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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.1603 of 2019

and

C.M.P.No.10578 of 2019

1. T.S.Gowrama

2. T.V.Pramila

... Petitioners

Vs.

1. Nithin K Chariyan

2. Vanaprastha International Charitable Trust,
Rep. by its Managing Trustee,
Fr.Cheriyar Puthenpura,
Atmadaan, Janatha Colony,
Doddakannelli,
Bengaluru - 560035.

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Arbitration Award in ARB.P.No.29 of 2018 dated 21.03.2018 on the file of Sole Arbitrator, Jayaprakash.

For Petitioner : Mr.M.R.Gokul Krishnan

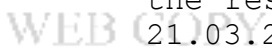
For R1 : Mr.V.Premkumar

For R2 : Mr.S.Sadasharam

ORDER

This Civil Revision Petition has been filed under Article 227 of the Constitution of India, challenging the Arbitral Award in ARB.P.No.29 of 2018 dated 21.03.2018 on the file of Sole Arbitrator, Jayaprakash.

2. This revision petition was initially posted for maintainability and this Court by order dated 08.04.2019



3. In the present revision petition, the petitioners and the respondents all prayed to set aside the Arbitral award dated 21.03.2018. The factual matter of the present case is that the petitioners seem to have filed a partition suit against their brothers and also against the 2nd respondent herein before the Sub Court, Hosur in O.S.No.314 of 2016, and in the same suit, a relief to set aside various sale deeds pertaining to the suit schedule property was also sought for. The 2nd respondent herein who was the 8th defendant in the suit to get over the partition executed a lease deed for a period of 11 months in favour of the 1st respondent herein who reportedly works as an employee in the 2nd respondent Trust. As per the said lease deed, there is a clause embedded in the Arbitration which provides for referring the matter for Arbitration in case of dispute and the seat of Arbitration to be at Chennai. Further, as if there was a dispute between the 1st and 2nd respondent for non existing person acting as an Arbitrator and passing an award ironically, the Arbitrator does not carry any address. After the award being passed, to get stamp of approval for this award, Section 9 Application is filed before this Court in O.A.No.307 of 2018 for appointment of a receiver based on the lease agreement. While the Section 9 Application was pending, the applicant in the said Application seems to have filed a Memo informing this Court that the Sole Arbitrator had already passed an award on 21.03.2018 and this Court by recording the said memo closed the Section 9 Application as infructuous. In fact, in the award, the so called Sole Arbitrator makes reference of pendency of O.A.No.307 of 2018. The revision petitioners herein claim that they came to know about the award passed by the Fictitious Arbitrator only later and immediately they approached this Court seeking to set aside the award by impleading the original parties to the award.

<https://hcservices.ecourts.gov.in/hcservices/>



respondent. While being so, the 2nd respondent seems to have approached one A.R.Chandran for the purpose of resolving the crises and the petitioners herein had no knowledge about that person. After some days, the 1st respondent came to know that the said A.R.Chandran has created bogus records in collusion with the Managing Trustee of the 2nd respondent Trust and an Advocate by name Ramesh has acted on behalf of A.R.Chandran and filed O.A.No.307 of 2018 as if filed by the 1st respondent.

5. The 1st respondent claims that he neither signed any vakalat nor signed any paper to be filed before this Court, and he neither engaged the said Ramesh as a counsel to file O.A.No.307 of 2018 before this Court nor he is aware of any such person by that name. Further, the 1st respondent claims that the Arbitral award namely interim award, final award and additional award have been fabricated and created bogusly to enable the revision petitioners to get back the possession of the property which the 2nd respondent Trust purchased under various sale deeds, and he is neither a party to the Arbitral award in ARB.P.No.29 of 2018 dated 21.03.2018 nor has signed any papers to be filed before this Court.

6. Mr.Fr.Churian Puthenpura, the Managing Trustee of the 2nd respondent Trust, has also filed a counter affidavit stating that he has been administering the affairs of the 2nd respondent Trust right from the year 1997-1998. The 2nd respondent Trust is a Charitable Trust, and the Trust wanted to purchase some immovable properties, for which, the 1st respondent purchased 5.54 acres through one Venkata Ramanappa under various sale deeds dated 21.01.2015 registered before the Sub Registrar, Hosur. After purchasing the said 5.54 acres of land, the 2nd respondent Trust applied for transfer of Patta and Chitta in favour of Trust's name, and after it was transferred in the name of the Trust, the 2nd respondent was put into possession of the above land.

7. It is further stated by the 2nd respondent that the 2nd respondent Trust is in absolute possession, occupation and enjoyment of the suit properties right from the date of purchase. While that being so, the revision petitioners herein with a motive to grab the land in question filed O.S.No.314 of 2016 before the Sub Court, Hosur, claiming partition among themselves and for a declaration to declare that the sale deeds executed in favour of the Trust as null and void and thus the 2nd respondent was made as a party in O.S.No.314 of 2016. In the meanwhile, the 1st respondent herein has sought for an allotment of a portion of the land in the 5.54 acres purchased by the 2nd respondent Trust for cultivating medicinal plants, for which, the 2nd respondent wanted to measure the land and allot a portion to the 1st respondent herein. In this regard, the 2nd respondent



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was introduced to one Dr.Vijayakumar of Hosur who in turn had introduced one A.R.Chandran at Bangalore who is the Chaiman-cum-Director of FTAC Regular ADR Centre, having Licence No.109588 of 2017 approved by the Ministry of Corporate Affairs, Government of India.

8. The 2nd respondent claims that believing the said A.R.Chandran who can do some help to him to survey the land and measure the property in a legal manner, the 2nd respondent had entrusted all the Xerox copies of the Original title deeds relating to the property in question. Thereafter, the said A.R.Chandran had absconded and not able to be traced out. All of a sudden, in the month of November 2018 during the absence of the Managing Trustee of the 2nd respondent Trust, someone has come to the school premises of the 2nd respondent Trust and handed over a copy of the final award to the Watchman. Thereafter, the 2nd respondent had tried to contact the A.R.Chandran over phone who was readily available at that time and he told the 2nd respondent that the copies of the award can be produced before the authorities concerned to measure the property with the help of a Surveyor. On reading the award, the 2nd respondent came to know that certain lease deeds were bogusly created by the A.R.Chandran to which neither the 2nd respondent nor the 1st respondent were parties to it, and based upon the said lease deeds, an arbitration has taken place and final award also has been passed.

9. The 2nd respondent further claims that he neither signed any paper for Arbitration nor handed over any Vakalat to anyone of them and the said A.R.Chandran by fabricating the award has approached this Court in O.A.No.307 of 2018 seeking a relief of appointment of a receiver. Moreover, the 2nd respondent claims that a Memo seems to have been filed in the name of the 1st respondent, and recording the memo, an order has been passed. The said O.A.No.307 of 2018 came to be closed on representation made by the Advocate by name Mr.Ramesh on 04.04.2018. In fact, the 2nd respondent had met the Advocate Mr.Ramesh in May 2019 and enquired about the case said to have been filed in the name of the 1st respondent, and the Ramesh has informed him that he acted on behalf of A.R.Chandran who had instructed him to file an application before this Court, and only on his instruction, he filed the said O.A.No.307 of 2018 before this Court. Finally, the 2nd respondent claims that he was neither a party before the Arbitrator nor attended the Arbitration proceedings. Hence he prays for setting aside the Arbitral award in ARB.P.No.29 of 2018 dated 21.03.2018.

10. The learned counsel appearing for the revision petitioners contends that when they have inherited the said 5.54 acres apart from other lands who had filed O.S.No.314 of 2016



before the Sub Court at Hosur for a prayer of partition and a declaration declaring the sale deeds executed in favour of the 2nd respondent herein as null and void which is pending adjudication, the question of an independent arbitrator passing an award between the 1st and 2nd respondent as if there was an agreement is absolutely illegal and has to be set aside. Whereas, the counsel appearing for the 1st and 2nd respondent contends that they were neither parties to the award nor have signed any papers and not even appeared before the Arbitrator. While that being so, the question of an Arbitrator deciding the issue does not arise and sought for setting aside the award.

11. Heard the learned counsel appearing for both sides and perused the materials available on record.

12. It is a clear case where fraud has been played on this Court. On perusal of the affidavit filed by the 2nd respondent, it is clear that an admission by the 2nd respondent in the affidavit is owned by him that the 2nd respondent is one who engaged the said A.R.Chandran by whatever means he claims to be introduced to him. This Court is not able to accept the said angelical portray of 2nd respondent himself who claims that he is unaware of the Arbitral award as well as the petition being filed before this Court in O.A.No.307 of 2018. As such, the suit in O.S.No.314 of 2016 filed by the present revision petitioners seeking partition and declaration to declare that the sale deeds executed in favour of the 2nd respondent as null and void is pending.

13. To circumvent the legal proceedings, it is clearly seen that the 2nd respondent engaged touts under guise of conducting an arbitration which itself is an illusory one, and to give a seal of approval for the Arbitral award in ARB.P.No.29 of 2018 dated 21.03.2018, they had the audacity to approach this Court by filing Section 9 of Arbitration and Conciliation Application seeking appointment of a receiver pending Arbitral proceedings. Thereafter, on a memo filed by the 1st respondent to state that the Arbitration has been concluded and Arbitral award has been passed, sought this Court's intervention to close the Section 9 Application. Based on the memo, this Court by order dated 04.04.2018 has closed the O.A.No.307 of 2018 as infructuous.

14. It would be pertinent to extract few paragraphs from the counter filed by the 2nd respondent herein, which are as follows :

"9. I further submit that I sought the help and advice of a person by name Venkata Ramanappa who helped me to purchase the land earlier for making arrangements to survey and measure the property. The said Venkata



Ramanappa introduced me to one Dr.Vijikumar of Hosur.

10. I further submit that under the guise of helping me to survey and measure the property, the above said Dr.Vijikumar introduced me to one Mr.A.R.Chandran at Bangalore in a hotel. When I met him in person at a hotel in Bangalore, the above said A.R.Chandran told me that he is the Chairman-cum-Director of FTAC Regular ADR Centre having Licence No.109588 of 2017, approved and licenced by the Ministry of Corporate Affairs, Government of India and he also told me that he is the Chairman of the corporate body and also given me copy of the memorandum of association of FTAC Regular ADR Centre. On perusal of the same I believed that the above said A.R.Chandran can do some help to me to measure the property and survey the land in a legal manner.

11. I further submit that the above said A.R.Chandran wanted me to place with him the Xerox copies of the documents relating to the property in question and accordingly I submitted the documents to him and thereafter as and when I contacted him over phone, there was no proper response. The above said A.R.Chandran who claimed to be an authorized person and he also shown to me his Identity card and the particulars furnished by him made me to believe that he is a bonafide person. However, after having handed over the papers to him, when I contacted him over phone, he could not properly respond and subsequently I was not able to contact him either in person or over phone. However, in the month of November 2018 during my absence somebody came to the school premises of the 2nd respondent Trust and handed over a copy of the final award to the watchman. I further submit that one additional award was posted in whatsapp in my cell phone and after going through the same, I contacted the above said A.R.Chandran over phone and wanted to know about the details of the papers said to be the copies of the award. He told me that the copies of the award can be produced before the concerned authorities to measure the property and to have survey of the same. However, I got suspicion about the bonafides of the award and the perusal of the award made me to suspect the bonafides of the person by name A.R.Chandran. As a matter of fact, myself and the 1st respondent never entered into any agreement of lease though A.R.Chandran suggested for the same. When I told him Dr.Nithin K, Cherian is interested to cultivate ayurvedic medicinal plants in the land, A.R.Chandran obtained the



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particulars of the 1st respondent and I never signed any agreement nor any papers as an application for arbitration. The 1st respondent has not signed any papers before the so-called sole Arbitrator nor any vakalat was signed either by me or by the 1st respondent.

12. I further submit that the above said A.R.Chandran is found to have fabricated records and documents in collusion with the opposite parties T.V.Nagaraj and T.V.Mohan through Dr.Vijikumar who is very much known to T.V.Nagaraj and T.V.Mohan and also Shanthamma and two revision petitioners. I understand that there was a clandestine and collusive conspiracy behind my back to grab the land from me from the holdings of the Trust and since I got suspicion over the authority of A.R.Chandran and also relating to the bonafides of the awards said to have been passed by the so-called sole Arbitrator, I approached the police authorities and revenue authorities and explained to them to guide and help me to survey my land. The above said A.R.Chandran is found to have fabricated lease agreement colluded with the other persons who fabricated the awards and as a matter of fact, I have got my own strong suspicion that previous land owners by name T.V.Nagaraj and T.V.Mohan including Shanthamma had their own involvement in fabrication of the records. I understand that the above said A.R.Chandran is absconding and not traced.

13. I further submit that the above said A.R.Chandran in the process of fabrication of records and awards, is found to have approached an advocate by name Mr.Ramesh at Chennai and met him to file an application before the Hon'ble High Court of Judicature at Madras in O.A.No.307 of 2018 seeking a relief of appointment of receiver. I further submit that I have not met the Advocate by name Mr.Ramesh prior to 04.04.2019 when the order was passed by the Hon'ble High Court in O.A.No.307 of 2018 and neither myself nor the 1st respondent by name Nithin K.Cheriiyan signed any papers or vakalat in O.A.No.307 of 2018 and I understand that our names have been misused and forged by the above said A.R.Chandran and Advocate Ramesh. What made them to file an application before the Hon'ble High Court seeking a relief is not known to me. As a matter of fact, the above said A.R.Chandran is found to have created records to make it appear that the so-called awards said to have been passed by the Sole arbitrator are genuine. However, to know the



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details about the order passed by the Hon'ble High Court, I met my Advocate Mr.Ramesh in May 2019 and enquired about the case said to have been filed by him on behalf of the 1st respondent. When I questioned the advocate by name Ramesh, he told me that A.R.Chandran met him and requested him to file a case in the Hon'ble High Court of Judicature at Madras and accordingly he did it. When I showed him the original order copy dated 04.04.2018 Mr.Ramsh admitted that he filed the case and obtained order on 04.04.2018."

15. On perusal of the last few lines in Paragraph No.13 referred from the counter filed by the 2nd respondent, it is black and white that the 2nd respondent engaged a tout by name A.R.Chandran who in turn had engaged one Mr.Ramesh, an advocate, who filed O.A.No.307 of 2018 on behalf of the 1st respondent who claimed that he has not engaged such advocate and that he neither signed any vakalat nor even knew such advocate by name Mr.Ramesh. However, the 2nd respondent in Paragraph No.13 has clearly stated that he knew Mr.Ramesh, and when questioned why O.A.No.307 of 2018 was filed, the said Ramesh seems to have replied that he had acted on instruction of that A.R.Chandran who was engaged by the 2nd respondent.

16. Under these circumstances, it is clear that Mr.Fr.Chерian Puthenpura, the Managing Trustee of the 2nd respondent Trust, has played foul and has mislead this Court in O.A.No.307 of 2018 as if there was an arbitration, and pursuant to the arbitration between 1st and 2nd respondent, there was an award being passed.

17. Though the 2nd respondent states in his affidavit that the award was in favour of the revision petitioners herein, the involvement of the revision petitioners as assailed by the 2nd respondent in the Arbitration proceedings, whatever said and done, the attitude of all parties herein strikes the conscious of this Court who has played fraud as against the Court itself demining the majesty of this Court. I have no hesitation in setting aside the Arbitral award dated 21.03.2018 in ARB.P.No.29 of 2018 as is a bogus, illegal and fabricated one. Thus the same is liable to be set aside.

18. However, the culprits who played fraud on this Court should be brought to light and be punished. Hence this Court directs the Additional Commissioner of Police (Central Crime Branch), Chennai, to investigate the issue and thereafter register an FIR against the culprits who had done this mischief. This Court also directs the Registry to place these papers before the Hon'ble Advocate General to initiate criminal contempt as against the said Advocate Mr.Ramesh who had filed



O.A.No.307 of 2018.

19. This Court also directs the Bar Council of Tamil Nadu and Puducherry to initiate appropriate disciplinary proceedings as against the Advocate Mr.Ramesh after due enquiry with regard to his Enrolment Number. This Court further directs the Registry to furnish certified copies of the O.A.No.307 of 2018 to all the above authorities for taking appropriate action.

20. With the above observation and direction, the Arbitral award in ARB.P.No.29 of 2018 dated 21.03.2018 passed by the Sole Arbitrator, Chennai is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Enclosed Xerox copy of O.A.No.307/2018

raja

To

1.Mr.S.Jayaprakash, Sole Arbitrator,
AD-HOC Arbitrator proceedings
Chandapura, Royal Grand Hall, Bangalore.

2.The Additional Commissioner of Police
(Central Crime Branch), Chennai

3.The Advocate General,
High Court, Madras.

4.The Bar Council of Tamil Nadu and Puducherry,
High Court, Madras.

5.The Registrar General,
High Court, Madras-104.

+1cc to Mr.Sadasharam, Advocate (SR No.28700)

C.R.P.No.1603 of 2019
and
C.M.P.No.10578 of 2019

NRL (CO)
PR (22/07/2021)