

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE G. CHANDRASEKHARAN

C.R.P. (NPD) No.3922 of 2019

V.P.Shamsudeen (Deceased)

1.Sohail Shamsudeen

2.Aysha Shamsudeen

3.Nimitha Riyas

4.Nasiya Shihabudheen

... Revision Petitioners

Vs.

The Superintending Engineer, PWD/WRO

Water Resources Organisation,

Parambikulam-Aliyar Basin Circle,

Pollachi,

Coimbatore District PIN – 642 003

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 23.07.2019 in E.P.No.71 of 2016, on the file of the V Additional District Judge, Coimbatore.

For Petitioners : Mr.K.G.Senthil Kumar

For Respondent : Dr.S.Suriya
Government Advocate (C.S.)

ORDER

This Civil Revision Petition is filed challenging the order passed in E.P.No.71 of 2016 on the file of the V Additional District Court, Coimbatore, passed on 23.07.2019.

2.Learned counsel for the petitioners submitted that, in the Arbitration proceedings initiated by the father of the petitioners, V.P.Shamsudeen, as Proprietor of M/s.S&S Co. Contractors, the respondent contested the matter. During the pendency of the Arbitration proceedings, V.P.Shamsudeen died. His legal heirs were permitted to continue with the Arbitration proceedings. At the conclusion of the Arbitration proceedings, a sum of Rs.1,09,84,027/- was awarded. Then the petitioners filed E.P.No.71 of 2016. The respondent entered appearance in the Execution Petition and submitted that the respondent filed A.O.P.No.276 of 2015 on the file of the Principal District Court, Coimbatore, challenging the award passed against the respondent. Therefore, the learned V Additional District Judge, Coimbatore, closed E.P.No.71 of 2016 for the time being, pending the adjudication of the aforesaid A.O.P. and liberty was given to file fresh Execution Petition after

disposal of A.O.P.No.276 of 2015. Against this order, the petitioners preferred this Civil Revision Petition.

3.The learned counsel for the petitioners submitted that A.O.P.No.276 of 2015 was filed against a dead person and therefore, it is not maintainable in law. Strangely, the respondent filed Tr.O.P.No.22 of 2017 on the file of the Principal District Court, Coimbatore, and in the said Tr.O.P., the respondent has shown the legal heirs of the deceased V.P.Shamsudeen as respondents. They deliberately omitted to show the legal heirs of the deceased V.P.Shamsudeen as respondents in the appeal and filed the appeal against a dead person. In such circumstances, the closure of the Execution Petition is not correct. Therefore, he prayed for setting aside of the order of the learned V Additional District Judge, Coimbatore, and for restoring the Execution Petition.

4.In response, the learned counsel for the respondent submitted that, already steps had been taken for impleading the legal representatives of the deceased V.P.Shamsudeen. Therefore, the order closing the Execution Petition cannot be challenged.

5.Considered the rival submissions and perused the records.

6.A reading of the order in E.P.No.71 of 2016 shows that the learned V Additional District Judge, Coimbatore, referring to a judgment reported in *2016 2 MWN (Civil) 176* that, when a decree is challenged before the Appellate Court, Executing Court cannot proceed with the execution proceedings, closed the Execution Petition in E.P.No.71 of 2016 and has also observed that A.O.P.No.276 of 2015 is pending for taking steps for impleading the legal representatives. From this observation, it is clear that, already steps had been taken for impleading the legal representatives of the deceased V.P.Shamsudeen.

7.In this view of the matter, this Court does not want to interfere with the order of the learned V Additional District Judge, Coimbatore, however, the Principal District Judge, Coimbatore, is directed to dispose of A.O.P.No.276 of 2015 as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

8.After dictating the order, the learned counsel for the petitioners submitted that, to his knowledge, no application was filed for impleading the legal representatives of the deceased V.P.Shamsudeen. If this submission is true, the learned Principal District Judge, Coimbatore, is directed to follow-up the provisions under Section 36 of the Arbitration and Conciliation Act, 1996, in proceeding with the matter.

With these directions, this Civil Revision Petition is disposed of. No costs.

21.09.2021

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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

To

1.The Principal District Judge,
Coimbatore.

2.The V Additional District Judge,
Coimbatore.

G. CHANDRASEKHARAN, J.

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3.The Superintending Engineer, PWD/WRO
Water Resources Organisation,
Parambikulam-Aliyar Basin Circle,
Pollachi,
Coimbatore District - 642 003.



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