

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Rev.Appln.(OS).No.1 of 2017

Mr.R.Stephen Louie

... Petitioner

Vs.

1.V.Subramanian
2.G.Annamalai
3.K.Thirunavukkarasu

... Respondents

Review Application filed under Order-47, Rule-1 read with Section 114 of Civil Procedure Code to review the order dated 12.01.2017.

For Petitioner : Mr.R.Stephen Louie, Party-in-person

For Respondents : Mrs.Hema Sampath, for R1 & R2

Senior Counsel, for Mrs.R.Meena

No appearance for R3

सत्यमेव जयते

ORDER

Heard Mr.R.Stephen Louie, review applicant appearing party-in-person and Ms.Hema Sampath, learned Senior Counsel for Ms.R.Meenal, learned counsel for the respondents 1 & 2. None appears for the third respondent.

2.This review application has been filed by the applicant to review the order passed by this Court dated 12.01.2017. At this juncture, it has to be pointed out that the order dated 12.01.2017 is not a final order, but an order which took note of the contentions advanced by the parties on which certain directions were issued to the applicant to produce certain documents. At this juncture, it would be necessary for this Court to extract the entire order dated 12.01.2017 as it is.

"Heard Mrs.Hema Sampath, learned Senior Counsel appearing for the applicants, Mr.R.Stephen Louie, 1st respondent appearing in person and Mr.K.Thirunavukkarasu, 2nd respondent-Arbitrator as well as his counsel Mr.Jayapalrajan.

2.On going through the impugned Award, prima facie I feel that the Award is flawed. No reasonable person would be in a position to decipher as to what the Arbitrator proposes to say or has said in the impugned Award. But this is only a prima facie finding and I will arrive at a final decision after hearing all the parties in full.

3.In terms of the directions issued by this Court on 12.08.2016, the 2nd respondent/Arbitrator has appeared before this Court and he shall continue to appear before the Court on all the hearing henceforth.

4.This Court raised a query to the Arbitrator as to who had nominated him as an Arbitrator, to which the Arbitrator does not have a specific answer. Next, the Court queried as to what is the nature of the Organization

called High Court Advocates' Arbitration Council. For this query, the Arbitrator states that he is not aware. However, surprisingly, it is the said "Council", which had nominated him.

5.The first respondent, appearing in person, interfered to say that the Council is a Registered Trust and there are about eight Trustees and as of now, it is defunct.

6.The question would be as to how a defunct Trust could term itself as an "Arbitration Council" and there is no recognition by a Statutory body or the High Court Rules, and the same is neither brought out nor set out in the impugned Award. Thus, prima facie, I am of the view that the said Council could at the best be a Fake Arbitration Tribunal. Similar such Tribunals are under scanner and the same are under scrutiny of the Hon'ble First Bench. There are criminal cases pending, apart from several actions being initiated by the affected parties against those fake Tribunals.

7.Since two advocates are involved in this matter, viz., the first respondent, appearing in person and the second respondent, the Arbitrator, this Court is inclined to grant one more opportunity to the parties to putforth their submissions in the form of an affidavit clearly stating as to what is their case. The Arbitrator shall file a separate affidavit because of the allegations which have been made against him in his personal capacity in this petition. The Court has sensitized the second respondent-Arbitrator about the seriousness of the proceedings.

8.The first respondent, in the course of his submissions, stated that the applicants have no right over the property in question. If such is the case, it is rather surprising as to how the first respondent had entered into an Agreement with them and based on such an Agreement, arbitration proceedings have been initiated, alleging that there is a binding arbitration clause.

9.The learned Senior Counsel appearing for the applicants submitted that the applicants are unaware of the Agreement, which the first respondent is referring to.

10.Therefore, on this aspect, the first respondent shall make appropriate submissions as to how he can maintain an application before the Arbitrator, if he questions the very existence of the Agreement or the locus of the applicants to enter into the alleged Lease Agreement. Since the first respondent appears to have full knowledge about the High Court Advocates' Arbitration Council, though it has become a defunct Organization, he is directed to produce the Trust Deed along with the Registration Certificate and whether the accounts of the Trust have been audited and if so, the audited accounts for the three financial years preceding 2016-17.

11.The second respondent-Arbitrator has produced the original Award passed on a non-judicial stamp paper of Rs.150 and the same shall be kept in the safe custody of the Joint Registrar (OS) and produce the same before this Court on the next date of hearing.

List the matter on 25.01.2017."

3. In terms of the above order, the review applicant was directed to make appropriate submissions as to how he can maintain an application before the Arbitrator, the second respondent in the main O.P, if he questions the very existence of the Agreement or the locus of the original petitioners/respondents 1 & 2 to enter into the alleged Lease Agreement. Further, the Court observed that the review applicant appears to have full knowledge about the High Court Advocates' Arbitration Council, though it had become defunct Organization. Therefore, he was directed to produce the Trust Deed along with the Registration Certificate and whether the accounts of the Trust have been audited and if so, the audited accounts for the three financial years preceding 2016-17.

4. The second respondent in the main O.P, who is the Advocate Arbitrator, on an earlier occasion, was directed to produce the original Award and when he had produced the original Award passed on a non-judicial stamp paper of Rs.150, it was directed to be kept in the safe custody of the Joint Registrar (OS) and the matter was directed to be listed on 25.01.2017.

5. The review applicant has come forward with this review application stating that the order passed by this Court on 12.01.2017 fails to take into account voluminous evidence by way of counter affidavit, counter

statements with typed set of documents and the order, thus, suffers from error apperent on the face of the record.

6.Further, the applicant refers to Section 19(2) of the Arbitration and Conciliation Act as amended in 2015. He has blamed this Court stating that it has heard arguments of the respondents herein without any reference to the agreements signed. Further, the applicant has commented upon certain observations made by this Court in paragraph No.5 of the order. Further, it is submitted that the applicant cannot be compelled to file the three financial years audited accounts, as it is a task which is impossible to perform. Further the applicant commented upon the observations made in paragraph No.2 of the order. In the grounds of review, certain other contentions have been raised in paragraph No.1 stating that the Court has failed to consider such contentions.

7.Firstly, the applicant has to bear in mind that he has filed this application as a review application to review the order dated 12.01.2017. Such review jurisdiction can be excercised only if the review applicant is in a position to point out errors, which should be apparent on the face of the record. The settled legal principle is that review application is not an appeal in disguise. That apart, the order dated 12.01.2017 is not a final order, but it is an order recording the proceedings, which took place, with directions to

the review applicant to produce certain documents and the Court has directed the matter to be listed on a particular date. Therefore, I find that the petitioner has not made out any grounds for review of the order dated 12.01.2017 and the order does not suffer from any error apparent on the face of the record.

8. At this juncture, this Court would like to comment upon the conduct of the petitioner in the course of these review proceedings and the Court had passed orders on 18.07.2017, 18.08.2017, 01.08.2017 and 18.09.2017 to give a clear picture, those orders are quoted hereinbelow:

18.07.2017 : *"The petitioner who is appearing in person has filed this review application to review the order passed by this Court in O.P.No.542 of 2016 dated 12.01.2017. There is no error which is apparent on the face of the said order.*

2. The order would direct the petitioner as well as the arbitrators to comply with certain directions and requirements. The petitioner is not appearing today.

3. Registry is directed to issue notice to the petitioners stating that the matter will be heard by this court on 01.08.2017. Private notice is also permitted to be taken by the counsel for the respondents.

List on 01.08.2017."

01.08.2017 : "The petitioner, who has filed this Review Application and appearing as Party-in-Person is not appearing today, and he has circulated a letter to the Registrar Judicial (OS), dated 31.07.2017, stating that, this case should not be placed before this Court, as it appears that, he has given a letter to the Hon'ble Chief Justice to list the matter before some other Court, though the petitioner is fully aware that the matter will be listed before this Court, on 01.08.2017, as he has been informed about the date of hearing.

2. This Court, prima facie, does not approve the conduct of the petitioner in not appearing before this Court and making whatever submissions. Thus, it is clear that the petitioner is dragging on the matter. However, adverse orders are deferred. "

18.08.2017 : "The petitioner appearing in person though filed a memo before the Court stating that the matter should be placed before some other Court, this Court is not inclined to pass any order on the said memo.

2. It appears that the petitioner had moved the registry for posting the matter before some other Hon'ble Judge and no orders have been passed on such a request.

3. Faced with this situation, the petitioner who is appearing in person agrees to argue the matter and seeks for an adjournment and requests that the matter may be posted on 30.08.2017.

4. Accordingly, Registry is directed to list this matter on 30.08.2017."

18.09.2017 : "When the case came up for hearing on 18.08.2017, this Court passed the following order:

"The petitioner appearing in person, though filed a memo before the Court stating that the matter should be placed before some other Court, this Court is not inclined to pass any order on the said memo.

2. It appears that the petitioner had moved the Registry for posting the matter before some other Hon'ble Judge and no others have been passed on such a request.

3. Faced with this situation, the petitioner, who is appearing in person, appears to argue the matter and seeks for an adjournment and requests that the matter may be posted on 30.08.2017.

4. Accordingly, Registry is directed to list this matter on 30.08.2017."

2. On 30.08.2017, there was no sitting of this Court and therefore, today, the matter is listed for hearing. The petitioner – party in person, is not present.

3. The learned Senior Counsel appearing for the second respondent submits that she has received information from other counsel that there are several other complaints pending against the petitioner herein. She would further submit that the complaint given by her client before the Bar Council the petitioner is still pending and no action has been initiated. During the course of the proceedings, Mr.A.Punithavanan intervened in the proceedings and submitted that he has been issued notices by the petitioner claiming himself to be an arbitrator and that he has now lodged a complaint against

the petitioner and in turn, the petitioner also lodged a criminal complaint against him, which necessitated to move a petition before this Court for the grant of anticipatory bail in Crl.O.P.No.2717 of 2015.

4. Thus, there are two aspects to the matter. One is that the review application filed by the petitioner merits consideration. Since the petitioner is not present today, the decision on the said issue is deferred. The other and more important issue is with regard to the allegations made against the petitioner.

5. It is stated that there is a great doubt as to the petitioner's date of enrollment before the Bar Council of India and as to whether he possesses a valid degree in law, etc.

6. The learned Senior Counsel appearig for the second respondent submits that the complaint given by the second respondent to the Bar Council of India against the petitioner will be placed before this Court on the next hearing date, duly supported by an affidavit by the second respondent, which has been registered as complaint No.198 of 2016.

7. List on 21.09.2017."

9.At the commencement of the proceedings today, the petitioner was not even apologetic for his absence on the two earlier occasions. It is only after the Court pointed out, the applicant with reluctance tendered his apology.

10. Be that as it may, as pointed out in the preceding paragraphs, the applicant has not made out any grounds for review of the order dated 12.01.2017 and has miserably failed to point out any error which is apparent on the face of the record. The present attempt of the petitioner is to delay and defeat the main proceedings. Therefore, this Court has no hesitation to hold that the petitioner has wasted the judicial time of this Court by filing this Review Application.

11. Thus, for all the above reasons, the application is dismissed with cost of Rs.25,000/- (Rupees Twenty Five Thousand only) payable to the Tamil Nadu State Judicial Academy within a period of four weeks from the date of receipt of a copy of this order. If the amount is not paid, the same is liable to be recovered as arrears by resorting to appropriate legal procedure.

As the Review Application is dismissed, the Registry is directed to list O.P.No.542 of 2016 before the appropriate Court.

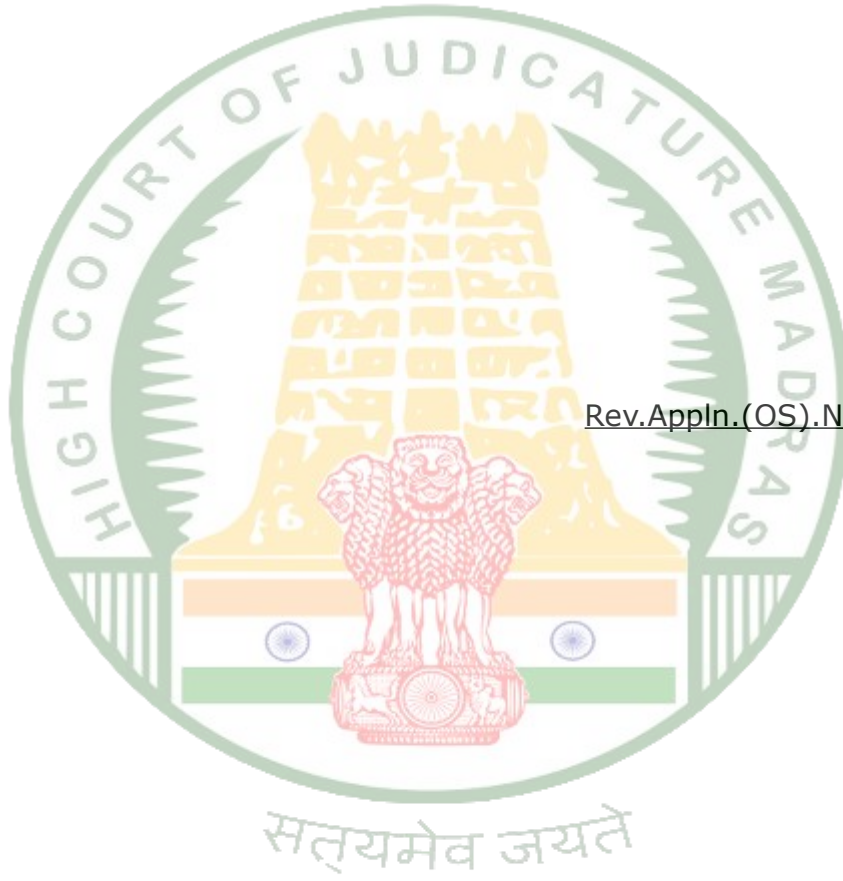
WEB COPY

21.09.2017

Index:Yes/No
abr

T.S.SIVAGNANAM, J.

abr



Rev.Appln.(OS).No.1 of 2017

WEB COPY

21.09.2017