



C.R.P(MD)No.155 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)No.155 of 2019(NPD)

Kuttai D.Venkatraman
.vs.

...Petitioner/Appellant/Petitioner

Dr.K.D.Anuradha (died)

... Deceased 1st Respondent

1.K.R.S.Girija
2.P.S.Sadhanandam
3.T.N.Subramanian
4.K.R.Lakshmanan
5.Dr.K.R.Santharam
6.Dr.K.S.Thilok Santharam

... Respondents/Respondents/
Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and executable order passed in Unnumbered C.M.A.No. Of 2018 in A.No.7391 of 2018 by the learned Principal District Judge, Madurai dated 25.09.2018.

For Petitioner

:Mr.M.Rajaraman

For R1 & R5

:Mr.T.Thevan

For R2 to R4 & R6

:No appearance



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ORDER

The present Civil Revision Petition has been preferred challenging the rejection of the appeal even before numbering.

2. Heard the learned counsel appearing for the petitioner as well as the contesting respondents.

3. Both the respondents 2 and 3 remain un-served. It is seen that they are only formal parties being the mediators, who arbitrated the dispute between the petitioner and the contesting respondents. Therefore, this Court is inclined to hear the revision in the absence of the respondents 2 & 3. After hearing the learned counsel for the contesting respondent, it is seen that the Arbitrator passed an award and aggrieved by the same, the petitioner has filed the Civil Miscellaneous Appeal before the Principal District Judge, Madurai. The said appeal has been rejected, as being not maintainable, citing the enactment of the Arbitration and Conciliation Act, 1996 and the District Court cannot entertain the appeal in view of the said enactment.



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4. The learned counsel appearing for the revision petitioner would submit that the provisions of the Arbitration Act, 1940 alone would apply and coming into force of. The Arbitration and Conciliation Act, 1996 would not be applicable to the present case, since the Arbitration agreement is of the year 1986 and therefore, it is only the Act 1940 that would be relevant.

5. The learned counsel for the respondents would fairly submit that the Arbitration Act, 1996 would not have any application, but there has been serious prejudice caused to the contesting respondent by passage of time and he would pray for suitable directiona to the District Court, in the event of revision being allowed.

6. The provision of the Arbitration and Conciliation Act, 1996 will not apply to the facts of the present case. It is only Act 10 of 1940 that would apply and under the old Act, the proceedings would have to be taken only before the District Court and not before the High Court in its original jurisdiction and is contemplated under Section 34 of the Arbitration and Conciliation Act, 1996.



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7. Section 30 of the Arbitration Act, 1940 reads as follows:-

“30.Grounds for setting aside award- An award shall not be set aside except on one or more of the following grounds, namely:-

(a) that an arbitrator or umpire has misconducted himself or the proceedings;

(b)that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35;

(c)that an award has been improperly procured or is otherwise invalid.”

8. Section 33 of the Arbitration Act, 1940 would also have relevance and the same is extracted hereunder:-

“33.Arbitration agreement or award to be contested by application:- Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits:

Provided that where the Court deems it just



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and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.”

9. Chapter VII of Arbitration Act, 1940 only excludes the Small Cause Court and not the Civil Courts in respect of arbitration dispute arising under the said Act, 1940. Thus, the learned Principal District Judge clearly fell in error in rejecting the appeal filed by the petitioner.

10. I hold that the appeal is maintainable and the learned Principal District Judge, Madurai shall number the appeal and after hearing the petitioner as well as the contesting respondents, the appeal shall be disposed of within three months from the date of receipt of a copy of this order. All the contentions including limitation are left open to the parties to canvass before the Principal District Court.

11. Accordingly, this Civil Revision Petition is allowed. No costs.

Index: Yes/No
Internet: Yes/No
NCC: Yes/No
AM

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To

The Principal District Judge,
Madurai.



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P.B.BALAJI,J.

am

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