

IN THE COURT OF THE DISTRICT MUNSIF, SULURPresent : **Tmt.N.Renuga., B.A., B.L.,**

District Munsif, Sulur

Friday the 12th day of January 2024**I.A.No.5/2022****in****O.S.No.206/2021**

Samunnati Agro Solution Pvt.Ltd.,

... Petitioner/ 36th Respondent Proposed party
/VS/

1. M/s.Sri Sangeetha Millas

Rep by its M.Partner Kanagaraj

2. R.Kanagaraj

...Respondents/Plaintiffs

This petition coming on 14.07.2023 for final hearing before me in the presence of Mrs.V.Malathy, Advocate for the Petitioners and Thiru.G.Mathanaseelan, Advocate for the Respondents and upon perusing the records, and this court made the following:

ORDERS:

This petition filed Under section 8 of Arbitration and Conciliation Act, 1996 to exonerate petitioner company as 36th proposed party in the impleading petition in IA.2/2022 in the above suit.

1. The brief averments of the affidavit filed by the Petitioners as follows:

1.1. The petitioner is the 36th respondent in IA.No.2/2022 in the OS.No.206/2021. The respondent/plaintiff filed the above suit for permanent injunction against defendants/Proposed party and filed this IA.No.2/2022 to implead petitioner company as 36th respondents/defendants, and subsisting the arbitration agreement.

1.2. The petitioners company refuses to accept the statements made in the affidavit filed by the respondent/plaintiff. The petitioner have already filed his detailed counter petition on 11.08.2022, so this petition is not maintainable in law and on facts and as such it is liable to be dismissed with regard to petitioner/ 36th

respondent /Proposed party.

1.3. The petitioner company and the respondent/plaintiff company entered into a sourcing and distribution agreement on 18.12.2020 for trade facilities. More specifically to the clause 13 on dispute resolution and governing law contained in the sourcing and distribution agreement that if any dispute arising between parties shall be contractually settled in accordance with arbitration and conciliation act, 1996.

1.4. This hon'ble court does not have jurisdiction to try this application when there is an arbitration agreement subsisting between the parties. In case of any dispute between the parties, the parties shall be bound by the agreement to proceed only through the Arbitration proceedings at Chennai only as per sourcing and Distribution Agreement Clause No.13.9 dated 18.12.2020.

1.5. As per the terms of the contract, that petitioner company had sent a notice on 20.05.2022 to recall the trade limit from the petitioner company and its partners on or before 30 days from the date of this notice and in case of non-repayment Arbitration proceedings would be taken against the petitioner company and its partners and Guarantors within the jurisdiction of Chennai. Therefore, the respondent/Plaintiff company rushed to this court and filed this application.

1.6. As stated about as far as the 36th respondent is concerned, this petitioner prays that the respondent has resolved the dispute in accordance with the Arbitration and Conciliation Act 1996 only and the respondent cannot file the petition within the jurisdiction of District Munsif Court, Sulur, Coimbatore and move on when the seat of Arbitration is fixed at Chennai. Hence, this petition.

2. The brief averments of Counter statement filed by the respondent as follows :

2.1. This petition is false frivolous and mischievous one. The averments made in the affidavit is totally false and irrelevant. The above suit is filed for the relief of permanent injunction restrain the petitioner/defendant, his agent and worker to enter into the respondent/plaintiff's house and office concern and made lot of disturbance

so, it puts too much hardship, in order to ruin the running of the plaintiff's office peacefully and peaceful stay in the suit property. The relief prayed for therein is squarely within the purview of protection of his civil rights, hence this suit, which is not barred by arbitration clause. The issued not within the scope of arbitration clause. The subject matter is not barred under section 8 of Arbitration act and hence not maintainable under Arbitration Act. The petitioner filed this petition by ignorance of nature of the suit.

2.2. The scope of the arbitration clause purely deals with claims, loan related dispute and transaction, account related, disputes, but the suit not in that nature, hence the petition is liable to be dismissed in limini. The arbitration clause not denied the civil rights of the respondent/plaintiff.

2.3. This petition is not maintainable in both law and fact. The respondent hereby reserves his right to file an additional counter statement, if necessary, in future. The petition motive to drag the proceedings. Hence the petition is to be dismissed with exemplary cost.

3. Points for Consideration:-

Whether the petition under section 8 of Arbitration and conciliation act is to be allowed ?

4. Points:-

4.1. Heard the petitioner's side. Records perused. The main suit is filed by the plaintiff against 31 members for permanent injunction, for the relief of except due process of law the defendants will not disturb the plaintiff's peaceful stay and business in the suit property. After numbering of this case, the plaintiff filed the IA.No.2/2022 to implead the proposed 32 to 36 respondents as a necessary party to this case under order 1 rule 10 (2) of CPC. In pendency of that application, the proposed 36th party has filed this petition to exonerate himself from the IA.No.2/22 by stating reasons between the plaintiff and themselves an arbitration agreement is in existence. Hence in respect of the dispute between themselves they are eligible

proceed under Arbitration agreements. The arbitration agreement has been produced before this court.

4.2. At the time of filing this application itself this court returned the said application, by stating reasons without allowing impleading petition in IA.No.2/2022, how this petition to exonerate is maintainable. But by way of the compliance, the petitioner has stated reasons that the plaintiff has already entered into an arbitration agreement, as per agreement in clause 13.5 the dispute between them has to be resolved through arbitration. Hence, this petition is filed to exonerate the proposed 36th party from the impleading petition pending in IA.No.2/2022.

4.3. The petitioner filed petition to exonerate them from the impleading application in IA.No.2/2022. The main suit is filed for permanent injunction. Here the creditor and debtor relationship between the parties here admitted. Hence, the plaintiff's claim is without due process of law, his possession and business should not be disturbed. Even an arbitration agreement pending between the parties the proposed party very well can proceed by taking due process of law under agreement. Hence, this court thinks this petition not maintainable.

In the result, this petition is dismissed. No cost.

Dictated to the Steno-typist and directly typed by her, corrected and pronounced by me in open court this the 12th day of January 2024.

District Munsif,
Sulur.

List of witnesses and documents on Petitioner side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.5/2022 in
O.S.No.206/2021
Dated : 12.01.2024
DMC, Sulur