

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.6.2016

C O R A M

THE HONOURABLE MR. JUSTICE T. MATHIVANAN

C.M.A.No.1193 of 2016
and
C.M.P.No.9042 of 2016

P. Perumal

... Appellant/2nd Respondent

Vs

1.Rotary Club of Maraimalai Nagar
rep. by its President L. Kumaran
No.14/16, L.I.G., N.H-1,
Ponmudiyar Street,
Maraimalai Nagar.
Kancheepuram District.

...1st and 2nd Respondent/
Petitioner

2.P.Vijayaram
3.A.Subramaniam
4.C.R. Raju

.. Respondents No.3&4/
Respondents No.1&3

Prayer:- Civil Miscellaneous Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 to set aside the fair and decretal order dated 29.4.2016 and made in Arb.O.P.No.4 of 2015 on the file of the learned Principal District Judge, Kancheepuram at Chengalpattu.

For Appellant : Mr.P. Wilson, Senior counsel
for M/s.J. Kannan

For RR1& 2 : Mr.K.K.N. Ganeshan

F3 & R4 : Mr.N. Vijayabaskar for
M/s. Law Vision

J U D G M E N T

This memorandum of civil miscellaneous appeal is directed against the fair and decretal order, dated 29.4.2016 and made in the Arbitration O.P.No.4 of 2015 on the file of the learned District Judge, Kancheepuram at Chengalpattu.

2. The appellant herein is the second respondent in the petition, whereas, the respondents 1 and 2 herein are the petitioners therein and the fourth respondent herein is the third respondent in the petition.

3. The third respondent herein is neither a respondent in the Arbitration O.P.No.4 of 2015 nor a defendant in the suit in O.S.No.87 of 2015, however, he is described as a sole arbitrator.

4. Heard Mr.P. Wilson, learned Senior Counsel appearing on behalf of M/s.J. Kannan, who is on record, for the appellant and Mr.K.K.N.Ganeshan, learned counsel appearing for the respondents 1 and 2 and M/s.Law Vision & Mr.N.Vijayabasker, learned counsel appearing for the respondents 3 & 4.

5. The appellant being the second respondent in the arbitration O.P. has got confused himself and on account of this reason, he has taken entirely a contradictory and conflicting stand in his counter statement filed in the application in I.A.No.335 of 2015, which is filed by the respondents 1 and 2 under Section 45 read with Section 8, sub-section 1 of Arbitration Act to refer the matter to Arbitration, as well as in the petition in Arbitration O.P.No.4 of 2015, which seems to have been filed by the respondents 1 and 2 under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the decision rendered by the third respondent (sole arbitrator).

6. Due to his unstableness, the maintainability of the appeal itself has become the mark of question.

7. The appellant/second respondent has filed a suit in O.S.No.87 of 2015 as against the respondents 1,2 and 4 herein seeking the relief of declaration to declare the decision of the fourth respondent(D3), viz., Mr.C.R.Raju in accepting the second respondent/second petitioner as President elect of the first defendant club in his place(appellant's place) through the mail communication, dated 22.4.2015 as null and void and unenforceable and issued without jurisdiction and unconstitutional and the same is not binding on him (appellant) and also to restrain the first respondent club as well as the fourth respondent(D3) from recognizing, treating, or conferring on the second respondent/second petitioner, the

status of the President elect or President for the first defendant club in respect of the rotary year 2014-2015 and 2015-2016 respectively instead of him (appellant/plaintiff).

8. According to the appellant, he is the member of the first defendant club. The first defendant club is governed by its own constitution and bye-laws. The third defendant, who is the fourth respondent herein is the facilitator, who will monitor that the affairs of the club are conducted in accordance with the constitution and bye-laws of the Club.

9. He has no business to interfere in the internal affairs of the club except when there is an express violation of provisions of constitution and bye-laws.

10. As per the constitution and bye-laws of the club, the President and other office bearers have to be elected from its own members before two years itself. For this purpose election has to be conducted before the end of the month of December in respect of each and every year.

11. After the month of December in each and every year no election shall take place in respect of the post of President and other important office bearers post. A person, who is elected as President immediately after election, will be designated as "President Nominee" in that year and in the next rotary year he would be called as the President Elect and the third year he will act as the President of the club. However, the tenure for the President and Office bearers is only 12 months and it starts from the month of July 1 of the Calendar year and ends with 30th June of subsequent Calendar year.

12. The appellant/second respondent was unanimously elected unopposed as President Nominee during the year 2013-14 and he has also been duly conferred with the status of President Nominee. In pursuance of his status as President Nominee, he was designated as President Elect and his name has duly been registered in all the official Records of the first defendant Club as well as in the official records of the third defendant/fourth respondent herein.

13. In these circumstances, on the midnight of 22nd April, the fourth respondent herein has sent an Email communication to the first respondent club by addressing a copy to the appellant/second respondent through which the fourth respondent herein had apprised that he had accepted the second respondent/second petitioner as President Elect of the first respondent club.

14. According to the appellant/second respondent, the

mail communication of the third respondent is without jurisdiction and as such it is unsustainable.

15. The appellant has also contended that the fourth respondent/third respondent has no right or power to intervene in the affairs of the first respondent's /first petitioner's club, that too, in respect of an elected post.

16. Further, it is his specific case that the second respondent/second petitioner had never been declared as President nominee during the year 2013-2014 and in fact he had never contested in the election during the said year.

17. He has also specifically contended that the fourth respondent/third respondent has not been specifically empowered by the Constitution of the first defendant club either to choose or to replace a person in the last moment.

18. According to the appellant, the action of the fourth respondent/D3, in sending the mail message apprising that he had accepted the second respondent/second petitioner as President elect of the first respondent club is unconstitutional and manifest error apparent on the face of the record and therefore, the appellant has filed the suit in O.S.No.87 of 2015 to declare that the decision of the fourth respondent/D3 as null and void and unenforceable as the same was issued without jurisdiction and also for permanent injunction.

19. During the pendency of the suit in O.S.No.87 of 2015, the respondents 1 and 2 herein, who are the defendants 1 and 2 in the suit have filed a petition in I.A.No.335 of 2015 under Section 45 read with Section 8 (1) of the Arbitration Act to refer the above said matter to Arbitration.

20. Even though the fourth respondent herein was arrayed as the second respondent in the above said petition, he had not contested the petition. However, the appellant, who is the second respondent in the above said petition, as well as the plaintiff in the suit in O.S.No.87 of 2015 had filed his objection, wherein he had taken a stand that the fourth respondent herein, who is the third defendant in the suit was not at all a member of the first respondent club and as such, the constitution of the first respondent club did not bind or apply to him.

21. It is also his contention that moreover, there was no specific arbitration agreement between him (appellant) and the fourth respondent, who is the third defendant in the suit.

22. He has also taken a plea that the fourth

respondent/D3 is a third party with regard to the internal matter of the first respondent's club and that he had exceeded his jurisdiction.

23. After hearing both sides, the learned Principal Subordinate Judge, Chengalpattu had proceeded to allow the said petition in I.A.No.335 of 2015, which resulted in referring the matter for arbitration under Article 16 Sub Clauses 1 to 5 of the Constitution of the club.

24. It is significant to note here that in pursuant to the order of the learned Principal Subordinate Judge, dated 8.7.2015, the third respondent herein, viz., Mr. A. Subramaniam, appears to have been appointed as arbitrator and he had also rendered his decision on 18.8.2015, which is extracted as under:-

DECISION BY ARBITRATORS

On the matter relating to Rtn.P.P.Perumal Vs. Rtn.Kumaran, President(2014-2015) RC Maramalainagar(DG Raju added subsequently), on the removal of Perumal as President of the Club for 20015-2016. Matter referred to arbitration by the court.

1.On written invitation from Rtn.Perumal and Rtn.Kumaran, the undersigned met the members of the Club on 28 July and 5 August 2015 for many hours of questioning and discussions. A report was sent to the District Governor.

2.The District Governor reported the matter to Rotary International and sought advice.

3.Based on Rotary International's inputs and directions the course of action is as follows:

3.1. A general body meeting of the club will be formally convened by th arbitrator by issuing a proper notice with a notice period of 15 days and mentioning the agenda as '' to elect the Board for the Rotary year 2015-2016.

3.2.The Assistant Governor 2015-2016 will be the Presiding Officer for the elections while the GGR 2015-2016 will assist him.

3.3.The members who will constitute this General body will be all the members in the rolls of the club as on 1 Jan 2015, as per SAR of that date.

3.4.Members will formally propose and second candidates in a proposal form(attached) submitted to the Presiding Officer mentioned above for these elections. Proposals for the following positions for the Rotary year 2015-2016 will be called for.

3.4.1.Prident

3.4.2.President Elect

3.4.3.Vice President

3.4.4.Secretary

- 3.4.5.Treasurer
- 3.4.6.Sergeant-at-arms
- 3.4.7.Six Directors

3.5.The President of the Club for the year 2014-2015 will serve as the Immediate Past President of the Club on the Board.

4.The General Body meeting will be conducted at the regular meeting venue of the club on the day and time of regular meetings.

5.There will be no other transactions at this General Body meeting.

After passing this decision by the 3rd respondent/arbitrator, the respondents 1 and 2 herein, have taken out a petition in Arbitration O.P.No.4 of 2015 before the learned District Judge, Kancheepuram, under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the decision rendered by the sole arbitrator.

25. In the said petition, viz., Arbitration O.P. No.4 of 2015, the third respondent herein was arrayed as first respondent.

26. The dispute between the appellant/R2 and the respondents 1 and 2 herein/ petitioners is with regard to the appointment of President to the Club for the year 2015-16 and therefore, the arbitrator/third respondent herein, who was requested to settle the issue had consulted with the fourth respondent/R3, which is against the law and ethics of practice.

27.The respondents 1 and 2/petitioners have also contended that the arbitrator/R3 had not right or power to meet the members separately and to have discussion with them over phone.

28. Further, the third respondent herein, who is the first respondent in the petition (arbitrator) had no power to declare election for all the executive post, which is not under question or dispute.

29. In the above said petition, the respondents 1 and 2/ petitioners have also stated that from the decision rendered by the third respondent/arbitrator, it is clear that the assistant governor 2015-16 would be the presiding officer for the elections G.G.R. 2015-2016 will assist him. But in the notice issued on 24.8.2015 for the general body to elect the officers of the club, it is mentioned that the arbitrator himself will act as a presiding officer for the elections, which is contrary to his decision.

30.According to the respondents 1& 2, the

arbitrator/third respondent herein, was not at all requested by the court to conduct the elections.

31.Under the above said grounds, the petition in Arbitration O.P.No.4 of 2015 is filed by the respondents 1 and 2/petitioners to set aside the decision of the sole arbitrator, dated 18.8.2015.

32.This petition was strenuously contested by the appellant/R2 on the following grounds:

(a)the decision of the third respondent/arbitrator dated 18.08.2015 does not come under the purview of the Arbitration and Conciliation Act 1996.

(b)He has not been appointed as an arbitrator under the relevant provisions of the Arbitration and Conciliation Act 1996 as well as in accordance with the relevant provisions of the Constitution of Rotary club of Maraimalai Nagar.

(c)Since the nomenclature describing the third respondent (arbitrator) as an arbitrator does not mean that his decision dated 18.08.2015 could be challenged under the Arbitration Act. The third respondent herein cannot be considered as an arbitrator as contemplated under the Arbitration and Conciliation Act as the issue raised by the appellant in O.S.No.87 of 2015 is totally different and he has not raised any dispute with the club and as such the appellant has not invoked the arbitration clause.

(d)During the Rotary year 2014-2015, Mr.L.Kumaran, who representing the first respondent's club had acted as the President of Maraimalai Nagar during his tenure of Office and he had committed various malpractice, mis-conduct, embezzlement, mis-management etc., in the affairs and operation of the club in connivance with his Secretary alongwith two other members including second petitioner herein. In pursuance to the decision of the third respondent/arbitrator an election notification was issued on 24.08.2015 and thereafter, the election was conducted on 15.09.2015 and subsequently, the third respondent/arbitrator had declared the election result, in which the appellant was declared as the President of the Rotary club of Maraimalai Nagar for the Rotary year 2015-2016 alongwith other Office Bearers. The third respondent/arbitrator had also conveyed the election result to the fourth respondent and he in turn had recognised the new Board under the leadership of the appellant and directed him to remit the mandatory dues to the District as well as to the Rotary International.

(e)From the above context, it would be clearly understood that the appointment of the third respondent by the fourth respondent is nothing but an internal arrangement to solve the issues and the appointment of the third respondent(herein)/arbitrator is not in accordance with the provisions of the Arbitration and conciliation Act as well as the relevant

provisions of the Constitution of the club.

(f) All the members of the club have accepted the decision of the third respondent/arbitrator and he after consulting all the members of the club had rendered his decision dated 18.08.2015. If any order is passed without hearing the other members of the club it would seriously affect their rights.

33. After hearing both sides and considering the averments of the affidavit as well as the counter statement, the learned Principal District Judge, Chengalpet at Kancheepuram District had proceeded to allow the petition, which resulted in setting aside the decision of the Arbitrator dated 18.08.2015 and to declare the said decision as invalid. Further the learned district Judge had also observed that there is no bar for appointing fresh arbitrators and umpires to resolve the dispute.

34. The learned Principal District Judge, banking heavily on Sections 4 & 5 of Article 16 of the Constitution of the Rotary club of Maraimalai Nagar/R1 had concluded that the dispute can be resolved by arbitration, as per the above said provisions. He had also observed that each side have to nominate an arbitrator and the arbitrators together had to appoint an Umpire then they have to decide the dispute and resolve the matter.

35. Insofar as this case is concerned, the above procedure has not been followed. Further, the learned Principal District Judge had observed that the third respondent A. Subramaniam alone had acted as an arbitrator and since his appointment itself is not in accordance with Sections 4 & 5 of Article 16 of the constitution of the club, his decision had become nullity and invalid.

36. Mr. P. Wilson, learned Senior Counsel appearing on behalf of the appellant has mainly attacked the petition in O.P.No.4 of 2015 on the ground of maintainability. He has also added that the Court can refer the matter to arbitration but it cannot appoint an arbitrator. The learned senior counsel has also drawn the attention of this Court to page 24 of the typed set of papers, wherein, the order of the learned Principal subordinate Judge, Chengalpet dated 08.07.2015 and made in the application in I.A.335 of 2015 is available.

37. It is palpable that the petition in I.A.No.335 of 2015 is filed under Section 45, read with Section 8(1) of the Arbitration and Conciliation Act, to refer the matter relating to the suit in O.S.No.87 of 2015, to arbitration by dismissing the petition in I.A.No.328 of 2015, which seems to have been filed seeking the relief of interim injunction.

38. The learned Principal Subordinate Judge, Chengalpet had

also allowed that application with a finding that the appellant is bound by the documents viz., Ex.R1 to R10 and it was also decided by him that as the internal matter of the first respondent's club as well as the appellant/plaintiff is bound by Article 16, Sections 1 to 5 of the Club constitution, the subject matter might be referred to arbitration.

39. Section 8 of the Arbitration and Conciliation Act 1996, contemplates power to refer parties to arbitration where there is an arbitration agreement.

Sub section (1) of Section 8 envisages that a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

Sub-Section (2), enacts that 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.

40. Section 45 of the Arbitration and Conciliation Act 1996, provides power of judicial authority to refer parties to arbitration. It envisages that notwithstanding anything contained in Part 1 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.

41. Insofar as Section 8, Sub-Section (1) is concerned, there must be an arbitration agreement between the parties to the proceedings. Secondly, the action which is brought in a matter before the judicial authority must be the subject matter of an arbitration agreement. Thirdly, the party must apply to refer the matter for arbitration since power to submitting his first statement before judicial authority.

42. Insofar as Section 45 is concerned, the suit in O.S.No.87 of 2015 pending on the file of the Principal subordinate Judge, Chengalpet is not relating to any arbitration agreement between the appellant/plaintiff and the respondents/defendants. Therefore, it cannot be heard to say that the learned Principal Subordinate Judge, Chengalpet had seized of the action in a matter in respect of which the parties had made an agreement referred to in Section 44 of the Arbitration and Conciliation Act.

43. The appellant himself in his counter statement filed in

the Arbitration O.P.No.4 of 2015 has stated that the decision of the third respondent/arbitrator dated 18.08.2015 did not come under the purview of the Arbitration and Conciliation Act. Further, he has stated that the third respondent/arbitrator was not appointed as an arbitrator under the relevant provisions of the Arbitration and Conciliation Act as well as in accordance with the relevant provisions of the Constitution of Rotary club of Maraimalai Nagar, which are dealt with the appointment of the arbitrator. Further in paragraph No.4 of his counter statement filed in arbitration O.P. No.4 of 2015, he has stated that the third respondent/arbitrator cannot be considered as an arbitrator as contemplated under the Arbitration and Conciliation Act.

44.Further, it is significant to note here that the appellant in his counter statement filed in the application in I.A.No.335 of 2015, (which is filed by the respondents 1 & 2 under Section 45, read with Section 8(1) of the Arbitration and Conciliation Act, to refer the matter to arbitration,) has stated that the third defendant in the suit viz., the fourth respondent herein Mr.C.R.Raju, is not at all a member of the first defendant club and the Constitution of the first defendant club did not bind or apply to Mr.C.R.Raju. He has also stated that there is no specific Arbitration Agreement between him (appellant) and the fourth respondent herein(C.R.Raju), who is the third defendant in the suit. He has Further stated that Mr.C.R.Raju, the fourth respondent herein(D3) is completely a third party with regard to the internal matter of the first defendant's club and he has exceeded his jurisdiction. Therefore, he would contend that the respondent viz., the club cannot go to arbitration for the illegal action of the third defendant(R4) herein, in the absence of any Arbitration Agreement with him.

45.The cumulative effect on the contention of the appellant is that the third respondent/arbitrator was not appointed as an arbitrator under the relevant provisions of the arbitration and his decision dated 18.08.2015, which is under challenge, did not come under the purview of the Arbitration and Conciliation Act 1996.

46.It is to be pointed out that the learned Principal District Judge, Chengalpet had rightly allowed the petition in Arbitration O.P.No.4 of 2015 and thereby declared the decision of the arbitrator dated 18.08.2015 as invalid. As observed by the learned Principal District Judge, Chengalpet, Kancheepuram district, Sections 4 & 5 of Article 16 of the Constitution of the first respondent club, which are extracted as under:

''Section 4 :''Arbitration. In the

event of a request for arbitration, each party shall appoint an arbitrator and the arbitrators shall appoint an Umpire. Only a member of a Rotary club may be appointed as umpire or as arbitrator.

Section 5:-Decision of Arbitrators or Umpire.

If arbitration is requested, the decision reached by the arbitrators or, if they disagree, by the umpire shall be final and binding on all parties and shall not be subject to appeal.''

47. Article 16 of the Constitution of the first respondent club is relating to Arbitration and Mediation. Sections 4 & 5 of Article 16 of the above Constitution of the first respondent club would go to show that the third respondent/arbitrator was not appointed in consonance with the above said provisions.

48. Under such circumstances, this Court is of the considered view that the appellant being the second respondent in the arbitration O.P. has got confused himself and on account of this reason he has taken entirely a contradictory and conflictory stand in his counter statement filed in the application made in I.A.No.335 of 2015, which is filed by the respondents 1 & 2 under Section 45 read with Sub-Section 8(1) of the Arbitration and Conciliation Act, to refer the matter to arbitration as well as in the petition in arbitration O.P.No.4 of 2015, which seems to have been filed by the respondents 1 & 2 under section 35 of the Arbitration & Conciliation Act to set aside the decision rendered by the third respondent(sole arbitrator). If he is able to understand this position he would not come forward with the Appeal to set aside the impugned order. When the contention of the appellant is that there is no specific Arbitration Agreement between him and Mr.C.R.Raju, then why he has filed this Appeal to set aside the impugned order passed by the learned Principal Subordinate Judge, Chengalpet.

49. It appears that he himself had resisted the appointment of arbitrator as his appointment is not in accordance with the relevant provisions of the Constitution of the Rotary club of Maraimalai Nagar. He has also contested that the decision of the arbitrator(R3) herein, is not in accordance with the provisions of the Arbitration & Conciliation Act as well as in consonance with the relevant provisions of the Constitution of the first respondent club.

50. Keeping in view of the above fact, this Appeal is devoid of any merits and therefore, it is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. Impugned order dated 29.04.2016 and made in Arbitration O.P.No.4

of 2015 is confirmed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

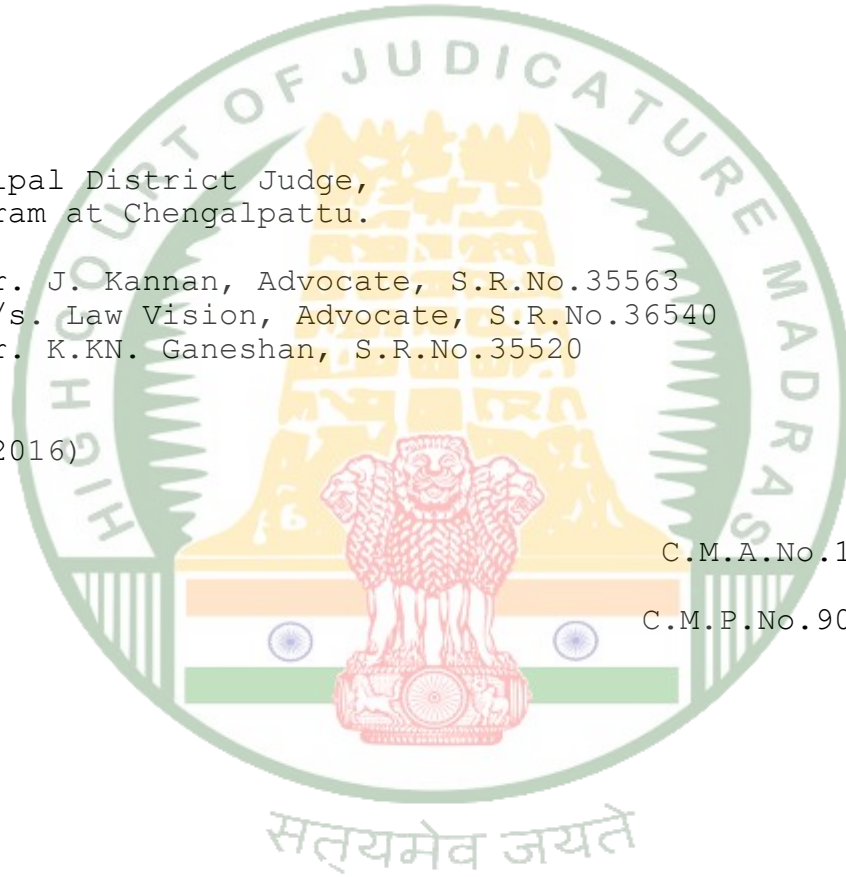
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To

The Principal District Judge,
Kancheepuram at Chengalpattu.

+1cc to Mr. J. Kannan, Advocate, S.R.No.35563
+1cc to M/s. Law Vision, Advocate, S.R.No.36540
+1cc to Mr. K.KN. Ganeshan, S.R.No.35520

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