissed the Suit. This Court



C.R.P.No.1953 of 2024

finds the Civil Court had rightly dismissed the Suit as per law and jurisdiction vested in it by law. Hence, the Revision is liable to be dismissed.

10. In the result, the Civil Revision Petition stands dismissed.
No costs. Consequently, the connected miscellaneous petition is also dismissed.

06.12.2024

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes
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To

1.The II Asst.Judge,
City Civil Court
Chennai.



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C.R.P.No.1953 of 2024

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY ORDER MADE
IN
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06.12.2024