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C.R.P.No.1272 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.07.2024
PRONOUNCED ON : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1272 of 2024
and
C.M.P. Nos.7292 & 7294 of 2024

1.K.Mangayarkarasi
2.KM Shreedevi

Both Represented by their power agent
Mrs.Jaishree S ... Petitioners / Plaintiffs

Vs.

1.N.J.Sundaresan ... 1st Respondent / D1
2.Manonmani Angannan ... 2nd Respondent / D2

PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order dated 06.02.2024 passed in I.A.No.9 of 2024 in C.O.S.No.147 of 2023 before Commercial Court (District Judge Cadre), Coimbatore.

For Petitioners : Mr.Arun C Mohan
For Mr.Praveen Rathinam

For Respondents : P.R.Ramakrishnan
For Mr.R.Bharath Kumar



C.R.P.No.1272 of 2024

ORDER

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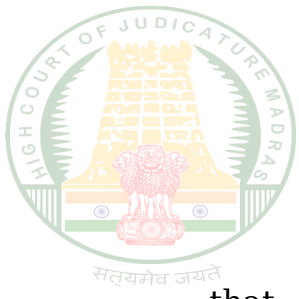
The Petitioners are plaintiffs and the Respondent herein is the 1st Defendant in the Suit. The Suit in C.O.S.No.147/2023, is filed the Petitioners / Plaintiffs before the Commercial Court (District Judge Cadre), Coimbatore, seeking for a relief of permanent injunction, restraining the Respondent / 1st Defendant, his men, agent, power agent, representative, etc., from interfering or using the Plaintiff's Trademark of "SRI ANGANNAN BIRIYANI HOTEL" or "ABH SRI ANGANNAN HOTEL" or any other name format signifying the term, "ANGANNAN." and to pay damages of Rs.20,00,000/- for the loss that the plaintiffs incurred due to the use of the Trademark in Application No.6440505 of "SRI ANGANNAN BiRIYANI HOTEL".

2. Pending Suit, the 1st Respondent / 1st Defendant filed an Application in I.A.No.9 of 2023, praying to refer the parties to Arbitration. The said Application was allowed by the Commercial Court, District Judge, Coimbatore. Aggrieved over the same, the Petitioners filed the present Civil Revision Petition along with Civil Miscellaneous Petitions.



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3. Mr.Arun C Mohan, the learned counsel appearing for the Petitioners / Plaintiffs would submit that the Court below ought to have considered that the 1st Respondent fraudulently fabricated the assignment of the Petitioners' Trademark to the 1st Respondent and that the 1st Petitioner did not consent for the said assignment. The said assignment was in fact denied as being fraudulent and the aspect of serious fraud can only be considered by a civil Court, which has been wholly disregarded to the impugned order. Since the assignment deed itself is a fabricated document and when such serious allegations of fraud exist, the fraud renders the arbitration clause invalid. The Court below not considered the question and prayer of infringement of trademark is a question of “right in rem” which is inherently non-arbitrable. The prayer sought for in the plaint has been disregarded in the impugned order and the nature of the suit has not been duly considered therein. The 2nd respondent is not a signatory to the alleged assignment agreement between the 1st petitioner and the 1st respondent. Further, the Petitioners have filed criminal complaint against the 1st Respondent for cheating and fabrication of the Assignment deed and the same has not adjudicated.



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4. The learned counsel for the petitioners further submitted that it was merely agreed between the 1st petitioner and the respondent to lease the brand name of "SRI ANGANNAN BIRIYANI" during the year 2016, for which, the respondent pay royalty every month. The Respondent fraudulently created an assignment of transfer of alleged Trademark on 20.09.2017, which is fabricated one. At no point of time, the 1st Petitioner consensually assigned the Trademark to the 1st Respondent. Since the alleged Assignment Deed itself is challenged by the Petitioners due to its illegal nature, the Arbitration clause incorporated in this fabricated document is not enforceable. If the 1st Respondent's intention is to resolve the dispute, then he should not have given an undertaking in mandatory mediation that there is no possibility of settlement. Even during pendency of the Suit, the Respondent, remained silent. Only after an order passed in I.A.No.3 of 2023, restraining the Respondents from using the Trademark and brand name, the Respondents filed the Petition in I.A.No.9/2024 invoking the Arbitration Clause. The Respondent is continued to use the Trademark and brand name in his bills and receipts. The dispute fall under the category of *right in rem* are non arbitrable. Initial assignment deed did not include an arbitration clause and later it was incorporated by the Respondent.



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5. The learned counsel in support of his contentions, has relied on the Judgment of the Hon'ble Supreme Court in ***Avitel Post Studios Limited and Ors Vs. HSBC PI Holdings (Mauritius) Ltd.*** Reported in ***2020 SCC Online SC 656***, wherein it has been held that a dispute becomes non-arbitrable when the court comes to the conclusion that there is serious allegations of fraud which makes the arbitration agreement itself to be inexistent such as in the present circumstances wherein the petitioners have raised the plea that the assignment deeds are fabricated and have been obtained by the 1st respondent through fraudulent means. Further, the learned counsel relied on the Judgment of the Hon'ble Apex Court in ***A.Ayyasamy Vs. A.Paramasivam*** reported in ***(2016) 10 SCC 386*** and in ***Booz-Allen & Hamilton Inc vs Sbi Home Finance Ltd. & Ors*** reported in ***2011 (5) SCC 532***, for the point that the disputes in relation to trademarks and patents are not arbitrable.

6. The learned counsel for the petitioners further submitted that arbitrability of disputes is further clarified by the Supreme Court in the case of ***Vidya Drolia vs. Durga Trading Corporation*** reported in ***AIR ONLINE 2020 SC 929*** wherein the Apex Court



propounded a fourfold test for determining the arbitrability of a subject matter. The relevant portion reads as follows:

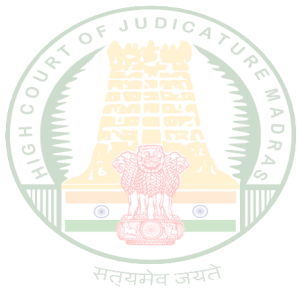
(1) when cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

(2) when cause of action and subject matter of the dispute affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;

(3) when cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and

(4) when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

7. Further, the learned counsel for the Petitioners relied on the Judgment of the Supreme Court in ***A.Ayyasamy Vs. A.Paramasivam*** reported in ***(2016) 10 SCC 386*** wherein it has been held that generally patent, copyright, trademark disputes are non-arbitrable. The court further held that where fraud is alleged, the dispute would be considered non- arbitrable. The relevant portion reads as under:



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“14. Notwithstanding the above, the Courts have held that certain kinds of disputes may not be capable of adjudication through the means of arbitration. The Courts have held that certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, cannot be referred to arbitration. Following categories of disputes are generally treated as non-arbitrable:-

- (i) patent, trade marks and copyright;
- (ii) anti-trust/competition laws;
- (iii) insolvency/winding up;
- (iv) bribery/corruption;
- (v) fraud
- (vi) criminal matters.”

Fraud is one such category spelled out by the decisions of this Court where disputes would be considered as non-arbitrable.”

8. The learned counsel further submitted that the above position has been re-iterated by this Court in ***Sanjay Lalwani vs. Jyotstar Enterprises & Ors.*** reported in ***MANU/TN/4688/2020*** wherein the Court placed reliance on the above judgements, to hold that



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arbitration is not maintainable in respect of copyright matters, when the relief against infringement is sought for. Non-arbitrability of disputes concerning *rights in rem* was further established by the Bombay High Court in the case of ***Steel Authority of India Ltd. vs. SKS Ispat and Power Ltd.***, reported in ***MANU/CG/0344/2012***, wherein it has been held that the rights to trademark and remedies in connection therewith are matters in rem and not amenable to the jurisdiction of a private forum chosen by the parties. The judgment held that disputes concerning infringement and passing off do not arise out of the contract between the parties which contains the arbitration agreement, and hence, is not an arbitrable matter. Further, in ***Indian Performing Rights Society Ltd. VS. Entertainment Network (India) Ltd.***, reported in ***MANU/MH/1597/2016***, the Bombay High Court was tasked with determining if an arbitral tribunal had the authority to decide the validity of a copyright. The Court ruled that it did not, Semphasizing that allowing a tribunal to address purely legal matters, such as the existence of a copyright, constitutes an action in rem, which falls outside the jurisdiction of an arbitral tribunal.



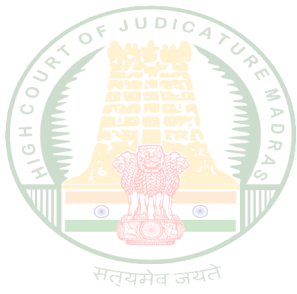
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9. The learned counsel for the petitioners submitted that intellectual Property Right matters including disputes regarding trademark infringement cannot be referred to arbitration, and can only be adjudicated by a Court of Law. The relief of infringement under Section 134 of the Trademarks Act, 1999, can never be granted by an arbitral proceeding, and this position in law, though irrefutable, has wholly misinterpreted in the Impugned Order. The Assignment Deed referred to by the 1st Respondent already been placed for determination of validity by the Trademark Registry, and therefore, there is no further enquiry in law or fact that would be surviving for determination by any arbitral tribunal, and this key facet has been wholly overlooked in the Impugned Order. The present dispute is not amenable to arbitration on two counts, the first being that it relates to the infringement of a trademark, which has been held to be non-arbitrable. The second being that there is an allegation of serious fraud which goes to the very root of the arbitration agreement, since the petitioners allege that the Agreement that contains the Arbitration Agreement has been forged by the 1st Respondent.



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10. Mr.P.Ramakrishnan, the learned counsel appearing for the Respondents would submit that the issue involved is the right available to the 1st Respondent / 1st Defendant as the assignee of the Trademark “ SRI ANGANNAN BIRIYANI HOTEL”. The 1st Petitioner is the Proprietrix of the Trademark, which belonged to her father, Late Angannan He died in the year 1986. After which, the Trademark belonged to the 1st Petitioner Mangayarkarasi. Angannan left behind another daughter Mohana, who is not in the picture in so far as this issue is concerned. The 1st Petitioner's husband, Kathirvadivel took over the business in 1984, after the death of Angannanm and till he died in 1990, he was assisted by his brother, Jagadeeswaran in the business till he died in 2019. The 1st Respondent, Sundaresan, is the son of Jagadeeswaran. Mangayarkarasi had a son, Muralidharan, who was not in this business. He died leaving behind two daughters, Jaishree and Sreemathi. Jaishree represents the Petitioners as power agent in this proceeding. The two daughters of Mangayarkarasi are Manonmani, who is the 2nd Respondent and Sreedevi, who is the 2nd Petitioner.



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11. The learned counsel for the Respondents further submitted that “Angannan Biriyani Hotel” was leased out by the 1st Petitioner in 2004 to Annapoorna Group of Hotels for a period of 10 years. However, the lease was terminated by the lessee prematurely. There was no registered trademark when Annapoorna exited from the business, as lessee. Since the 1st Respondent was assisting his father and father's brother, the 1st Petitioner assign the right to the 1st Respondent for future business. The 1st Petitioner decided to assign the trademark and she was careful in including her own daughter, Sreedevi, as one of the assignees along with the first Respondent. This assignment dated 20.09.2017 is irrevocable and the 1st Respondent paid consideration of Rs.20,000/- and the trademark was assigned in their joint names. The deed of assignment contains an Arbitration Clause vide Clause 15. Since the assignment was not registered before the Registrar of Trademarks, a subsequent Assignment Deed was also executed on 14.10.2019 by the first Petitioner in favour of the same assignees. Due to Covid, notifying the assignment with the Registrar could not be done immediately. Later on, the 1st Respondent has moved for registration of the assignment



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12. The learned counsel further submitted that the 1st Petitioner given an affidavit of Declaration as required for registration of the trademark. Even before this assignment, with the full knowledge and concurrence of the first Petitioner, her granddaughter Jaishree and the 1st Respondent, started a business in partnership on 14.01.2017 and they carried on the business of 'Sri Angannan Biriyan Hotel' in partnership with effect from 05.01.2017. The business was located in VCV layout in a rented premise, which was taken on lease from K.Palanniappan, under a Lease Agreement, dated 15.12.2017. This lease is in favour of 'Sri Angannan Biriyan Hotel' represented by its partner, Jaishree and the 1st Respondent. The Partnership dissolved subsequently by a Deed of Dissolution, dated 30.11.2020, which is attested by the landlord Palaniappan and the family Lawyer of the Petitioners. There is also a Deed of affirmation in which both 1st Respondent and Jaishree affirmed that they both can run the business under the same name or in any other name of their choice. While 1st Respondent agreed to shift to another premises, Jaishree was allowed to continue the business in VCV Layout.

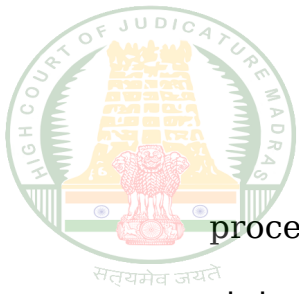
13. The learned counsel for the Respondents submitted that in pursuance of this arrangement, the business of Sri Angannan Biriyan



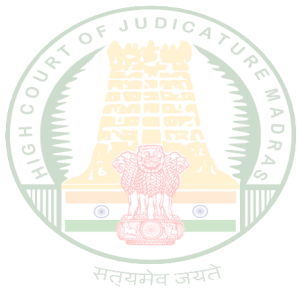
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pursuance of this arrangement, the business of Sri Angannan Biriyan Hotel is carried on by the first Respondent, in Ratna Residency in V.H.Road which is also owned by the same landlord, K.Palaniappan. Jaishree is carrying on business in V.C.V Layout under the name and style of "Covai Anganna Biriyan House" and she also opened Branches, which establish the fact that the first Petitioner Mangayakarasi, not carrying on business and only the proprietary of the trademark, assigned the trademark to her daughter Sreedevi and her brother-in-law's son, Sundaresan. When the assignment deed is irrevocable, a proceeding has been initiated challenging the assignment and seeking injunction before the District Commercial Court, Coimbatore, in C.O.S. No.147 of 2023. In the said suit, the 1st Respondent filed I.A.No.9 of 2024 pointing out the arbitration clause and seeking the relief of referring the parties to arbitration. The plea was upheld. Against which, the petitioners preferred the present Revision mainly on two grounds viz., (i) The Assignment Deed is brought about fraudulently and therefore when fraud is pleaded, the matter cannot be referred to arbitration and (ii) Dispute regarding the Trademark is not arbitrable.

14. The learned counsel for the Respondents further submitted



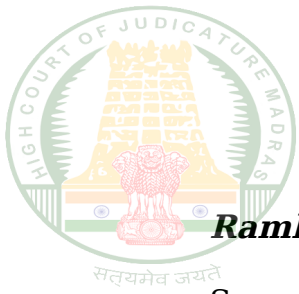
proceedings. In Paragraph 8 of the plaint, the Petitioners/Plaintiffs stated that the assignment deed was brought about by misrepresentation and the first plaintiff misled to signing blank papers and the 1st Petitioner / 1st Defendant filled up the same by including his name. Further, in paragraph 9 it is stated that the 1st Petitioner / 1st Plaintiff not intended the trademark to be assigned to the 1st Respondent / 1st Defendant. However, the plea is falsified by the fact that the first plaintiff has received several payments from the 1st Defendant periodically. This is a matter to be gone into before the Arbitration. Further, in para 10, it is pleaded by the plaintiff that the first Defendant has drafted the assignment deed by including his name along with the 2nd Plaintiff and has adopted fraudulent dilatory tactics by undue influence. In para 11, it is stated that the first Defendant has forged a fabricated deed as an irrevocable deed. The plea of the plaintiff has been totally inconsistent. The signature is not disputed. The fact that the first plaintiff wanted to assign the trademark is also not in dispute. The objection now taken is that the first Defendant fraudulently included his name also in the Deed of Assignment. This is a matter of fact which has to be gone into in the arbitration proceedings.



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15. The learned counsel for the Respondents further submitted that once the 1st Petitioner /first plaintiff's signature is admitted and the document *ex facie* shows that it has been properly executed and the 2nd Petitioner / 2nd plaintiff is also a party to the document and the Assignment Deed is duly executed and attested by a Notary Public, *prima facie* the plea of the plaintiffs should be rejected. Mere use of the word, 'fraud' will not disentitle the Court from referring the matter to arbitration or from the Arbitral Tribunal to consider the validity and enforceability of the agreement in all respects. The learned counsel for the respondent invited the attention of this Court to the Judgment of the Hon'ble Apex Court In ***Hindustan Petroleum Corporation Ltd vs. Pink City Midway Petroleum*** reported in ***(2003) 6 SCC 503***, wherein the Supreme Court held that where arbitration clause exists, Court has a mandatory duty to refer the disputes arising between the contracting parties to arbitration.

16. It is the submission of the learned counsel for the Respondent that mere use of the word, "fraud" is not sufficient to oust the jurisdiction of arbitration. A recent decision of the Supreme Court



Ramkrishnaji Bajaj & Others reported in **(2024) (1) CTC 84**, the Supreme Court held that plea of fraud raised by the Applicant in their reply to a petition under Sec.8 has never been substantially accepted for making a bald plea of fraud and nothing else. Relying on a earlier Judgment of the Apex Court in **Rashid Raza Vs. Sadaf Akhtar** reported in **(2019 (8) SCC 710)**, the Supreme Court holds that two conditions are laid down and have to be satisfied before a Court can refuse to refer the matter to the arbitrator, conscientiously decided by parties in an Agreement. The first is that the plea permeates the entire contract option of the arbitration agreement rendering it void or secondly whether the allegation of fraud touches upon the internal affairs of the parties inter se having no implication in the public domain. The allegation must have some implication in public domain to oust jurisdiction of arbitration. If an allegation of fraud exists directly between the parties concerned, the same will not be termed to be of serious nature of fraud and hence would not be barred for arbitration. The Apex Court in the Judgment in **Deccan Papar Mills Company Ltd., Vs. Regency Mahavir Properties and Others** reported in **(2021 (4) CTC 334)** held that where the suit is inter parties with no public domain, fraud as laid down in the case of **Avitech Past Studioz Ltd (cited supra)** is not applicable. Where



Avitech Past Studios Ltd (*cited supra*)) is not applicable. Where rectification of instrument under Section 31 of the Specific Relief Act is strictly action inter parties or by person who obtained derivative title from parties, such action is *in personam* and the dispute is arbitrable.

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

18. It is not in dispute that the 1st Petitioner/Plaintiff is the Proprietrix of the Trademark, after her father Late.Angannan, who died in 1986. The 1st Petitioner's husband, Kathirvadivel took over the business in 1984, after the death of Angannanm and till he died in 1990, he was assisted by his brother, Jagadeeswaran in the business till he died in 2019. The 1st Respondent, Sundaresan, is the son of Jagadeeswaran. Mangayarkarasi had a son, Muralidharan. He died leaving behind two daughters namely, Jaishree and Sreemathi. Jaishree represents the Petitioners, as power agent in this proceeding. The two daughters of Mangayarkarasi are Manonmani, who is the 2nd Respondent and Sreedevi, who is the 2nd Petitioner.

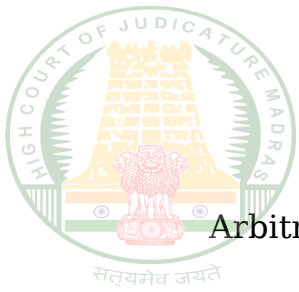


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19. On perusal of the records it is seen that the Petitioners / Plaintiffs filed a Suit in C.O.S.No.147 of 2023 before the Commercial Court (District Judge Cadre), Coimbatore, for permanent injunction, restraining the defendants from interfering or using the Plaintiff's Trademark of "Sri Angannan Briyani Hotel" and to pay damages of Rs.20,00,000/- for the loss that the plaintiffs incurred due to the use of the Trademark. Pending Suit, the 1st Respondent / 1st Defendant filed an Application in I.A.No.9 of 2023, praying to refer the parties to Arbitration, which was allowed by the Commercial Court, District Judge, Coimbatore. Aggrieved over the same, the Petitioners are before this Court with the present Civil Revision Petition.

20. On perusal of Clause 15 of "Deed of Assignment of Trade Marks", dated 20.09.2017 and 14.10.2019., it is seen that in the event of any dispute between the parties, parties agreed to get such issues resolved through Arbitration and in the event of not finding a resolution through Arbitration, the Court having jurisdiction in Coimbatore to the exclusion of all other Courts. The Clause 15 of "Deed of Assignment of Trade Marks", dated 14.10.2019, contains Arbitration Clause, which reads as follows:-



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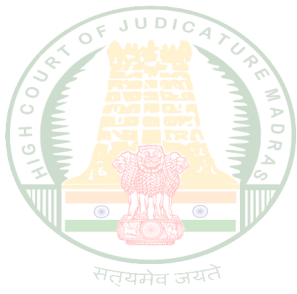
15. "Dispute Resolution"

"In the event of any dispute, difference or claim arising between the Parties under or in connection with this Agreement, parties agree to get such issues and disputes resolved first through CONCILIATION failing which by ARBITRATION and in the event of not finding a resolution through arbitration, the Court having jurisdiction in Coimbatore to the exclusion of all other Courts."

21. [Section 8](#) of the Arbitration and Conciliation Act, 1996 reads as under:

"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, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding



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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."

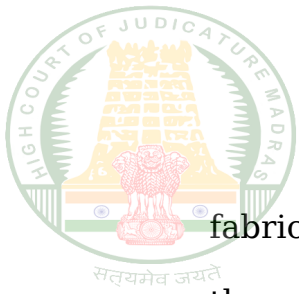
22. The suit has been filed by the Petitioners / Plaintiffs by suppressing the Arbitration Clause. The right of the Respondents emanates out of the agreement between the parties. When there is a valid contract between the parties providing for Arbitration, all claims



including enforceability can only be adjudicated before an Arbitrator.

Though the Petitioners disputed the execution of the agreement, the existence of the agreement is not disputed. An Arbitration Clause which forms a part of the Agreement shall be treated as an agreement independent of the other terms of the Contract. Further, the Arbitral Tribunal has power to decide on any objections with respect to the existence of validity of the agreement when there is an Arbitration Clause. The petitioners and Respondents having signed in the 'Assignment Deed of Trademark', which contains the Clause regarding settlement of dispute through arbitration, the Court below is right in referring the matter to the Arbitral Tribunal .

23. As regards the contention of the petitioners that the Assignment Deed is brought fraudulently and therefore, when fraud is pleaded, the matter cannot be referred to Arbitration is concerned, no doubt, mere plea of fraud is insufficient to avoid an arbitration proceedings. The contention of the petitioners that the 1st Petitioner was misled to signing blank papers and the 1st Respondent filled up the same by including his name and the 1st Respondent has forged a fabricated deed as an irrevocable deed, cannot be countenanced for the simple reason that the the 1st Petitioner wanted to assign the



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fabricated deed as an irrevocable deed, cannot be countenanced for the simple reason that the the 1st Petitioner wanted to assign the Trademark is not in dispute and the signatures not disputed. Once the 1st Petitioner admitted her signatures and the document *ex facie* shows that it has been properly executed and the 2nd Petitioner is also a party to the document and the Assignment Deed is duly executed and attested by a Notary Public, prima facie the contention of the Petitioners cannot be accepted. Further, the 1st Petitioner/K.Mangayarkarasi and the 2nd Petitioner Sreedevi and her Husband Ajith received several payments from the 1st Respondent periodically, which is evident from the statement of extract of the payments made by the 1st Respondent from 19.03.2021 to 23.02.2023.

24. The allegation of fraud must have some implication in public domain to oust jurisdiction of arbitration. If an allegation of fraud exists directly between the parties concerned, the same will not be termed to be of serious nature of fraud and hence would not be barred for arbitration. At this juncture, it is worthwhile to refer the decision of the Hon'ble Apex Court in ***Sushma Shivkumar Daga case (cited supra)***. Further, relying on a earlier Judgment of the Apex Court in ***Rashid Raza's case (cited supra)*** the Supreme Court holds that two



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parties in an Agreement. The first is that the plea permeates the entire contract option of the arbitration agreement rendering it void or secondly whether the allegation of fraud touches upon the internal affairs of the parties inter se having no implication in the public domain. The allegation must have some implication in public domain to oust jurisdiction of arbitration. If an allegation of fraud exists directly between the parties concerned, the same will not be termed to be of serious nature of fraud and hence would not be barred for arbitration. Further, the Apex Court in the Judgment in ***Deccan Papar Mills's case*** (cited supra) held that where the suit is inter parties with no public domain, fraud as laid down in the case of ***Avitech Past Studioz Ltd*** (cited supra)) is not applicable. Where rectification of instrument under Section 31 of the Specific Relief Act is strictly action inter parties or by person who obtained derivative title from parties, such action is *in personam* and the dispute is arbitrable.

25. The Law laid down by the Apex Court in the aforesaid Judgments squarely apply to the case on hand. Admittedly, the dispute between the parties arise out of a contract of assignment. There is no public cause involved in this dispute. The question involved is one



between the parties arise out of a contract of assignment. There is no public cause involved in this dispute. The question involved is one arising under the contract of assignment and its validity and binding nature and what is the effect of several payment received by the assignor from the 1st Respondent, as assignee, on various dates, which are matters to be considered by the Arbitral Tribunal and this is undoubtedly covered by the arbitration clause. The right claimed by the 1st Respondent is contractual as assignee of a Trademark. Disputes raised by the Petitioners is that there was no intention to assign the trademark and that too irrevocably to the 1st Respondent, but at the same time, the assignment in favour of the 2nd Petitioner is accepted. This renders the position of the Petitioners very weak insofar as the merits of the claim are concerned. This despite is arbitrable and factual issues as also validity of the assignment and rights flowing from it can be decided by the Arbitral Tribunal. Further, the Suit is filed for the reliefs against the infringement and passing off, which by their very nature would fall within the jurisdiction of the Arbitrator. The right that is asserted by the 1st Respondent is not a right that emanates from the Trademark Act, but a right that emanates from the Assignment Deeds. The Assignment of a trademark is by a contract and not by a statutory act.



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26. As regards the contention of the Petitioners that disputes involved in use of trademark is not arbitrable is concerned, the Petitioners rely on a passing reference in **Ayyasamy's** case (cited supra), where the Apex Court held that where there are allegations of fraud and such allegations are merely alleged, it may not be necessary to nullify the effect of arbitration agreement between the parties and such issues can be determined by the Arbitral Tribunal. This judgment supports the plea of the 1st Respondent, who wants the dispute to be referred to Arbitration. Though fraud was pleaded in that proceeding, the Supreme Court concluded that mere allegation of fraud was not sufficient to detract from the obligations of the parties to submit their disputes to arbitration. Moreover, non-arbitrable disputes dealt with in **Booz Allen's** case and **Vidya Dolia's** case. In **Booz Allen's case**, the Apex Court dealt with the disputes, which are arbitrable and which non-arbitrable. This is clarified by a Three Judge Bench Decision of the Apex Court in **Vidya Dolia's case**. In view of the foregoing reasons, this Court is not inclined to interfere with the findings of the Court below.



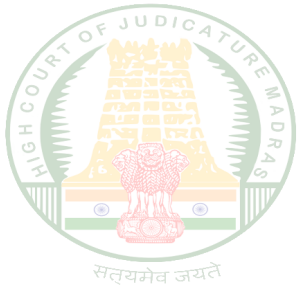
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27. In the result, the Civil Revision Petition stands dismissed.
Consequently, the connected miscellaneous petitions are also dismissed. However, there shall be no order as to costs.

09.01.2025

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes
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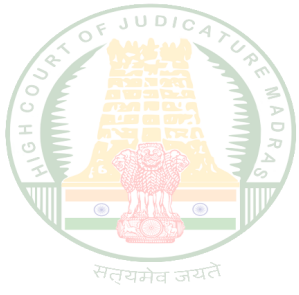
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C.R.P.No.1272 of 2024

To

The Judge,
Commercial Court (District Judge Cadre),
Coimbatore.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER MADE IN

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