

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP (NPD) No.4036 of 2017

Imam Shafi (Rah) Matriculation
Higher Secondary School (23362)
Pattukottai Road, Adirampattinam-614 701.
Thanjavur District.
Correspondent office at No.42,
Moore Street, Chennai – 1 ..Petitioner

Vs.

1.M/s.Edusmart Servives Private Limited,
Registered office at
L-74, Mahipaipur Extension,
New Delhi,
Rep. By authorised signatory K.R.Karthi

2.M/s.Educomp Solutions Limited,
Having its office at
1211, Padma Tower-I,
No.5, Rajendra Palace, New Delhi.
Rep by authorised signatory K.R.Karthi ..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the E.P.No.181 of 2017 in Arbitration Case No.RG/ARB23.6.2016/LOT-OT-3/225 pending on the file of the Principal District Court, Thanjavur.

For Petitioner : Mr.M.J.Jaseem Mohammed
For Respondents : No appearance

ORDER

This Civil Revision Petition is filed to strike off the E.P.No.181 of 2017 in Arbitration Case No.RG/ARB23.6.2016/LOT-OT-3/225 pending on the file of the Principal District Court, Thanjavur.

2. The petitioner/School entered into an agreement with the respondents under the guise of imparting hi-tech educational and scholastic studies using sophisticated computer gadgets and other paraphernalia. In pursuant to the contract, the respondents laid claim as against the petitioner. Thereafter, the respondents invoked the arbitration clause and demanded a sum of Rs.3,58,587.95/-. The learned Arbitrator rendered an ex-parte award dated 09.02.2017. On the basis of the said award, the respondents filed an Execution Petition before the Court below, in which, notice was served on the petitioner.

3. The learned counsel for the petitioner would submit that the Court below ought not to have to execute the proceedings without being transmitted as per Order 21 Rule 11 of CPC. The respondents obtained an award at Delhi and that too without any Arbitral award. In this regard, its relevant to the extract of provision under the Order 21 Rule 10 &11 of CPC

is hereunder:

*“10. **Application for execution** – Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions herein before contained to another Court, then to such Court or to the proper officer thereof.*

*11. **Oral application** -(1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.*

*(2) **Written application** – Save as otherwise provided by sub-rule(1) every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely :-*

(a) the number of the suit ;

(b) the names of the parties ;

(c) the date of the decree ;

(d) whether any appeal has been preferred from the

decree;

(e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree ;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results ;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed ;

(h) the amount of the costs (if any) awarded ;

(i) the name of the person against whom execution of the decree is sought ; and

(j) the mode in which the assistance of the Court is required, whether -

(i) by the delivery of any property specifically decreed ;

(ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property ;

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver ;

(v) otherwise, as the nature of the relief

granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree”.

4. Accordingly, the decree passed by the Arbitrator, New Delhi has to be transmitted by the Execution Court and without being the transmission as contemplated under Order 21 Rule 11, the execution petition is not at all maintainable. Hence, the execution petition itself is not at all maintainable and liable to be struck off.

5. In view of the above, the Civil Revision Petition is allowed and the E.P.No.181 of 2017 in Arbitration Case No.RG/ARB23.6.2016/LOT-OT-3/225 pending on the file of the Principal District Court, Thanjavur, is hereby struck off. No costs.

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lpp

G.K.ILANTHIRAIYAN,J.

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To

The Principal District Judge,
Thanjavur.



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19.03.2021

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