



C.R.P.(NPD)No.4323 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4323 of 2017
and C.M.P.No.20319 of 2017

S.Chelladurai

... Petitioner

Vs.

1.Chandragurusamy

2.S.Selvaraj

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to struck down E.P.No.447 of 2017 in A.R.O.P.No.732 of 2003 on the file of II Additional Sub Court, Coimbatore.

For Petitioner	: Mr.M.Muruganantham for Mr.M.Rajamani
For R1	: Mr.T.M.Hariharan
For R2	: No appearance



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ORDER

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(The matter is heard through “Video Conferencing/Hybrid Mode”.)

Civil Revision Petition is filed to strike out E.P.No.447 of 2017 in A.R.O.P.No.732 of 2003 on the file of II Additional Sub Court, Coimbatore.

2.The learned counsel appearing for the petitioner contended that petitioner and respondents are brothers. The 1st respondent filed E.P.No.447 of 2017 based on the created fraudulent arbitration award dated 04.04.2003. The learned Judge failed to see that there is no appeal against the award dated 04.04.2003 and there is no petition filed to implement the award by filing E.P. within the statutory time limit of 12 years. The present E.P. filed by the 1st respondent is on 08.06.2017 after lapse of 14 years. E.P. filed beyond 12 years is not maintainable. The learned Judge without considering the same, decided the said E.P. in the absence of the petitioner. The petitioner filed E.A.No.769 of 2017 to set aside the exparte order of delivery of possession on 09.09.2017 and the said E.A. is pending. The petitioner also filed an Obstruction Petition on



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01.09.2017 obstructing the delivery of possession. The petitioner also filed E.A.SR.No.25706 of 2017 under Section 47 read with Section 151 of C.P.C., which was returned by the Court directing the petitioner to file a petition to set aside the exparte order of delivery of possession. The 1st respondent has deliberately sent a notice in the E.P. to the wrong address of the petitioner, even though the petitioner and 1st respondent are living in the same address.

2(i).The learned counsel appearing for the petitioner further submitted that petitioner filed O.S.No.706 of 2009 on the file of II Additional Sub Court, Coimbatore, for partition against the 1st respondent and five others. The said suit was dismissed on 29.03.2016 and First Appeal A.S.No.37 of 2016 filed by the petitioner was allowed decreeing the suit filed by the petitioner granting half share in the suit property. The learned First Appellate Judge in A.S.No.37 of 2016 held that the 1st respondent failed to prove arbitration award and arbitration award is suspicious in nature and prayed for striking of E.P.



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3.The learned counsel appearing for the 1st respondent submitted that after arbitration award, the petitioner filed O.S.No.706 of 2009 and therefore, the 1st respondent did not file E.P. immediately. After dismissal of the said suit on 29.03.2016, the 1st respondent has filed present E.P. The time taken to dispose of the suit has to be excluded and after exclusion of such time, E.P. has been filed in time. The 1st respondent has filed Second Appeal before this Court challenging the judgment and decree of First Appellate Court, Second Appeal is yet to be numbered and prayed for dismissal of the Civil Revision Petition.

4.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for the 2nd respondent either in person or through counsel.

5.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.



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6.From the materials on record, it is seen that the 1st respondent has filed E.P.No.447 of 2017 for vacant possession of the suit property by vacating the petitioner as per the arbitration award dated 04.04.2003. It is seen that said E.P. is filed on 08.06.2017 after 14 years of passing of arbitration award dated 04.04.2003. The contention of the learned counsel for the petitioner is that arbitration award dated 04.04.2003 was not challenged by petitioner and the said award has become final. The 1st respondent did not file any petition to implement the award. On the face of the dates mentioned above, it is clear that 1st respondent has filed E.P. after 14 years 3 months of passing of arbitration award. At the time of argument, the learned counsel appearing for the 1st respondent contended that the petitioner filed O.S.No.706 of 2009 on the file of II Additional Sub Court, Coimbatore, for partition, the same was dismissed only on 29.03.2016 and therefore, E.P. filed by the 1st respondent is within time.

7.From the materials on record, it is seen that the petitioner has filed First Appeal on 04.06.2016 and 1st respondent has filed E.P. only



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after 1 year 3 months of passing of judgment and decree in O.S.No.706 of 2009 and one year after filing First Appeal. Further, the suit filed by the petitioner is not challenging the award dated 04.04.2003, but it is only for partition of properties mentioned in E.P. In view of the same, the contention of the learned counsel for the 1st respondent that 1st respondent did not file E.P. within the time due to pendency of O.S.No.706 of 2009 is without merits. The petitioner has produced judgment dated 18.06.2021 made in A.S.No.37 of 2016 on the file of III Additional District Court, Coimbatore. A reading of the said judgment shows that First Appellate Court took note of the fact that 1st respondent did not produce arbitration agreement based on which, arbitration proceedings was initiated and took adverse inference against the 1st respondent. The learned First Appellate Judge held that arbitration award is not properly stamped and it is legally invalid document. The learned First Appellate Judge considering the evidence of D.W.2/Arbitrator, also held that there is suspicion in conducting arbitration proceedings by Arbitrator. The learned counsel for the 1st respondent submitted that the



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1st respondent has filed Second Appeal before this Court and the same is yet to be numbered. The learned counsel for the 1st respondent has not furnished any details about the alleged filing of Second Appeal.

8.Considering the fact that suit and First Appeal filed by the petitioner do not relate to challenging the arbitration proceedings dated 04.04.2003, the contention of the learned counsel for the 1st respondent that time taken to dispose of O.S.No.706 of 2009 has to be excluded in calculating the time for filing E.P. is without merits. On the face of the record, it is seen that after 14 years 3 months of passing award, E.P. is hopelessly barred by limitation. The 1st respondent is abusing the process of law and Court by filing E.P. beyond 12 years. This Court has power under Article 227 of the Constitution of India over the proceedings pending before the Subordinate Court and has power to strike off any proceedings, when the same is abuse of process of Court and the same is barred by law.



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9. For the above reasons, E.P.No.447 of 2017 filed by the 1st respondent on the file of II Additional Sub Court, Coimbatore, is struck off. Accordingly, this Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Internet: Yes/No

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To

II Additional Subordinate Judge
Coimbatore.



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V.M.VELUMANI,J.

Kj

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