

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.7.2021

Delivered on : 29.7.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.(PD) No.1446 of 2017
and
C.M.P.No.6742 of 2017

R.Karuppusamy

Petitioner

vs.

1. The Regional Manager,
Co-operative Marketing Federation,
Sowripalayam Road,
Ramanathapuram,
Coimbatore 641 015.
2. The Deputy Registrar,
Deputy Registrar of Co-operative Societies,
Collectorate Compound, Coimbatore.
3. R.Velliangiri
4. K.K.Ramasamy

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and decree dated 10.3.2017 passed in C.M.A.No.27 of 2015 on the file of the Principal District Judge, Coimbatore confirming the order made in I.A.No.1 of 2013 in A.R.C.No.256/1997-98 Sa.Pa.1 dated 29.5.2015 made by the Deputy Registrar, Deputy Registrar of Cooperative Societies, Coimbatore.

For Petitioner : Mr.Kalyanasundaram, Senior Counsel for
Mr.S.Ponjaganathan

For R1 : Ms.P.Rajalakshmi
For R2 : Mr.A.Edwin Prabhakaran
For R3 : No appearance

ORDER

The civil revision petition is filed against the judgment and decree in C.M.A.No.27 of 2015 dated 10.3.2017 on the file of the Principal District Judge, Coimbatore, confirming the order made in I.A.No.1 of 2013 in A.R.C.No.256/1997-98 Sa.Pa.1 dated 29.10.2015 made by the Deputy Registrar, Deputy Registrar of Cooperative Societies, Coimbatore.

2. Brief facts leading to filing of the present civil revision petition is as under:-

i) The petitioner herein being a lorry owner, had entered into an agreement with the first respondent to operate lorries on contract on 28.6.1997 for transporting fertilizers, manures, pesticides in Coimbatore and Pollachi areas procured by the first respondent to various Cooperative Societies in Coimbatore and Pollachi.

ii) Respondents 3 and 4 being the staff of the petitioner, are alleged to have colluded together and caused some loss to the first respondent and thereby, proceedings were initiated before the Deputy Registrar of Cooperative Societies, Coimbatore against the petitioner

and respondents 3 and 4 under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 and the same was contested by the petitioner that any dispute between him and the first respondent could not be decided in a proceedings initiated under Section 90 of the Act, and as per Clause 28 of the Agreement entered by him with the first respondent, only the courts at Chennai have jurisdiction to decide any dispute between him and the first respondent, however, by order dated 30.7.1999, the Deputy Registrar of Cooperative Societies allowed the claim of the first respondent against the petitioner.

iii) The above order was challenged by the petitioner in C.M.A.No.26 of 2000 before the District Judge, Coimbatore where the case was remanded to the Deputy Registrar of Cooperative Societies for fresh disposal by order dated 28.11.2007 and aggrieved against that order, the petitioner had filed C.R.P.No.720 of 2008.

iv) This court, after elaborately considering the contentions raised by the petitioner, held that the petitioner is an Agent of the first respondent and the dispute that arose between him and the first respondent could be referred to the Registrar for a decision under Section 90 of the Act and thereby rejected the ground of jurisdiction raised by the petitioner while confirming the order of remand made by

the District Judge, Coimbatore.

v) However, the petitioner had moved this court by filing Review Application No.64 of 2009 and once again, this court had confirmed its view and rejected the contention of the petitioner on the aspect of jurisdiction.

vi) Whiles, on remand, when the matter was taken up for fresh consideration by the Deputy Registrar of Cooperative Societies, Coimbatore, the petitioner had preferred I.A.No.1 of 2013 raising the jurisdiction issue once again and the Deputy Registrar of Cooperative Societies, Coimbatore, referring to the decision of this court, dismissed the petition sought to raise the jurisdiction issue by his order dated 29.5.2015.

vii) The above order was put to challenge by the petitioner before the Principal District Judge Coimbatore in C.M.A.No.27 of 2015 and once again, the jurisdiction issue raised by the petitioner was answered therein by order dated 10.3.2017 which is subjected to challenge in this civil revision petition.

3. Mr.Kalyanasundaram, learned Senior Counsel appearing for the petitioner would submit that the entire proceedings is illegal since as per class 28 of the agreement, any dispute between the petitioner

and the first respondent can be resolved only by the courts at Chennai whereas the proceedings had been conducted at Coimbatore and the jurisdiction issue being a preliminary one going to the root of the case, has to be decided before ever proceeding further. He relied upon the decision in *Swastik Gases Private Limited* ((2013) 9 SCC 32).

4. Ms.P.Rajalakshmi, learned counsel appearing for the 1st respondent would submit that the original order was passed in A.R.C.No.256/1997-98 by the Deputy Registrar of Cooperative Societies, Coimbatore on 30.7.1999 which was 22 years ago and thereafter, there was an earlier round of litigation in which the question of jurisdiction on the basis of Clause 28 of the agreement was raised and it was negated by this court by a common order dated 6.4.2009 in C.R.P.Nos.720 to 722 of 2008 and once again a Review Application was filed raising the point of jurisdiction that only the courts in Chennai will have jurisdiction and this court, by order dated 10.12.2009, had dismissed the Review Application. The learned counsel would, therefore, submit that the petitioner, having not challenged the orders by way of appeal, is estopped from raising the point of jurisdiction, which has already been raised and negated in an earlier round of litigation.

5. Mr.Edwin Prabakar, learned counsel appearing for the second respondent would submit that the ground of jurisdiction was also raised by the petitioner in C.R.P. No.27 of 2015 where it was rejected and it had been once again clarified and confirmed in the Review Application filed by the petitioner and therefore, if the petitioner is aggrieved by the finding rendered by the court below, the remedy for the petitioner can only be an appeal and not by way of a second round of litigation. He would also submit that merely by urging the jurisdiction issue again and again, the petitioner cannot be permitted to protract the proceedings eternally. The learned counsel for the respondents would press for dismissal of the revision.

6. Heard the learned counsel appearing for the petitioners and perused the materials available on record.

7. It is not in dispute that the petitioner had entered into an agreement with the first respondent for transporting fertilizers and pesticides for the first respondent and in such course of business, some loss occurred to the first respondent and as a consequence, proceedings under Section 90 of the Act was initiated against the petitioner and respondents 3 and 4 the staff of the petitioner. The main contention of the learned counsel for the petitioner is that

jurisdiction being the root cause and predominant issue, it requires to be decided as a first and foremost one whereas, it was not answered by the authorities and courts below whereas, the learned counsel for the first respondent would bring to the notice of the court the relevant portions of the findings rendered by the authorities and the courts below with regard to the issue of jurisdiction.

8. Of course, the issue of jurisdiction is to be decided as a foremost one. In *Swastic Gases Private Limited* ((2013) 9 SCC 32), it has been held that the very existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear and it is not advisable to read such a clause in the agreement like a statute.

9. In the present case, the petitioner had come up before this court in an earlier round of litigation in C.R.P.No.720 of 2008. Apart from other grounds, the petitioner had also raised the ground of jurisdiction that the courts in Chennai alone will have jurisdiction. The said Civil Revision Petition was dismissed by order dated 6.4.2009. A Review Application No.64 of 2009 was filed seeking to review the order passed in the said Civil Revision Petition raising the ground of territorial jurisdiction and this court has dismissed the Review

Application, by order dated 10.12.2009. It is apposite to refer to the relevant paragraphs of the said order:-

"11. The crux of the argument of the learned Senior counsel is that this court ought not to have decided the issue whether the applicant is an agent or not and could have left the issue open while dismissing the revision petition. The further ground raised is that this court has not considered the jurisdiction as per the agreement according to which only the courts in Chennai alone have the jurisdiction to decide the issues.

12. I am unable to the argument of the learned Senior counsel on what is now being sought for is re-arguing the case on merits under the guise of review.

13. Aggrieved by the order of Deputy Registrar, dt.30.7.1999, the applicant filed C.M.A.No.26 of 2000 and the Tribunal by order dt.28.11.2007 allowed the appeal on the ground of violation of principles of natural justice and remitted

the matter back to the Deputy Registrar.

14. It is the applicant who chose to challenge the order of Remand by filing Review under Article 227 of the Constitution of India and one of the grounds raised is that Sec.90 of Co-operative Societies Act will not get attracted in the present case and the petitioner is not an agent. The further ground raised in C.R.P. is that even assuming that he is an agent, Sec.90 will not apply and only courts in Chennai alone have jurisdiction to decide the issues.

15. Considering the grounds raised in the C.R.P. and on the basis of the arguments advanced, the applicability of Sec.90 and whether the applicant is an agent have been gone into and on merits, I held that the applicant is an agent and Sec.90 would definitely get attracted in this case. Further, I have concurred with the findings of Deputy Registrar with regard to these two questions.

16. In such circumstances, if the applicant is

aggrieved by these findings, the proper remedy is to file an appeal and not a Review application. Having come before this court under Article 227 of the Constitution of India raising the above questions and having found that the decision of this court is not favourable to him with regard to the above issues, it is not open to the applicant to get over the findings of the court which are adverse to him by filing a review petition.

17. Hence, the Review Application is dismissed as devoid of merits. No costs."

The question of jurisdiction has been taken up as an issue in the earlier proceedings and the issue has already been answered by this court. The petitioner has not challenged the same. Therefore, in the opinion of this court, the issue of jurisdiction has been re-agitated now after about two decades, only to protract the proceedings.

10. On the above aspect, it would be useful to refer to the decision of the Apex Court in *Neycer India Ltd v. GMB Ceramics Ltd* . ((2002) 9 SCC 489), wherein a three Judges Bench of the Apex Court, in a similar circumstances, has held as under:-

"4. The learned counsel for the appellant vehemently urged that the issue of jurisdiction being a matter which goes to the root of the matter, it would always be open for an aggrieved party to raise the same and in the case in hand, notwithstanding several orders passed by the Calcutta High Court since the dismissal of the special leave petition in limine, does not decide the matter and cannot be held to be res judicata, it would be open for the appellant to raise the issue. On merits, the learned counsel placed reliance on two decisions of this Court, namely, A.B.C.Laminart (P) Ltd v. A.P.Agencies (1989) 2 SCC 163 and Sant Ram & Co. v. State of Rajasthan (1997) 1 SCC 147. So far as the first case is concerned, suffice to say, that the question of jurisdiction has been taken up as preliminary issue and the issue having been answered one way or the other the matter had ultimately been carried to this Court where this Court examined the question and answered the same. In the second case, the question for consideration was

whether the power under Section 41 of the Arbitration Act can be exercised even when there is no initiation or pendency of proceeding before any court. In the case in hand, having regard to the circumstances and facts already narrated, we are of the considered opinion that the aforesaid decisions will have no application and, therefore, since the jurisdiction of the Calcutta High Court has already been decided by that very Court itself and also by the Madras High Court in rejecting the appellant's application, which the appellant never assailed in this Court, it would be futile to interfere with the impugned order of the Calcutta High Court. An arbitration proceeding which was intended to be a speedy and efficacious remedy for an aggrieved party to which both the parties agreed, is protracting for this length of time or an unnecessary issue on the question of jurisdiction; particularly having regard to the facts and circumstances already narrated."

11. Considering the facts and circumstances of this case that the petitioner seeks to raise the jurisdiction issue once again when he had already invited a finding in the first round of litigation itself and in the light of the above decision in *Neycer India Limited* case, this court finds no infirmity in the order passed by the court below. Accordingly, the civil revision petition is dismissed. No costs. The connected Miscellaneous Petition is also dismissed.

29.7.2021.

Index: Yes/No.
Internet: Yes/No.
ssk.

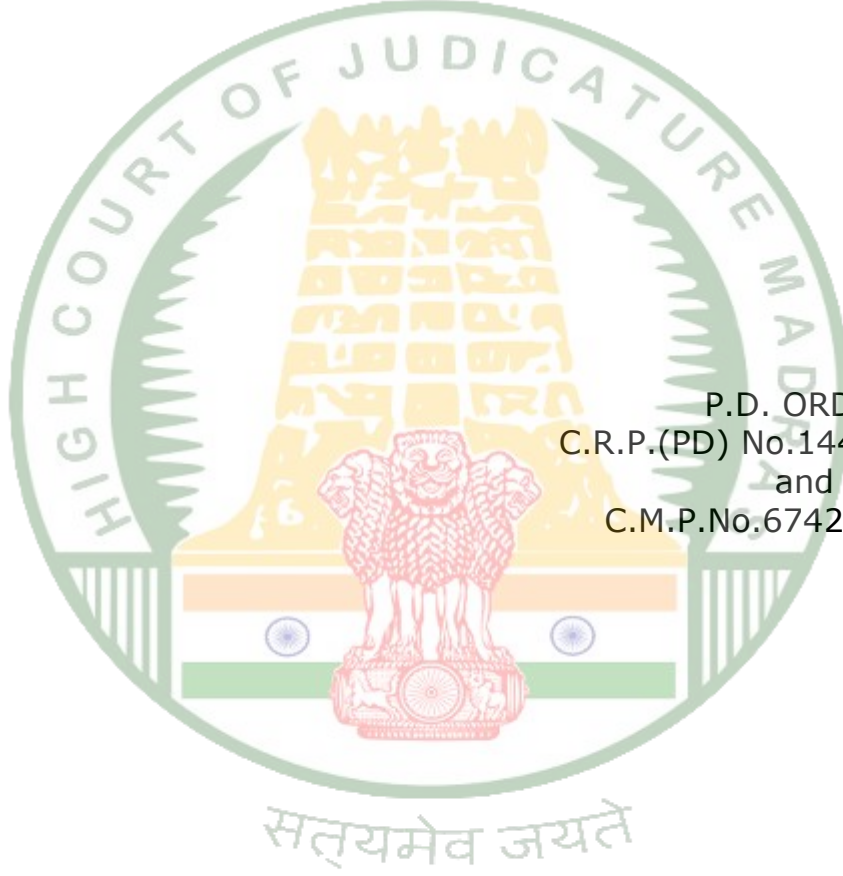
To

1. Principal District Judge,
Coimbatore.
2. The Regional Manager,
Co-operative Marketing Federation,
Sowripalayam Road, Ramanathapuram,
Coimbatore 641 015.
3. Deputy Registrar,
Deputy Registrar of Cooperative Societies,
Coimbatore.

WEB COPY

A.D.JAGADISH CHANDIRA, J.

Ssk.



P.D. ORDER IN
C.R.P.(PD) No.1446 of 2017
and
C.M.P.No.6742 of 2017

WEB COPY

Delivered on
29.7.2021.