

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.316 of 2016 &

C.M.P.No.1714 of 2016

1.Venkatachalam
2.Ramalingam

... Petitioners

v.

1.Supparayan
2.P.Alagusamy
(Independent Arbitrator,
Namakkal[E.Sa.Ma.,No.3/2010]

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Trial Court to convert the C.M.A.No.57 of 2010 into the Arbitration Original proceedings by setting aside the order dated 16.07.2015 made in C.M.A.No.57 of 2010 on the file of the learned Principal District Court, Namakkal and decide the matter on merits and in accordance with law.

For Petitioner : Mr.R.Prabakar _

ORDER

Challenging the order dated 16.07.2015 passed in C.M.A.No.57 of 2010, the respondents in the Arbitration Original Proceedings in E.sa.Ma.No.3 of 2010, have filed the above Civil Revision Petition.

2. By order dated 09.07.2010, the Arbitrator passed an award as against the petitioners.

3. Challenging the Arbitral Award, the petitioners filed an appeal in C.M.A.No.57 of 2010 on the file of Principal District Court, Namakkal.

4. If the petitioners are aggrieved, they should have filed an Original Petition under section 34 of the Arbitration and Conciliation Act, 1996. Instead of filing the Original Petition, the petitioners have filed a Civil Miscellaneous Appeal under Order 43, Rule 1 of Civil Procedure Code. The appeal was kept pending for 5 years and by order dated 16.7.2015, the Principal District Judge, Namakkal, dismissed the appeal. Even on 16.7.2015, there was no representation for the appellant before the Principal District Court, Namakkal. Further, the first respondent also filed a memo stating that the appeal cannot be filed by the petitioners challenging the Arbitral Award. In spite of all these things, the petitioners kept quiet for more than 5 years and ultimately remained absent before the court below and the appeal was dismissed.

5. Now, in this Civil Revision Petition, the petitioners seeks to convert the Civil Miscellaneous Appeal into Arbitration Original Petition by setting aside the order dated 16.7.2015.

6. Admittedly, the award dated 9.7.2010 was challenged in the appeal before the Principal District Judge on 7.11.2010. Under section 34 of the Arbitration and Conciliation Act, 1996, the petitioners should have challenged the award within a period of three months from the date of the award. That apart, having prosecuted the appeal for 5 years, now they cannot seek for conversion of the Civil Miscellaneous Appeal into Arbitration Original Petition.

7. In these circumstances, I do not find any error or irregularity in the order passed by the Principal District Judge, Namakkal. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

23.06.2016

Rj

To

The Principal District Court,
Namakkal.

M. DURAISWAMY,J.,

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