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C.R.P.(MD)No.2961 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 28/03/2024

Date of Pronounced : 12/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P (MD) No.2961 of 2023

and

CMP (MD) No.15224 of 2023

The Manager,
M/s.Shriram Transport Finance Corporation Ltd.,
Silaiman Branch
Represented by its Power of Attorney
Mr.P.Vellaichamy : Petitioner/Defendant

Vs.

J.S.Satheesh Mumar : Respondent/Plaintiff

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records pertaining to the impugned fair and decreetal orders made in IA No.1 of 2023 in OS No.15 of 2022 on the file of the District Munsif Court, Madurai Taluk, Madurai District, dated 17/07/2023 and set aside the same.

For Petitioner : Mr.R.Shankar Ganesh

For Respondent : Mr.A.P.Athithan

O R D E R

This revision is filed seeking to set aside the fair and decreetal orders passed in IA No.1 of 2023 in OS



C.R.P.(MD)No.2961 of 2023

No.15 of 2022 by the District Munsif Court, Madurai Taluk, Madurai District, dated 17/07/2023.

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2.The facts in brief:-

The plaintiff filed a suit in OS No.12 of 2022 seeking the relief of permanent injunction restraining the petitioner and his men not to dispossess him in respect of the vehicle bearing registration Nos.TN-64-B-4051 and TN-45-AS-0753, otherwise than under due process of law. Pending further process before filing the written statement, the petitioner filed a petition under section 7 of the Arbitration and Conciliation Act to refer the issue to the arbitration. That was dismissed by the trial court.

3.Against which, this civil revision petition is preferred.

4.The brief averments stated in the plaint are that he approached the respondent Financial Corporation for financial assistance in respect of the above said two vehicles. In respect of TN-45-AS-0753, he obtained Rs.7,00,000/- and the installment period ends on 15/07/2025. In respect of TN-64-B-4051, he availed Rs.7,00,000/- and the installments ends on 05/08/2025. He



was repaying the loan amount for both the loans and later, could not continue the same due to some financial difficulties and pandemic situation. But however, the petitioner and their men are frequently disturbing the possession of the vehicles and try to take away them illegally. Hence, the suit.

5.The petitioner straight away would rely the Arbitration Clause in the agreement.

6.Article 22 reads as follows:-

"22(a) All disputes, differences, and/or claim arising out of or in connection with this Agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provision of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the sole arbitration of an Arbitrator nominated by the Lender. The award given by such an Arbitrator shall be final and binding on the parties to this Agreement.

(b) The venue of arbitration proceedings shall be at The



WEB COPY



C.R.P.(MD)No.2961 of 2023

language of arbitration shall be English.

(c)The arbitrator so appointed herein above, shall also be entitled to pass an Award on the hypothecated asset and also on any other securities furnished by or on behalf of the Borrower."

7.By relying this agreement, the learned counsel appearing for the petitioner would submit that the issue involves the repayment of installment amount. So, this is in connection with the agreement and so the matter must be referred to the mediation process before invoking the jurisdiction of the civil court.

8.But the trial court was of the view that the grounds raised in the plaint is not with reference to the dispute over the terms of the agreement and the attempt on the part of the petitioner to dispossess him. So it will not come under the issue to be resolved by way of arbitration.

9.During the course of argument, another contention that raised by the respondent is that the petitioner appeared in-person on summon and has not chosen to file a



C.R.P.(MD)No.2961 of 2023

WEB COPY

petition to refer the matter to the arbitration before the time expired for filing written statement. So, this was the main argument advanced by the respondent herein.

10.Per contra, the learned counsel appearing for the petitioner would submit that even though, he appeared before the trial court, the time was extended periodically for filing the written statement. Since the time is not expired, he is entitled to invoke the jurisdiction of the court under section 8 of the Act.

11.Regarding the first issue, I am convinced that the issue arose between the parties over the non payment of the monthly installment. So, it is nothing, but the dispute, which arises with reference to the agreement as stated in Article 22A. This issue is the arbitral issue. So the finding of the trial court that this is not covered under Article 22 of the agreement is not correct. This finding of the trial court is set aside.

12.Regarding the time period, the principle is now well evolved. Before that, let us extract section 8 of the Act.

13.Section 8 of the Act reads as under:-



WEB COPY



C.R.P.(MD)No.2961 of 2023

"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 the 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



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C.R.P.(MD)No.2961 of 2023

restrained by the other party to that agreement, the the party so applying shall file such application along with a copy of the arbitration agreement an a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before the Court.

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

14.We can straightaway refer to the judgment of the Hon'ble Supreme Court reported in **Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd and Co., [(2011)5 SCC 532]**. Para No.19 is relevant for discussion.

"19.Though [section 8](#) does not prescribe any time limit for filing an application under that section, and only states that the application under [section 8](#) of the Act should be filed before submission of the first statement on the substance of the dispute, the scheme of the Act and the provisions of the section clearly



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C.R.P.(MD)No.2961 of 2023

indicate that the application thereunder should be made at the earliest. Obviously, a party who willingly participates in the proceedings in the suit and subjects himself to the jurisdiction of the court cannot subsequently turn round and say that the parties should be referred to arbitration in view of the existence of an arbitration agreement. Whether a party has waived his right to seek arbitration and subjected himself to the jurisdiction of the court, depends upon the conduct of such party in the suit. When plaintiffs file applications for interim relief like appointment of a receiver or grant of a temporary injunction, the defendants have to contest the application. Such contest may even lead to appeals and revisions where there may be even stay of further proceedings in the suit. If supplemental proceedings like applications for temporary injunction on appointment of Receiver, have been pending for a considerable time and a defendant has been contesting such supplemental proceedings, it cannot be said that the defendant has lost the right to seek reference to arbitration. At the relevant time, the unamended



WEB COPY



C.R.P.(MD)No.2961 of 2023

Rule 1 of Order VIII of the Code was governing the filing of written statements and the said rule did not prescribe any time limit for filing written statement. In such a situation, mere passage of time between the date of entering appearance and date of filing the application under [section 8](#) of the Act, can not lead to an inference that a defendant subjected himself to the jurisdiction of the court for adjudication of the main dispute. The facts in this case show that the plaintiff in the suit had filed an application for temporary injunction and appointment of Receiver and that was pending for some time. Thereafter, talks were in progress for arriving at a settlement out of court. When such talks failed, the appellant filed an application under [section 8](#) of the Act before filing the written statement or filing any other statement which could be considered to be a submission of a statement on the substance of the dispute. The High Court was not therefore justified in rejecting the application on the ground of delay."



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C.R.P.(MD)No.2961 of 2023

15.This is the drastic change after the amendment which came up for consideration before the Delhi High Court in ***SPML Infra Ltd., Vs. Trisquare Switchgears Pvt. Ltd.***

16.The only point, which will disqualify a party to invoke section 8 of the Act is that the time prescribed for filing the written statement should not have expired. The second issue is that he subjected himself to the jurisdiction of the court.

17.So far as the first point is concerned, it appears that even though, there is a delay on the part of the petitioner to invoke the jurisdiction, but the time granted by the Court did not expire.

18.Regarding the second issue, he has not subjected himself to the jurisdiction of the trial court. So, the right of the petitioner to seek reference is not lost. So, I am of the considered view that on both points, the order of the trial court is liable to be set aside and accordingly, it is set aside.

19.In the result, this civil revision petition is **allowed**. The order of the trial court is set aside. The



C.R.P.(MD)No.2961 of 2023

matter is remitted back to the trial court. The trial court is directed to refer the matter to the Arbitration as contained in Article 22(a). No costs. Consequently, connected Miscellaneous Petition is closed.

12/06/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The District Munsif Court,
Madurai.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.2961 of 2023

G.ILANGO VAN, J

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C.R.P (MD) No.2961 of 2023

12/06/2024