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O.S.A. No.38 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2024

PRONOUNCED ON : 04.10.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S. SUNDAR

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

O.S.A. No. 38 OF 2024

1. Mrs. M. Ranjani
 2. Mrs. R. Rahini
- ... Appellants

Vs.

1. Mrs. R. Usha Rani
 2. Mr. M. Ragunathan
 3. Mr. M. Rajarathinam
 4. Mr. M. Rajendran
 5. Mr. M. Ravindran
 6. Mrs. I. Rajani
- ... Respondents

Original Side Appeal filed Under Order XXXVI Rule 9 of Original Side Rules R/w. XV of Letters Patent against the judgment and decree dated 09.08.2023 in the ordinary original jurisdiction of this Court in O.A. No.624 of 2023 in C.S.No.263 of 2022.

For Appellants : Mr. P. Anandan
(for Majestic Law Firm)

For RR 1 and 2 : Mr. M.S. Subramanian



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For RR 3, 5 & 6 : No Appearance

For R4 : Mr. S. Kumaran

JUDGMENT

(made by K.Rajasekar,J.,)

This Original Side appeal is filed challenging the order dated 09.08.2023, passed by the learned Single Judge in O.A. No.624 of 2023 in C.S.No.263 of 2022 under Section 8 of the Arbitration and Conciliation Act, 1996, referring the parties to go for Arbitration to resolve their dispute.

2. The plaintiffs and the defendants 2 to 6 are the daughters and sons of the late Salatchy Ammal @ M. Visalatchi Ammal, who died intestate on 22.11.1995, and their father late K.N. Manisamy Pillai also died intestate on 12.06.2000. The Defendant No.1 is the daughter-in-law of the deceased Salatchy Ammal and the wife of the second defendant. The suit schedule properties are the family properties of the plaintiffs and defendants 2 to 6. In the year 2019, the second defendant had approached the plaintiffs and the defendants 3 to 6 for partition of the suit scheduled properties and thereby, the plaintiffs had entered into a Memorandum of Understanding with the second



defendant on 06.03.2019 and thereafter, the second defendant had approached the plaintiffs and the defendants 3 to 6 to execute a Power of Attorney in favour of the first defendant, to manage the properties and the same was executed and registered before the Joint Sub-Registrar-II, Chennai vide Doc. No.322 of 2019.

3. Thereafter, the defendants 1 and 2 had colluded with ulterior motive and the first defendant, as a Power Agent of plaintiffs and other defendants had executed a Release Deed in favour of the second defendant vide Doc.No.426 of 2019 dated 29.03.2019 and the plaintiffs were not to put up a notice about the Release Deed. After knowing about the execution of the Release Deed and also an attempt made by the defendants to sell away the portion of the suit scheduled properties, the plaintiffs have cancelled the Power of Attorney executed in favour of the first defendant. Thereafter, they filed present suit to declare that the documents executed pertaining to the Power of Attorney as null and void.

4. The defendants, after service of summons, have come forward with the petition under Section 8 of the Arbitration and Conciliation Act, 1996, in which they have stated that with a view to amicably settle the family



disputes, they have decided to enter into a family settlement by way of Memorandum of Understanding (M.O.U. hereafter) dated 06.03.2019. Based upon the M.O.U., the General Power of Attorney in favour of the first defendant was executed by payment of huge amounts by the defendants 1 and 2 in favour of the other defendants and plaintiffs, but due to additional demand made by the plaintiffs, dispute aroused between the parties. As the Power Agent of the defendants and plaintiffs, the first defendant had executed a Release Deed in favour of the second defendant, hence there is no reason to declare the General Power of Attorney and Release Deed as null and void. As per Clause 16 of the M.O.U, if any dispute arose among the parties, then the same shall be referred to two Arbitrators, one appointed by each party, whose proceedings shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

5. After hearing both sides, the learned Single Judge has accepted the contention of the defendants 1 and 2, that there is an Arbitration Clause in Clause 16 of the M.O.U, entered between the parties, thereby, the parties shall workout their remedies, as per the Arbitration Agreement entered between them. Further, the learned Single Judge has appointed a Sole Arbitrator to adjudicate the dispute between the parties to the M.O.U., vide his order dated



09.08.2023.

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6. Aggrieved over the order passed Under Section 8 of the Arbitration and Conciliation Act, 1996, the plaintiffs have preferred this original side appeal.

7. The learned counsel appearing for the appellants submits that the learned Single Judge has not considered various other clauses mentioned in the M.O.U., with regard to the payment of money and charge to be created in the properties and directed the parties to undergo Arbitration based on Clause 16 of the M.O.U. He further submitted that appointment of arbitrator in terms of Clause 16 is not possible, since at this point of time, there are 3 parties disputing and contesting the suit. Further, while referring the parties under Section 8 of the Arbitration and Conciliation Act, to undergo Arbitration process, the learned Single Judge had exceeded his jurisdiction in appointing the Arbitrator, which is against the terms of Clause 16 of the M.O.U., hence prays to set aside the order in O.A. No.624 of 2023 in C.S. No.263 of 2022 dated 09.08.2023 passed by the learned Single Judge.

8. Per contra, the learned counsel appearing for the defendants/



respondents submits that based on the Arbitration clause agreed between the parties, the learned Single Judge had rightly directed the parties to resolve the disputes through an Arbitrator and they are ready to undergo Arbitration in terms of M.O.U., entered between the parties and prays to dismiss the appeal.

9. We have considered the submissions made on both sides and perused the materials available on record.

10. There is no dispute regarding the execution of M.O.U. between the parties and existence of Clause 16, which deals with referring the parties to the Arbitration proceedings in case of disputes arise between them. The Clause 16 in the M.O.U., reads as follows:

"16. In case of any dispute between the Parties in the interpretation of any of the clauses herein above and in case of any solution required on misunderstanding that may arise, without rushing to Court, the PARTIES shall be referred to two Arbitrators, appointed by each Part, whose proceedings shall be in accordance with the provisions of the Arbitration Act and Conciliation Act, 1996 and the proceedings will be in ENGLISH and Venue will be at Chennai."

11. As per the Clause 16, if any party required solution to any misunderstandings with regard to the execution or interpretation of M.O.U., the



parties are entitled to invoke Arbitration. In this case, on reading of the recitals of the M.O.U., it shows that the parties herein for the purpose of settling the properties belongs to their mother, late Salatchy Ammal @ M. Visalatchi Ammal, as well as their partnership business properties, entered into a M.O.U., dated 06.03.2019. There is a reference with regard to payments to be made to various parties and also a condition that the parties shall co-operate with each other in completing the process of registration of the documents such as General Power of Attorney, Settlement Deed, Release Deed, etc.,. It is also stated that, in case of any dispute among them, they shall resolve the dispute by appointing the Arbitrators and the Arbitration proceedings shall be in accordance with the Arbitration and Conciliation Act, 1996. They have also fixed the venue for the Arbitration proceedings. According to the learned counsel for the appellant, they are not able to appoint Arbitrators as agreed between them, since, the Clause prescribed that two Arbitrators to be appointed by each Part and now the parties herein are contesting more than two groups. So far, defendants have not invoked Arbitration Clause, thereby the plaintiffs contend that they cannot be referred to Arbitration.

12. The learned Single Judge after considering the Clause 16 has held that, the ingredients of Section 8 of the Arbitration and Conciliation Act is made out in this case, and referred the parties for Arbitration. The Section 8 of



the Arbitration and Conciliation Act, reads 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.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original Arbitration agreement or a duly certified copy thereof:

[Provided that where the original Arbitration agreement or a certified copy thereof is not available with the party applying for reference to Arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the Arbitration agreement and a petition praying the Court to call upon the other party to produce the original Arbitration agreement or its duly certified copy before that Court.]

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an Arbitration may be commenced or continued and an arbitral award made."

13. The scope of Section 8 of the Arbitration and Conciliation Act and the conditions, which are required to be satisfied was considered by the Apex



Court in ***P.Anand Gajapathi Raju and Ors. vs. P.V.G. Raju (Died) and Ors.***

[AIR 2000 SC 1886], in paragraph Nos.5, 6, 7 and 8 as follows:

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"5. The conditions which are required to be satisfied under Sub-sections (1) and (2) of Section 8 before the Court can exercise its powers are (1) there is an Arbitration agreement; (2) a party to the agreement brings an action in the Court against the other party; (3) subject matter of the action is the same as the subject matter of the Arbitration agreement; (4) the other party moves the Court for referring the parties to Arbitration before it submits his first statement on the substance of the dispute.

This last provision creates a right in the person bringing the action to have the dispute adjudicated by Court, once the other party has submitted his first statement of defence. But if the party, who wants the matter to be referred to Arbitration applies to the Court after submission of his statement and the party who has brought the action does not object, as is the case before us, there is no bar on the Court referring the parties to Arbitration.

6. In our view, the phrase "which is the subject of an Arbitration agreement" does not, in the context, necessarily require that the agreement must be already in existence before the action is brought in the Court. The phrase also connotes an Arbitration agreement being brought into existence while the action is pending. Black's Law Dictionary has defined the word 'is' as follows:

This word, although normally referring to the present, often has a future meaning, but is not synonymous with "shall have been". It may have, however, a past signification, as in the sense of "has been".

7. A further question arises whether the Court is in these



circumstances obliged to refer the parties to Arbitration and if so with what effect.

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8 . In the matter before us, the Arbitration agreement covers all the disputes between the parties in the proceedings before us and even more than that. As already noted, the Arbitration agreement satisfies the requirements of Section 7 of the new Act. The language of Section 8 is per-emptory. It is therefore, obligatory for the Court to refer the parties to Arbitration in terms of their Arbitration agreement. Nothing remains to be decided in the original action or the appeal arising there from. There is no question of stay of the proceedings till the Arbitration proceedings conclude and the Award becomes final in terms of the provisions of the new Act. All the rights, obligations and remedies of the parties would now be governed by the new Act including the right to challenge the Award. The Court to which the party shall have recourse to challenge the Award would be the Court as defined in Clause (e) of Section 2 of the new Act and not the Court to which an application under Section 8 of the new Act is made. An application before a Court under Section 8 merely brings to the Court's notice that the subject matter of the action before it is the subject matter of an Arbitration agreement. This would not be such an application as contemplated under Section 42 of the Act as the Court trying the action may or may not have had jurisdiction to try the suit to start with or be the competent Court within the meaning of Section 2(e) of the new Act."

14. As observed by the Apex Court, in this case, admittedly there is an Arbitration agreement entered between the parties and the dispute referred is only about sharing of their family properties, which is an Arbitrable dispute. Since, the defendants 1 and 2, has filed petition, even prior to filing of written



statement, the petition filed under Section 8 of the Arbitration and Conciliation Act is maintainable and thereby defendants 1 and 2, fulfilled all the requisite conditions for referring the dispute for Arbitration, hence, we have no reason to interfere with the order of the learned Single Judge, for referring the parties to resolve their disputes through Arbitration.

15. The learned Single Judge after referring the parties to Arbitration has held that, since the parties agreed to appoint two arbitrators on each Part, it may result in a split Arbitral Award and thereby appointed one of the retired Judge of this Court as an Arbitrator. Though, while exercising the powers under Section 8 of the Arbitration and Conciliation Act, the Judicial Authority has no power to appoint an Arbitrator and the appointment shall be made only in terms of Section 11 of the Arbitration and Conciliation Act. However, in this appeal, both parties agreed and expressed their willingness to accept the appointment of the learned retired Judge of this Court, as Sole Arbitrator, suggested by the learned Single Judge, without going into the validity of the Order of appointing the Arbitrator, for the purpose of avoiding further delay in this matter, we are inclined to confirm the Order impugned herein.



16. Accordingly, this original side appeal is dismissed and the order of the learned Single Judge in O.A. No.624 of 2023 in C.S. No.263 of 2022 dated 09.08.2023, is hereby confirmed. No costs.

(S.S.S.R.,J.) (K.R.S.,J.)
04.10.2024

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Index:Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No

To:

1. The Section Officer,
VR Section,
High Court,
Madras.

S.S. SUNDAR, J.,
and
K. RAJASEKAR, J.,



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