



C.R.P.No.1347 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 03.08.2022

Delivered On : 22.09.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P(PD).No.1347 of 2020 and
C.M.P.No.7447 of 2020

1.R.K.Kumar
2.Akila

... Petitioners

Vs.

- 1.M/s.Nachiappan & Co.,
Represented by its partner,
R.K.Singaravel
- 2.R.K.Singaravel
- 3.The Divisional Railway Manager,
Southern Railway.
- 4.The Divisional Engineer (Co ordination),
Accounts Section, Southern Railway.
- 5.The Senior Divisional Finance Manager,
Southern Railway.
- 6.The Divisional Engineer/Central,
Southern Railway.

Respondents 3 to 6 having office at
Southern Railway Divisional Office,
Salem Junction, Salem.

1/20



C.R.P.No.1347 of 2020

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7.The Divisional Railway Manager,
Southern Railway.

8.The Divisional Engineer (Co ordination),
Accounts Section, Southern Railway.

9.The Senior Divisional Finance Manager,
Southern Railway.

10.The Divisional Engineer/Central,
Southern Railway.

Respondents 7 to 10 are having office at
Southern Railway, Madras Division (South),
Chennai.

11.The Branch Manager,
Allahabad Bank,
Saradha College Road,
Swarnapuri, Salem.

... Respondents

Prayer: This Civil Revision Petition had been filed under Article 227 of
Constitution of India to strike off the Complaint in O.S.No.83 of 2020 on the file
of the learned I - Additional District Munsif Court, Salem.

For Petitioner : Mr.R.Ezhilarasan

For Respondent : Mr.R.Rajarajan (for R.1)
Mr.P.T.Ramkumar (for R.3 to R.10)



C.R.P.No.1347 of 2020

ORDER

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This Civil Revision Petition had been filed to strike off the Plaint in O.S.No.83 of 2020 on the file of the learned I - Additional District Munsif Court, Salem.

2. It is the contention of the learned Counsel for the Petitioner that the learned District Munsif Court at Salem does not have territorial Jurisdiction, as the place of business is at Tindivanam Taluk. There is a Partnership deed between the Petitioners herein and the Respondents 1 and 2, who are the Partners in the firm Nachiappan & Co. When ever there is any dispute between the Partners, it shall be referred to arbitration under the Arbitration and Conciliation Act, 1996. The dispute mentioned in the Plaint is to be referred to the Arbitration, as per the Arbitration Clause between the Partners of the Partnership firm Nachiappan & Co. Therefore, the learned District Munsif Court, Salem ought not to have entertained the Suit in O.S.No.83 of 2020. On that two grounds this Civil Revision Petition is filed under Article 227 of the Constitution of India seeking to strike off of the Plaint in O.S.No.83 of 2020.



WEB COURT

2. The learned Counsel for the Revision Petitioners who are the Defendants in the Suit in O.S.No.83 of 2020 submitted that this Revision Petition has to be allowed in the light of the Arbitration Clause and Plaint in O.S.No.83 of 2020 has to be rejected, the Suit in O.S.No.83 of 2020 has to be struck off on the file of the learned Additional District Munsif, Salem.

3. In support of his contention, the learned Counsel for the Petitioner relied on the following rulings:-

3.1.In the case of ***Kvaerner Cementation India Limited Vs. Bajranglal Agarwal and another*** reported in ***(2012) 5 SCC 214*** wherein the Hon'ble Supreme Court had held as under:

“3. There cannot be any dispute that in the absence of any arbitration clause in the agreement, no dispute could be referred for arbitration to an Arbitral Tribunal. But, bearing in mind the very object with which the Arbitration and Conciliation Act, 1996 has been enacted and the provisions thereof contained in Section 16 conferring the power on the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objection with respect to existence or validity of the arbitration agreement, we have no doubt in our mind that the civil court cannot have jurisdiction to go into that question.

4. A bare reading of Section 16 makes it explicitly clear that the Arbitral Tribunal has the power to rule on its own jurisdiction even when any objection with respect to existence or validity of the arbitration agreement is raised, and a conjoint reading of sub-sections (2), (4) and (6) of Section 16 would make it clear that such a decision would be amenable to be assailed within the ambit of Section 34 of the Act.”



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3.2. In the case of ***Bhatia International Vs. Bulk Trading S.A. and another*** reported in (2002) 4 SCC 105 wherein the Hon'ble Supreme Court has observed as under:

“29. We see no substance in the submission that there would be unnecessary interference by courts in arbitral proceedings. [Section 5](#) provides that no judicial authority shall intervene except where so provided. [Section 9](#) does not permit any or all applications. It only permits applications for interim measures mentioned in clauses (i) and

(ii) thereof. Thus there cannot be applications under [Section 9](#) for stay of arbitral proceedings or to challenge the existence or validity of arbitration agreements or the jurisdiction of the arbitral tribunal. All such challenges would have to be made before the arbitral tribunal under the said Act.

30. Mr. Sen had also submitted that the term "arbitral award" includes an interim award. He had submitted that it would be open for the arbitral tribunal to pass interim awards and those interim awards could be enforced in India under Part II. However, there is a difference between an "interim award" and an "interim order". Undoubtedly, the arbitral tribunal could pass an interim award. But an interim order or directions passed by the arbitral tribunal would not be enforceable in India. Thus even in respect of arbitrations covered by Part II a party would be precluded from getting any interim relief. In any event, on Mr. Sen's interpretation, an award passed in arbitral proceedings held in a non-convention country could not be enforced. Thus such a party would be left completely remediless.

31. If a party cannot secure, before or during the pendency of the arbitral proceedings, an interim order in respects of items provided in [Section 9\(i\) & \(ii\)](#) the result may be that the arbitration proceedings may themselves get frustrated e.g. by non appointment of a guardian for a minor or person of unsound mind or the subject matter of the arbitration agreement not being preserved. This could never have been the intention of the Legislature.

32. To conclude we hold that the provisions of Part I would apply to all arbitrations and to all proceedings relating thereto. Where such arbitration is held in India the provisions of Part I would compulsory



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C.R.P.No.1347 of 2020

apply and parties are free to deviate only to the extent permitted by the derogable provisions of Part I. In cases of international commercial arbitrations held out of India provisions of Part I would apply unless the parties by agreement, express or implied, exclude all or any of its provisions. In that case the laws or rules chosen by the parties would prevail. Any provision, in Part I, which is contrary to or excluded by that law or rules will not apply.”

3.3. In the case of ***The General Manager, Telecommunications,***

Trichy and others Vs. K.Natrayan reported in 2004 (3) CTC 241 (Mad)

wherein this Court had held as under:

“12. If we consider these decisions with reference to [Section 7-B \(1\)](#) and (2) of the Act as well as Section 9 of CPC, it leads to an irresistible conclusion that for any dispute relating to telephone line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus, is, or has been provided, the dispute shall be determined by arbitration and the same cannot be agitated before the civil Court. No doubt, the learned counsel for the respondent would submit that inasmuch as no award has been passed by the Arbitrator appointed under Sub-section (1) of [Section 7-B](#) of the Act, till such award being passed, the subscriber is free to challenge the same before the civil Court. In the light of the embargo with reference to subject in question which has clearly spelt out in sub-section (1) and as explained and interpreted by this Court as well as the Apex Court, I am unable to accept the said contention. Though the sub-section (1) provides that it is for the concerned authority to refer the dispute for an arbitration, if there is any doubt or dispute regarding the subject provided under sub-section (1), the subscriber can very well request the authority concerned to refer the question for adjudication by way of arbitration proceedings. In such a circumstance, though the plaintiff withdrew the suit subsequent to filing of the revisions, I hold that in the light of specific bar under [Section 7-B](#) and in view of Section 9 of CPC as well as as explained by catena of decisions that in respect of any dispute relating to the matter specifically provided in sub-section (1), the only remedy for the affected person to resolve the same is by way of arbitration proceedings and the civil Court has no jurisdiction to entertain the suit of this nature.

Under these circumstances, the impugned common order passed by the learned District Munsif in I.A.Nos.121 and 166 of 1999, is set aside. However, it is brought to my notice that the dispute in question is



C.R.P.No.1347 of 2020

now pending before the Arbitrator under [Section 7-B](#) of the Act and in view of the order passed by this Court on 28.08.2003 in W.P.No.5580 of 2002, the Arbitrator is free to pass final award as directed in that order. With the above observation, both the revisions are allowed. No costs. Consequently, connected CMP., is closed.”

3.4.In the case of ***M.Devaprakash Vs. P.P.Devaraj and others*** in

C.R.P(PD).No.796 of 2016 order ***dated 10.01.2022*** wherein this Court has

observed as follows:

“17.Considering the object and scope of Order II Rule 2 of the Code of Civil Procedure, the present suit is hit by provisions of Order II Rule 2 of the Code of Civil Procedure and barred by law. The 1st respondent is initiating multiplicity of proceedings based on same cause of action. This amounts to frivolous, vexatious proceedings which amounts to abuse of process of Court. When the plaintiff initiates such a proceeding, the Court has power under Article 227 of the Constitution of India to stop such proceeding summarily and prevent the time of public and Court being wasted. Such a power is discretionary power and such discretionary power has to be exercised sparingly and in special cases. The power of the Court under Article 227 of the Constitution of India is superintending power of the High Court over all Sub Court including Tribunals and this Court can interfere when there is clear abuse of process of Court based on averments or the pleadings, in order to avoid miscarriage of Justice. The power under Article 227 of the Constitution of India can be invoked by the High Court on following grounds:

- (i) To prevent abuse of process of law;
- (ii) To prevent miscarriage of justice;
- (iii) To prevent grave injustice and
- (iv) To establish both administrative as well as judicial power of High Court.

3.5.In the case of ***V.Krishnan and other Vs. B.Akbar and others*** in

C.R.P.(PD).No.256 of 2019 order ***dated 24.06.2020*** this Court has observed

as under:



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C.R.P.No.1347 of 2020

“11. The learned counsel for the first and third respondents submitted that when there is alternative remedy under Order 7 Rule 11 of CPC, the petitioner is not entitled for any relief under Article 227 of the Constitution of India. In this regard, the learned counsel for the petitioners relied upon the following judgments, the proposition of which are extracted hereunder:

(i) Tamil Nadu Handloom Weavers Cooperative Society Vs. S.R.Ejaz reported in 2009 SCC Online Mad 1531

*“Para 41:In a given case, if the suit is a clear abuse of process of law, the High Court was not expected to be a mute spectator;
Para 42, 43 & 48:In extraordinary circumstances, when it was demonstrated that there was flagrant violation of the principles of law or abuse of process of Court, the parties would be entitled to invoke the jurisdiction under Art.227 of the Constitution of India;
Para 52:Ratio laid down by Supreme Court in 1998 (3) SCC 573 (KK Modi Vs. KN Modi) followed”*

(ii) Southern and Rajamani Transport Pvt.Ltd. Vs. R.Srinivasan & Others reported in 2010 (4) CTC 690

“Para 29:Held, alternative remedy under CPC is not a bar to invoke jurisdiction under Art.227 of Constitution of India; Art.227 can be invoked to prevent abuse of process of Court, miscarriage of justice, to establish both administrative as well as judicial power of High Court; Civil Revision Petition under Art.227 maintainable to strike off Plaintiff”

(iii) S.R.Nanda Kishore Vs. The Body of Villagers, Mambakkam Village & Others reported in 2013-5-LW 810

“Para 17:Ratio laid down by Supreme Court in 1998 (3) SCC 573 (KK Modi Vs. KN Modi) followed;

Para 17 & 19:Though an alternative remedy is available, the High Court is vested with the power of striking off the plaintiff, when there is clear abuse of process of Court established for invoking Art.227 of the Constitution of India; Alternative remedy would not be bar in preventing abuse of process of Court;

Para 23:Ratio laid down by Supreme Court in 1998 (3) SCC 573 (KK Modi Vs. KN Modi) followed;

Para 25:High Court has for inherent jurisdiction under Art.227 to prevent abuse of process of Court and passing order to struck off plaintiff if it is a clear abuse of process of law and Court”



WEB COURT

4. The learned Counsel for the Respondents who were the Plaintiffs before the trial Court resisted the line of argument of the Petitioners in the Civil Revision Petition. It is the submission of the learned Counsel for the Respondents/Plaintiffs before the trial Court that the Suit was filed for the relief seeking :

a) granting a decree of Declaration, declaring the second Plaintiff as a partner of M/s. Nachiappan & Co.,

b) granting a decree of Mandatory injunction, directing the defendants 1 and 2, to render proper accounts in respect of the Partnership firm M/s. Nachiappan & Co., as per the Partnership deed dated 01.04.2010 executed among the plaintiff, defendants 1 and 2 and their mother Radha, within the time to be specified by this Court.

c) granting a decree of permanent injunction restraining the defendants 3 to 10 and their subordinates from in any manner passing any pending bills for the contract works already entrusted and not to give any other contract works to M/s.Nachiappan & Co., without the knowledge and consent of the plaintiff;

d) granting a decree of permanent injunction restraining the 11th defendant from in any manner sanctioning any further loan or any other financial facilities to M/s. Nachiappan & Co., on the basis of the immovable property mortgaged by the plaintiff, without the knowledge and consent of the plaintiff;

e) awarding costs of the Suit;

The Partnership deed dated 01.04.2003 was alleged to have been executed by the Defendants 1 and 2 who are also the Partners of the firm M/s.Nachiappan & Co., behind the back of the Plaintiffs, the first and second Respondents herein.



C.R.P.No.1347 of 2020

5. As per the Partnership deed the second Respondent who was the Plaintiff in O.S.No.83 of 2020 on the file of the learned District Munsif, Salem, was to be allotted 30 per cent of the Income derived by the Partnership firm and regularly Rs.10,000/- per month by the Petitioners herein. The Petitioners herein are the Defendants in the Suit had created a forged Partnership firm deed behind the back of the Respondents 1 and 2. As though, the Plaintiff was also a party to the Partnership deed where by reducing the Income to be allotted to the share of the Plaintiffs as 1 per cent of the Income derived by the Partnership firm M/s. Nachiappan & Co., this fraudulent deed has to be set aside, **the Plaintiffs cannot invoke the Arbitration Clause.** It is considered as forged deed by the Plaintiffs. Therefore, to declare the said deed as null and void the Plaintiffs can only approach the Civil Court for a decree to declare the alleged Partnership deed as null and void in the eyes of the law. The goodwill earned by the father of the Plaintiff and the Defendant No.1 had been enjoyed by the Partnership firm. The Partnership firm is in the business of obtaining contract and had been earning well by carrying out the contract works with the Southern Railway, Salem Division. While so, behind the back of the second Plaintiff,

10/20



Partnership deed had been executed. It affects the valuable right of the Plaintiff for which the Plaintiff cannot seek Arbitration. The learned Counsel for the second Respondent who is the Plaintiff before the trial Court invited the attention of this Court to the cause of action, which is extracted hereunder:-

"10. The second plaintiff submits that the defendants 1 and 2 have committed all acts purely with the intention of cheating the second plaintiff and to get unlawful gain. Even now the defendants 1 and 2 have been doing contract works in Minnampalli, Lalapet, Pukiravari, Palayam, Mallur in Salem Division and at Olakkur, Peralli in Chennai Division. But the defendants 1 and 2 have no intention of giving the second plaintiff apprehends that the defendants 1 and 2 will use their influence and will get payments for the bills from the defendants 3 to 10 and they will also get loan or any other benefits from the 11th defendant bank. Unless the defendants 3 to 11 are restrained from passing the bills and from sanctioning any further loan, the plaintiffs will have to face serious problems. Hence, the plaintiffs are left with no other option except to file this Suit for suitable remedies. Due to urgency, the plaintiffs have no time to issue prior notice to the defendants 3 to 10 under Section 80 of C.P.C and the plaintiffs are filing separate petition to dispense with the same. Hence this Suit.

11. Cause of action for the suit arose on 01.04.2003 and on 01.04.2010 when Partnership deed in respect of contract works were executed among the plaintiffs, defendants 1 and 2, their mother and one Nachiappan, during 2011 when the second plaintiff availed loan from 11th defendant by pledging his properties, on all days when the first defendant has been doing contract works without providing the second plaintiffs share and amounts, on all subsequent days of second plaintiffs demands to the defendants 1 and 2 for getting his share in the profit and the agreed amounts, on all days of first defendants refusal to give the amounts to the second plaintiff, on all days of panchayats convened by the plaintiffs, on 25.01.2020 when the plaintiffs came to know about the false and fraudulent deeds created by the defendants 1 and 2 on 01.04.2016 and on 01.04.2017, on 25.01.2020 and 12.02.2020 when the plaintiffs sent objection letters to the defendants 3 to 11 and at Salem Taluk, where the above said acts took place, which is well within the jurisdiction of this Court."



Therefore, it is the submission of the learned Counsel for the Respondents that the Suit itself is maintainable. Therefore, Suit filed by the Plaintiffs/ Respondents in the Civil Revision Petition is maintainable.

6. The learned Counsel for the Respondents invited the attention of this Court to the reported rulings of the Hon'ble Supreme Court of India reported in **(2007) 7 MLJ 13** in the case of **Ganapathy Subramanian Vs. S.Ramalingam and others**. The relevant portion of the said Judgement is extracted hereunder:-

"16. The supervisory jurisdiction of this Court could be invoked only when the trial Court has committed any error. Mere filing of a suit by the respondents and taking the suit on the file by the trial Court cannot be regarded as an act on the part of the trial Court to transgress its jurisdiction or its bound. Of course, the party who files the suit might have filed the suit suppressing material facts or made up the suit to his convenience for seeking the relief which is not otherwise entitled to. But that fact has to be considered by the trial Court during the relevant point of time. There is no impediment or embargo for the petitioner to put forth his contentions before the trial Courts to strike off the plaint at the threshold. As this Court is relegating the petitioner to go before the trial Court for the relief, the Court has restrained itself from going into the facts of the case, as any observation made by this Court would have a bearing on the suit, which is pending before the trial Court. Of course, the petitioner is also having an effective remedy in the Code of Civil Procedure itself to have the suit struck off and he could very well avail that remedy. On the above said reasoning, I am not inclined to grant the relief as prayed for in the revision.

17. Yet another factor is also to be taken into consideration. Of-late, High Courts are flooded with cases and the Courts have reached a saturation point with the backlog staring on the face and the disposal of the cases by the



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Courts for the past four or five years could never match the institution of the cases. When Courts are facing such a situation, this sort of approaching this Court can be avoided. By saying so, this Court should not be misunderstood of shirking of its responsibilities, but it has to be taken in the way it is stated, that is, the Court has just high lighted the state of affairs. This Court also sends a cautionary note to the litigant public to approach the court of first instance first."

Also, the learned Counsel for the Respondents invited the attention of this Court to the Section. 8 of the Arbitration and Conciliation Act.

7. In support of his contention, the learned Counsel for the Respondents relied on the following decisions:-

7.1. In the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society & Ors*** wherein the Hon'ble Supreme Court has observed as follows:-

"11. Primarily the High Court, in our view, went wrong in overlooking the fact that there was already an appeal in C.M.A. No. 1 of 2018 filed before the SubCourt at Tuticorin under Order XLI, Rule 1 (r) of the Code, at the instance of the fifth defendant in the suit (third respondent herein), as against the very same order of injunction and, therefore, there was no justification for invoking the supervisory jurisdiction under [Article 227](#).

*12. Secondly, the High Court ought to have seen that when a remedy of appeal under [section 104](#) (1)(i) read with Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In *A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors. 1*, this Court held that*



“though no hurdle can be put against the exercise of the Constitutional powers of the High Court, it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a Constitutional remedy”.

13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasijudicial authorities and tribunals. In respect of cases falling 1 (2000) 7 SCC 695 under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under [Article 227](#), even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in [Surya Dev Rai vs. Ram Chander Rai](#)², pointed out in [Radhey Shyam Vs. Chhabi Nath](#)³ that “orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.

14. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and 2 (2003) 6 SCC 675 3 (2015) 5 SCC 423 prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under [Article 227](#) especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

7.2.In the case of ***Urvashiben and another Vs. Krishnakant Manuprasad Trivedi*** wherein the Hon'ble Supreme Court had held as under:-

“15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter



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C.R.P.No.1347 of 2020

cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. 14 (2009) 5 SCC 462 15 (2006) 5 SCC 658 C.A.@ SLP(C)Nos.23062-63/18 Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.”

8. On consideration of the rival submissions and on consideration of the rulings relied by the Petitioners and well as the Respondents 1 & 2, and on perusal of the averments in the Plaint, copy of which is enclosed in the typed set, it is found that the cause of action is that Petitioners herein as Defendants 1 and 2 in the Suit had created a fraudulent deed behind the back of the Plaintiffs, thereby changes made is due to shares. When that be the case, the reliance placed by the learned Counsel for the Respondents herein who are the Defendants in the Suit cannot help the Petitioners herein to invoke the powers of this Court under Article 227 of the Constitution of India. It is the contention of the Plaintiff in the Suit in O.S.No.83 of 2020 that the petitioners herein as the Defendants in the Suit had played fraud which the Arbitrator cannot resolve. It is a subject to be dealt by the Court of Law. Therefore, the reliance placed by the learned Counsel for the Respondent in **(2007) 7 MLJ 13** has application to the facts of this case and



C.R.P.No.1347 of 2020

the reliance placed by the learned Counsel for the Petitioners in the Supreme Court rulings is not applicable to the facts of this case.

9. The contention of the learned Counsel for the Petitioners that when the place of business is at Tindivanam, the Plaintiffs having filed the Suit before the learned District Munsif, Salem without territorial jurisdiction also cannot be accepted. Also, in the Suit there are Defendants who are the officials of the Southern Railway with regard to the Railway Division, Salem. Therefore, regarding the dispute between the Partners wherein the Plaintiffs had sought injunction not to grant the Bill to the Defendants 1 and 2 cannot be considered by the Arbitrator. When the claim of the Plaintiffs is fraud played upon by the Defendants 1 and 2 relying on the original Partnership deed will not help the Petitioners herein. It is the contention of the Plaintiffs in the Suit that separate Partnership deed was executed behind the back of the second Plaintiff in the year 2016 - 2017, which the Plaintiff came to know lately. Therefore, objection of the learned Counsel for the Petitioners that the learned District Munsif, Salem had entertained the Suit is found to be unreasonable and unacceptable. As per the provisions of C.P.C, when there is dispute in the Partnership firm and the Southern

16/20



C.R.P.No.1347 of 2020

Railway Authorities, the Division where the Southern Railway has its office has to be treated as place of jurisdiction for filing a Suit. When the Salem Division is the authority under which the Plaintiffs and the Defendants seeks contract under the name of M/s.Nachiappan & Co., the dispute regarding the same is rightly filed before the appropriate forum, District Munsif Court, Salem. The Railway Authorities does not have Divisional Office at Tindivanam. Therefore, the contention of the learned Counsel for the Petitioners seeking to invoke Article 227 of the Constitution of India to struck off the Suit, Plaint in O.S.No.83 of 2020 is found ill-conceived and mis-construed. Therefore, the office of the Salem Division, General Manager of Salem Division is at Salem not at Tindivanam, the Defendants 3 to 8 in the Suit are the Railway Authorities, the Respondents as Plaintiffs had sought injunction not to pay the Bills till the dispute between the Partners is resolved. Therefore, the Suit is maintainable, an Arbitrator cannot grant injunction. The Suit is not filed on the original Partnership deed. It is filed on the ground that the Defendants 1 and 2 had played fraud by creating a new Partnership deed reducing the remuneration of the Plaintiffs as 1 per cent. From the original Partnership deed he was to be paid Rs.10,000/- per month and 30 per cent of the Income derived from the

17/20



C.R.P.No.1347 of 2020

contracts. It is the averment in the Complaint that the firm Nachiappan and Co., had been carrying out the contracts in the Salem Division. Therefore, seeking injunction against the Railway Authorities the Plaintiffs had filed the Suit. When the Divisional Office is at Salem, Plaintiffs cannot file the Suit at the Tindivanam. Therefore, the dispute is with regard to Division Office. Therefore, the Railway Authorities are brought out as necessary parties to the Suit seeking injunction against the Railway Authorities. Arbitration Clause cannot be pressed into the service. Therefore, the objection of the Petitioners regarding the territorial jurisdiction is rejected by this Court. While instituting a Suit, the place of residence or the place where the Defendants carries out their work is to be the place of institution of the Suit. Therefore, the learned District Munsif, Salem has jurisdiction to grant injunction against the Railway Authorities and the Suit is maintainable. Therefore, the invoking of Article 227 of the Constitution of India to struck off the Complaint in O.S.No.83 of 2020 is found unacceptable.

10.In the light of the reported ruling in the case of ***Ganapathy Subramanian Vs. S. Ramalingam*** and others reported in (2007) 7 MLJ 13, the present Civil Revision Petition is liable to be dismissed.

18/20



C.R.P.No.1347 of 2020

In the result, **this Civil Revision Petition is dismissed.** No Costs.

Consequently connected Civil Miscellaneous Petition is closed.

22.09.2022

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order
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To

1.The Divisional Railway Manager, Southern Railway.

2.The Divisional Engineer (Co ordination),
Accounts Section, Southern Railway.

3.The Senior Divisional Finance Manager, Southern Railway.

4.The Divisional Engineer/Central, Southern Railway.

Respondents 3 to 6 having office at Southern Railway Divisional Office,
Salem Junction, Salem.

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Respondents 7 to 10 are having office at Southern Railway, Madras
Division (South), Chennai.

19/20



WEB COPY



C.R.P.No.1347 of 2020

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tri

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C.R.P(PD).No.1347 of 2020 and
C.M.P.No.7447 of 2020

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20/20