

13.06.2009 passed by Arbitral Tribunal in Arbitration Petition No. 97 of 2008. That Chamber Summons stands dismissed. Hence, the petitioner plaintiff preferred the present Writ Petition.

4 The learned Counsel for the petitioner plaintiff submits that the Court below erred in coming to the conclusion that plaintiff failed to make out the case for allowing them to carry out amendment in the plaint. He submits that the respondent defendant obtained the award in Arbitration Petition No. 97 of 2008 dated 13.06.2009 by committing fraud. Hence, plaintiff can challenge the said Award before the Bombay City Civil Court at Bombay in Summary Suit, though the Award was passed by the Arbitrator at Coimbatore, Tamilnadu State. In the present petition, he raised following grounds/submissions.

“(a) The impugned order passed is against facts on record and against the law; and is an error of jurisdiction too. There is miscarriage of justice.

(b) In the first place since there was no refutation to the allegations in the Chamber Summons, by filing Affidavit in reply, the allegations stood proved viz., that the award was obtained by practicing fraud and by indulging in forgery – That the signatures of the Plaintiff's Director Shri Sunil N. Jhunjhunwalla on the MOU were forged. The Chamber Summons therefore should have been made absolute.

(c) It is axiomatic that fraud and forgery vitiate all acts and therefore MOU dated 30.07.2006 which was the foundation of the award given by the Arbitrator in favour of the Respondent No. 1/original Defendant stood vitiated and was therefore null and void.

(d) The learned Judge, City Civil Court ought to have taken note of the above position in law and ought to have held that the Award, if it were to be allowed to stand, would have nullified the Plaint altogether and should be declared to be null and void.

(e) The Petitioner has no effective alternate remedy.

- (f) Fraud cannot be investigated by Arbitrator. Fraud can be challenged in Suit alone.*
- (g) Opponent cannot take advantage of their fraud and compel the Petitioner to go to Coimbatore or Tamil Nadu where they have procured fraudulent Award.*
- (h) Fraud can be challenged even in collateral proceedings. In this case appropriate proceedings viz. the Suit, was pending when by fraudulent means the Opponents hijacked/sought to derail the proceedings from this appropriate forum.*
- (i) Consequences of fraud visit the Petitioner's/cause in this forum in Mumbai.*
- (j) The Learned Judge was in error in dismissing Chamber Summons.”*

5 The learned Counsel for the petitioner, in support of his contention relies on the Apex Court judgment in the matter of ***S.P Chengalvaraya Naidu (Dead) by Lrs. V/s. Jagannath (Dead) by Lrs. & Ors. reported in (1994) 1 Supreme Court Cases 1***. On the basis of these submissions and law declared by the Apex Court, the learned counsel for the petitioner submits that impugned order passed by the trial court is required to be set aside and this Hon'ble Court be pleased to allow the plaintiff to carry out amendment in the plaint.

6 I heard learned counsel for the petitioner at length. In the present proceeding, plaintiff filed summary suit on 06.01.2009, in which by way of amendment in the year 2012, he wants to challenge the validity of Arbitration Award Dated 13.06.2009 passed by the Arbitral Tribunal at Coimbatore. It is to be noted that in the plaint which was filed as summary suit, the plaintiff cannot amend the same for challenging the award passed by the Arbitrator under the Arbitration & Conciliation Act, 1996.

7 The judgment relied by the plaintiff in the matter of S.P. Chengalvaraya Naidu (Dead) by Lrs. (supra) is not applicable to the facts and circumstances of the present case. Considering this fact and the reasons given by the trial court, I do not find any reason to entertain the present Writ Petition.

8 Hence, Writ Petition stands rejected.

(K.K.TATED, J.)