IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.03.2015

Pronounced on : 26.06.2015

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

C.R.P.(NPD) No.4382 of 2013
and
M.P.Nos.1 to 4 of 2013

M/s.G.Jawahar Enterprises,
a partnership Firm, having its office at
No.121, Thiruvenkatasamy Road (West)
R.S.Puram, Coimbatore - 641 002
Rep. by its Managing Director
Mr.G.Jawahar ... Petitioner

Vs.

1.Glencore Grains BV, is a
company incorporated under the
Laws pertaining to Companies in
Netherlands now having its office
At BLAAK, 31 Rotterdam No.3011
G.A.Netherlands

2.M/s.International Cotton Association Limited
having its office at 620
Cotton Exchange Building
Liverpool
United Kingdom ... Respondents

Civil Revision Petitions filed under Article 227 of the Constitution of India against the order and decretal order of the learned IV Additional District and Sessions Judge, Coimbatore dated 21.10.2013 made in I.A.No.236 of 2013 in O.S.No.41 of 2011.

For Petitioner : Mr.Karthick Sheshathri

for M/s.Iyer and Thomas
For Respondents : Mr.P.S.Raman, Senior Counsel
for Mr.Satish Parasaran

O R D E R

This revision arises out of an order of the learned IV Additional District and Sessions Judge, Coimbatore dated 21.10.2013 made in I.A.No.236/2013 in O.S.No.41 of 2011. The revision petitioner-M/s.G.Jawahar Enterprises, a Partnership firm filed the above said original suit in the lower court for the reliefs of declaration and injunction in respect of three contracts for supply of Indian raw cotton to Glencore Grain B.V. Netherelands, the first respondent herein/first defendant. The contracts are:-

1)GJE/GLEN/44/09-10 dated 18.02.2010 for 1500 MT
2)GJE/GLEN/45/09-10 dated 19.02.2010 for 1000 MT
3)GJE/GLEN/11/10-11 dated 06.01.2009 for 4000 MT

2. The revision petitioner/plaintiff in the said suit sought for: (1)a declaration that all the three contracts, including the arbitration clauses contained therein, had become null and void, inoperative and incapable of performance owing to supervening impossibility and force majeure situation resulting from the Press Note No.1/162/2010/Cotton/Vol.IV/357 dated 19.04.2010 issued by the Textile Commissioner, Ministry of Textiles, Government of India; (2)for an injunction restraining the first respondent/first defendant from in any manner enforcing or claiming enforcement of the said contracts including the arbitration clause; (3) for an

injunction restraining the first respondent/first defendant from instituting or prosecuting any legal proceedings including arbitration outside the Republic of India in respect of the above said contracts and (4) a permanent injunction restraining the International Cotton Association, namely the second respondent/second defendant from entertaining and conducting any arbitration proceeding and passing awards in respect of the above said suit contracts.

3.The first respondent herein/first defendant, who came to know the institution of the suit by the revision petitioner herein/plaintiff, filed a petition as I.A.No.236/2013 in the above said suit O.S.No.41/2011 under Section 45 of the Arbitration and Conciliation Act, 1996 praying for an order referring the revision petitioner/plaintiff and the first respondent/first defendant to arbitration before the Arbitral Tribunal constituted by the second respondent/second defendant under its bylaws and rules. The petition was opposed by the revision petitioner/plaintiff. The second respondent/second defendant remained neutral.

4.The learned IV Additional District and Sessions Judge, Coimbatore, upon hearing the contesting parties, passed the impugned order dated 21.10.2013 allowing the said application, namely I.A.No.236/2013 and directing the revision petitioner/plaintiff and the first respondent herein/first defendant to arbitration as prayed for in the

petition. Consequently, a decree was passed on the same day closing the suit. As against the same, the present revision has been preferred.

5. The point that arises for consideration in the revision is:

> *"Whether the court below has committed any error or illegality in directing the revision petitioner/plaintiff and the first respondent/first defendant to arbitration under Section 45 of the Arbitration and Conciliation Act, 1996?*

6.The arguments advanced by Mr.Karthick Seshathri for M/s.Iyer and Thomas, learned counsel for the revision petitioner and by Mr.P.S.Raman, learned Senior Counsel for Mr.Satish Parasaran, counsel on record, the first respondent/first defendant were heard. The order of the court below and other materials available in the form of typed set of papers were also perused.

7. The admitted facts are as follows:

The revision petitioner/plaintiff is a firm dealing in Indian raw cotton and it had several business dealings with the first respondent/first defendant, an overseas purchaser having its office in Netherlands. As many as ten contracts came to be entered into between them from 18.11.2009 and 19.03.2010. They had no problem in performing the first seven

contracts entered into between them from 18.11.2009. However the revision petitioner/plaintiff did not perform his part of the contract, namely supply of the Indian raw cotton to the first respondent/first defendant against the last three contracts dated 18.02.2010, 19.02.2010 and 06.01.2010. The revision petitioner/plaintiff claimed that they were discharged from performing the obligations cast on them under the suit contracts, as the performance was made impossible by a force majeure situation, namely the issuance of the Press Note No.1/162/2010/Cotton Vol.IV/357 dated 19.04.2010, by the Commissioner of Textiles, Ministry of Textiles, Government of India. When they faced a threat of proceedings in the form of arbitration as per the arbitration clauses contained in the suit contracts, they rushed to the court below with the above suit O.S.No.41/2011 for the reliefs of declaration and injunctions as indicated above.

8. The first respondent/first defendant contending that the Press Note could not be projected as a supervening event preventing export of cotton altogether that since the press note simply sought to regulate the export of cotton, the same could not be projected as a force majeure discharging the revision petitioner/plaintiff from performing their obligations under the suit contracts; that even if it is assumed that the above said supervening event had crippled the revision petitioner/plaintiff

and made it difficult for them to perform their obligations under the suit contracts, the same would not have made the contractual clauses void or impossible of performance; that since the impossibility of performance due to supervening events was pleaded as a force majeure situation, the said question of impossibility of performance had got to be resolved only by arbitration as per the agreement of the parties and that hence for invoking the arbitration clause, they would invite the jurisdiction of the court to refer the parties to the dispute for arbitration, the first respondent/first defendant, filed I.A.No.236 of 2013 praying for an order of reference by invoking Section 45 of the Arbitration and Conciliation Act, 1996, as the contract is one contemplated under Section 44 of the said Act.

9.The revision petitioner/plaintiff would contend that there is no valid and enforceable contract to refer the parties to arbitration for settlement of the dispute. Such contention has been raised based on the following grounds:

> 1).The main contracts have become void due to a supervening event making the performance impossible and hence the contracts for arbitration inbuilt in the main contracts for referring the dispute to arbitration have also become void;
>
> 2)The supervening impossibility of performance was created by the Press Note dated 19.04.2010 and hence an attempt to enforce the rights and obligations under the

contract would amount to an act against the public policy of the Indian Republic;

3)Each one of the Suit contracts contain a force majeure clause as condition No.6 discharging the revision petitioner/plaintiff from any liability on the ground of non-performance of the contract on his part;

4)The arbitration clauses in the contracts and the conditions stipulated relating to the arbitration are vague and hence the contract for arbitration is unenforceable; and

5)The right of the first respondent/first defendant to resort to arbitration is lost by waiver as they have agreed for the inclusion of the force majeure clause in the contracts.

10.Per contra, the following are the contentions of the first respondent/first defendant.

1)The arbitration clause in the contract can be severed from the contract for supply of raw cotton and the supervening impossibility of performance of the main contract for supply of cotton shall not make the arbitration agreement either void or unenforceable.

2)The alleged force majeure event, namely the issuance of the Press Note, did not totally prohibit export and it simply aimed at regulating the export of Indian raw cotton. Still the revision petitioner/plaintiff did not take effective steps to get the Export Authorisation Registration Certificate and they had not even performed the contract to the extent made possible after the issuance of the Press

Note.

3)The question whether a party is discharged from the contract in accordance with the force majeure clause is within the domain of the Arbitral Tribunal and the same cannot be taken away by the defaulting party by approaching the civil court and resisting the application filed by the opposite party in the civil court for referring the dispute to arbitration.

4)Each contract contains a clear and unambiguous clause that the dispute shall be referred to arbitration under the Indian Cotton Association Rules and such decision in the arbitration shall be final. Having agreed for such a clause for arbitration to be included in the contract and having signed the contract, the revision petitioner/plaintiff cannot contend that the arbitration clause is vague and hence unenforceable.

5)Almost every commercial contract shall have a force majeure clause absolving a party from any liability for the non performance due to supervening impossibility. When a dispute arises, regarding such a force majeure event absolving the party, the same should proved by such party in the appropriate forum. Here, the appropriate forum is the Arbitral Tribunal constituted by the International Cotton Association and the revision petitioner/plaintiff has to prove his contention before the Arbitral Tribunal.

6)Simply because the parties agreed that any supervening event causing frustration of the contract/making the performance impossible will absolve

> a party from any liability due to non-performance, it cannot be inferred that the other party waived its right to refer such a dispute to arbitration.

11.Let us consider the above said rival contentions in the light of the relevant provisions of law and the precedents cited on behalf of both parties.

12.Part I of the Arbitration and Conciliation Act, 1996 deals with the arbitration in general. Part II Chapter 1 contains section 44 defining a foreign award. Section 45 states that a judicial authority when seized of an action in a matter in respect of which parties have made an agreement referred to in Section 44 shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

13.It is not the case of the revision petitioner/plaintiff that the suit contracts were void *ab initio* or that it was incapable of performance at the inception itself. On the other hand, it is the case of the revision petitioner/plaintiff that though the suit contracts were validly made and were legally binding upon the parties, it became inoperative and incapable

of being performed due to supervening event. In other words, the revision petitioner/plaintiff pleads frustration of the contract making it impossible for the revision petitioner/plaintiff to make the shipment in accordance with the suit contracts. The reasons assigned by the revision petitioner/plaintiff is that the Press Note issued by the Textile Commissioner in No.1/162/2010/Cotton/Vol.IV/357 dated 19.04.2010 made it impossible for them to effect shipment of raw cotton.

14.The Press Note reads as follows:

GOVERNMENT OF INDIA
MINISTRY OF TEXTILES
OFFICE OF THE TEXTILE COMMISSIONER
POST BAG NO.11500, MUMBAI - 400 020
TeleFax No: 022-22002495
www.texmin.nic.in; www.txcindia.gov.in
E-mail- jtcbap@gmail.com; textilecom@hotmail.com

No.1/162/2010/Cotton/Vol IV/357 Date: 19th April, 2010

P R E S S N O T E

Sub: Suppression of registration of Export contracts, prior to shipment of Raw Cotton (Lint) - Tariff item code 5201, Cotton Waste (including yarn waste and garnetted stock) - Tariff item code 5202 and Cotton carded or combed - Tariff item code 5203 with effect from 19.04.2010

Pursuant to the Inter - Ministerial meeting on steep increase in prices of cotton etc, the Government have decided that the registration of Export contracts prior to shipment of Raw Cotton (Lint) - Tariff item code 5201, Cotton Waste (including yarn waste and garnetted stock) - Tariff item code 5202 and Cotton carded or combed - Tariff item code 5203 - allowed so far under Ministry of Commerce and Industry notification No.26 (RE-2008)/2004-09 dated 22.07.2008, shall now be suspended with effect from 19.04.2010 till further orders. Consequently, the procedure prescribed under the Textile Commissioner's

Memorandum-I bearing No.1/162/2008/cotton/131 dated 26.07.2008, as amended vide corrigendum of even No.44 dated 10.10.2008 on the subject of registration of export contracts, is hereby kept in abeyance till further orders.

The suspension of registration of export contracts shall extend to the applications for registration in pipeline in the office of Textile Commissioner, Mumbai for which Export Authorisation Registration Certificate (EARC) have not been issued. The EARC's issued prior to the closing hours of 19.04.2010 and having valid shipment period with unshipped quantity shall have to be got revalidated by the exporters with the office of the Textile Commissioner, Mumbai by preferring an application in the prescribed form to enable the clearance of goods by the Customs. The Textile Commissioner would allow revalidation of EARC's permitting unshipped quantity for shipment on monthly pro-rata limits so that a reasonable carry over stock of the Cotton is maintained in the country.

(A.B.JOSHI)
TEXTILE COMMISSIONER

15.A reading of the Press Note will show that due to steep increase in the price of cotton, the Government had taken a decision that registration of export contracts prior to shipment of raw cotton allowed till the issuance of the aforesaid Press Note under the Ministry of Commerce and Industry Notification No.28(RE-2008)/2004-09 dated 22.07.2008, shall be suspended with effect from 19.04.2010 till further orders and that the registration of export contracts was kept in abeyance until further orders. Paragraph 2 of the Press Note states that the suspension of registration of export contracts shall extend to the applications for registration in pipeline in the office of the Textile Commissioner, Mumbai for which Export

Authorisation Registration Certificate have not been issued and that the Export Authorisation Registration Certificate issued prior to the closing hours of 19.04.2010 and having valid shipment period with unshipped quantity shall have to be got revalidated by the exporter with the office of the Textile Commissioner, by preferring an application in the prescribed form. It also contains a statement to the effect that the Commissioner would allow revalidation of Export Authorisation Registration Certificate permitting unshipped quantity for shipment on monthly pro-rata limits.

16.A reading of the said Press Note will make it clear that the issuance of Export Authorisation Registration Certificate had been suspended with effect from 19.04.2010. So far as the Export Authorisation Registration Certificate issued prior to the closing hours of 19.04.2010 were concerned, the exporterse should get them revalidated with a rider that the Textile Commissioner would allow revalidation of such certificate permitting the unshipped quantity for shipment on a monthly pro-rata limits. As per the suit first contract, the supply of 1500 MT of Indian Origin raw cotton should have been made in March/April 2010. Similarly, under the second contract for the supply of 1000 MT Indian Origin raw cotton, the supply should have been made in March/April 2010. Under the third contract, 4000 MT of Indian Origin raw cotton should have been supplied in the month of December 2010/January 2011. All the said contracts contain

special conditions to the effect that partial and transhipment shall be allowed.

17.The contention of the revision petitioner/plaintiff is that having exported raw cotton under the previous seven contracts, they were prevented from exporting contractual quantity of cotton to the first respondent as per the suit contract by virtue of the Regulatory Order; that they negotiated with the first respondent/first defendant for entering into a new contract so that based on such new contract, application for quota could be made to the Government and it would become possible for the revision petitioner/plaintiff to export cotton to the extent sanctioned by the Textile Commissioner and that on the other hand, the first respondent/first defendant showed hostile attitude. Of course the said facts, not disputed at present by the first respondent/first defendant would show that the revision petitioner/plaintiff had made out a *prima facie* case that there was a force majeure situation and it became impossible for them to export the contractual quantity of raw cotton to the first respondent/first defendant. However the question that looms large is, "whether the supervening impossibility frustrating the contract will cause the arbitration agreement incorporated in the contract also unenforceable?". Such a question arose before the Supreme Court in ***Shin-Etsu Chemical Co. Ltd. vs. M/s.Aksh Optifibre Limited*** reported in ***(2005) 4 SCC 234.*** The Supreme Court has

held that while considering the question of validity of the arbitration agreement, the court has to satisfy prima facie about the validity of the arbitration agreement at the pre-reference stage and that if it is so satisfied about the validity of the arbitration agreement, the reference of the dispute to arbitration shall be mandatory.

18.However, the question "whether the arbitration agreement incorporated in the main contract will also become null and void on the main contract, though valid at the time of making it subsequently becoming null and void?- is the issue to be resolved in this case. Such an issue arose in ***Andritz Oy. vs. Enmas Engineering Pvt. Ltd***. reported in ***(2007) 4 MLJ 290,*** decided by a learned single judge of this court. After referring to various judgments of the Apex Court and High Courts, the learned Judge of this court held as follows:

> i) An arbitration clause contained as part of a main agreement, would survive, even if the main agreement perishes, in cases where such an agreement is voidable.
>
> ii) It would also survive in cases where the main agreement becomes void or becomes incapable of performance subsequent to its creation; and
>
> iii) The arbitration clause would not survive, if the main agreement, of which it is a part, is void *ab initio*.

19.The rational of such classification is appreciable and I do not find any reason to differ from the said view expressed in the above said

case. The contracts may be categorized as follows:- (1)contract void *ab initio;* (2)a contract valid on its inception and becomes void due to supervening events like change in law etc; (3) contract voidable at the option of a party under certain circumstances; and (4)contract valid and performance of the same was possible at its inception, but would have become incapable of performance subsequent to its creation. The agreement for arbitration incorporated in the main contract will survive or will not survive depending upon the category in which the main agreement falls.

20.The arbitration clauses contained in the contracts falling under categories 1 and 3 above will perish with the main agreement and it will not survive. If the main agreement falls in category 3 or 4, the arbitration clause, which is incorporated in the main agreement will survive. Here is a case in which, admittedly the main contracts were valid at their inception. Even though the Press Note Released by the Textile Commissioner has been cited as an impediment for the performance of the contracts, it cannot be said that the contracts have become void since there is no total prohibition. On the other hand, it can be said that they have become incapable of performance due to the restrictive regulation. The revision petitioner/plaintiff was not able to secure the revalidation of Export Authorisaion Registration Certificate or a new Export Authorisation Registration Certificate, as the issuance of such certificate had been

suspended and the revalidation was subjected to stringent conditions allowing only export of a pro-rata limit. Hence the suit contracts falls under category 4 cited above. It is possible to contend that it can even come under category 3, as there is a prima facie case that it can be said that it had the force majeure clause contained in the contract gives such right to avoid the contract in the circumstances contemplated as force majeure events. In either case, the arbitration agreement incorporated in the contract shall not perish with the main contracts which have been either avoided or have become incapable of performance. When such is the case, if one of the parties to the suit wishes the dispute to be referred to arbitration, the court is duty bound to refer the parties to arbitration.

21. The next question to be decided is: *"whether the agreement being null and void, inoperative or incapable of being performed as referred to in Section 45 is with reference to the main contract or the arbitration agreement incorporated in it?"* . Sections 44 and 45 of the Arbitration and Conciliation Act, 1996 read as follows:

> *" 44. Definition.- In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after*

the 11th day of October, 1960- (a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and (b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

45. Power of judicial authority to refer parties to arbitration.- Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed."

It does not refer to the distinction between the main contract giving rise to the cause of action for the action in a matter before a Judicial Authority and an agreement referred to in Section 44. According to Section 44, “foreign award” means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the Law of India provided such award is passed in pursuance of an agreement in writing for arbitration and is passed in one of the territories, as the Central Government, by Notification in the Official Gazette declared to be the territories to which the New York convention

awards apply. There is a condition that the arbitration should have been initiated in pursuance of an agreement in writing for arbitration in one of the countries to which the convention set forth in the first schedule, namely convention on the recognition and enforcement of foreign arbitral awards applies.

22.Admittedly, Netherland as well as England the venue of arbitration and India are the signatories to the convention. Therefore there would not be any impediment to apply the provisions of Section 45 to the arbitration agreement incorporated in the suit contracts provided the phrasial clause of the section providing a rider is not attracted. The last part of the section is to the effect that the reference to arbitration can be made, unless the courts find that the agreement is null and void, inoperative or incapable of being performed. By a catena of judicial decisions, it has become a settled proposition that the agreement referred to in the said phrasial clause is not the main agreement or main contract and on the other hand, it refers to the agreement for arbitration either entered into in the form of a separate document in writing or incorporated in writing in the main contract itself. This will be quite obvious if a comparative reading of sections 44 and 45 is made. To apply the conditional phrasial clause appearing at the end of Section 45, the agreement for arbitration should itself be null and void, inoperative or

incapable of being performed.

23.The following questions may also arise (1)*"whether there can be any case in which the arbitration agreement alone shall be null and void, inoperative or incapable of being performed when the main agreement will be valid and enforceable? and (2) when the main agreement has become void where the arbitration agreement alone will survive?"*. The answer is that, normally, the arbitration agreements are considered to be supplementary or incidental to the main contracts. Though the main contract may be valid, an arbitration agreement may be void, inoperative and incapable of being performed, if the venue becomes a place within a country, which shall be at war with the country of either of the parties. The arbitration agreement may be void due to non-observance of the formalities or it may become incapable of performance due to vagueness.

24.So far as the main contract being not void ab initio and may be null and void due to subsequent events or made inoperative or incapable of being performed due to subsequent events, the severence of the agreement for arbitration depends upon in which category the main contract falls. An agreement incorporated in the main contract which is *ab initio, void,* the agreement for arbitration cannot survive and it can be said that the life

boat, namely agreement for arbitration, will sink with the ship, namely the main contract. In case the agreement was valid at its inception and subsequently it is avoided or made null and void or made inoperative or incapable of being performed, then the agreement for arbitration can be severed from the main contract and it shall survive. It is like saying that the initial validity of the main agreement will be equivalent to the availability of the time for separating the life boat from the sinking ship.

25.In the case on hand, there is no illegality or other vitiating factors in the agreements for arbitration, which have been incorporated in the main contracts. The attempt made by the revision petitioner/plaintiff to show that the agreement was vague, resulted in utter failure. According to the revision petitioner/plaintiff, the main page of the contract contains an arbitration clause which refer to the arbitration as per International Cotton Association Rules, whereas condition No.7 on the reverse page of the contract states “arbitration and further conditions as per rules of Cotton Exchange or Association mentioned on the front”. Since condition No.7 on the reverse page of the contract containing general conditions, contains reference to the front page, there is a clarity as to under what rules the arbitration is to be held. It is the further contention of the revision petitioner/plaintiff that the arbitration clause in the contracts refer to International Cotton Association Rules and it does not refer to bylaws and

on the other hand, it has been claimed that bylaws and rules have been cited as the provisions governing the arbitration. The International Cotton Association, namely the second respondent is an ascertainable body which undertakes arbitration governed by its bylaws and rules. The bylaws and rules of International Cotton Association have been produced as Annexure-7. Having agreed for incorporating the arbitration clause which says that the arbitration shall be in accordance with the International Cotton Association Rules, the revision petitioner/plaintiff, cannot be heard to contend that they do not know bylaws and rules of the second respondent/second defendant. From Annexure 7, it is obvious that the bylaws and rules of the International Cotton Association (second respondent/second defendant) is one and the same document. Without being aware of the same, the revision petitioner/plaintiff would not have chosen to agree for incorporation of such an arbitration clause in the main agreement. In fact, on seven previous occasions regarding the previous contracts containing the same clause, the revision petitioner/plaintiff has not made any objection to the incorporation of such clause, especially on alleged vagueness in such clause. Hence, this court also concurs with the finding of the courts below that there is no bonafide on the part of the revision petitioner/plaintiff in making an attempt to contend that the arbitration clause is vague and hence invalid and that such a contention is liable to be discountenanced.

26.Learned counsel for the revision petitioner has cited the following judgments in support of his contention:

1) M/s.S.B.P. & CO. V. M/s.Patel Engineering Ltd. and Anr. reported in ***AIR 2006 SUPREME COURT 450;*** and

2) Chloro Controls India Private Limited vs. Severn Trent Water Purification Inc. and others reported in ***(2013) 1 SCC 641.***

27.The above cited judgments are not relevant to the case on hand. In the first of one, a majority of a Larger Bench of seven Hon'ble Judges of the Supreme Court held that the power exercised by the Chief Justice of the High Court and the Chief Justice of the Supreme Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 is a judicial power of appointing arbitrator and that such an order of the Chief Justice of the High Court or of a Judge of the High Court to whom the power could have been delegated is appealable to the Supreme Court only under Article 136 of the Constitution of India, whereas the judicial power exercised by the Chief Justice of the Supreme Court or a Judge of the Supreme Court to whom such power might have been delegated by the Chief Justice is final and is not appealable.

28.The second case cited by the learned counsel for the petitioner dealt with the question of binding nature of the arbitration agreement against non-parties as persons claiming through the parties to the

agreement. Hence both the judgments are not relevant to the case on hand.

29.For all the reasons stated above, this court comes to the conclusion that the court below did not commit any error or mistake, much less illegality in passing an order referring the parties, namely the revision petitioner and the first respondent for arbitration before the Arbitral Tribunal constituted by the second respondent. The revision petitioner/plaintiff seems to have approached the Civil Court with the suit in order to prevent the first respondent/first defendant from invoking the arbitration clause soon after first respondent/first defendant expressed their intention to do so in their notice dated 28.01.2010. On the same day the revision petitioner/plaintiff has filed the suit and the same is seen from the decree of the lower court passed in the suit. Without wasting any time and without causing any laches on their part, the first respondent/first defendant chose to approach the court below with an application under Section 45 of the Arbitration and Conciliation Act, 1996 praying for an order referring the parties to arbitration as per the arbitration clause. The condition found in Section 8 that such an application should be made not later than the submission of the first written statement on the substance of the dispute has also been complied with. Hence this court finds no error or mistake, much less illegality in the order of the Court below referring the parties to arbitration.

30.Moreover the revision petitioner has not shown that the court below exercised jurisdiction not vested in it by law or that it failed to exercise jurisdiction vested in it. The revision petitioner/plaintiff has also failed to show that the court below committed any illegality or material irregularity in exercise of such jurisdiction. Therefore, this court comes to the conclusion that there is no merit in the revision and the same deserves to be dismissed.

31.In the result, the civil revision petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petitions are closed.

26.06.2015

Index : Yes
Internet : Yes
asr/-

To
The IV Additional District and Sessions Judge, Coimbatore

P.R.SHIVAKUMAR,J.

asr/-

C.R.P.(NPD) No.4382 of 2013
and
M.P.Nos.1 to 4 of 2013

26.06.2015