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C.R.P.(NPD)No.3808 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.3808 of 2023

Satish Karthikeyan V

.. Petitioner

-VS-

Axis Bank Limited
rep.by its Manager
Mr.Ramalingam Palanisamy
At Trishul, 3rd Floor
Opposite Samartheshwar Temple
Low Gardebn Eillis Bridge
Ahmedabad 380 006

.. Respondent

Memorandum of Grounds of Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 11.09.2022 passed in E.A.No.1 of 2023 in E.P.No.803 of 2022 on the file of the learned XXVI Assistant Judge, City Civil Court, Chennai.

For Petitioner :: Mr.B.Manimaran

For Respondent :: Mr.M.R.Uma Vijayan



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ORDER

Challenge has been made to the order passed by the executing Court dismissing the application filed by the petitioner under Section 47 of the Code of Civil Procedure to prohibit the execution of the arbitral award.

2. Admittedly, an award has been passed against the revision petitioner for a sum of Rs.1,92,809/- with interest at the rate of 18% per annum from the date of award till the payment. The dispute between the revision petitioner and the respondent is with regard to the credit card dues. In terms of the arbitration clause, the sole arbitrator adjudicated the dispute and the award came to be passed. While so, in the execution proceedings, an application under Section 47 of the Code of Civil Procedure has been taken out by the revision petitioner challenging the very award itself. The executing Court, after considering the entire materials, dismissed the application with a finding that the application under Section 47 of the Code of Civil Procedure is not maintainable as far as the award is concerned. Besides, the award came to be passed on 8th January, 2021. Hence this



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3. The learned counsel for the revision petitioner would submit that the arbitrator has been appointed unilaterally and hence the award passed by the arbitrator is not valid in the eye of law. That apart, no notice whatsoever was issued and the arbitrator has concluded the proceedings during the Covid period. When the award suffers from illegality and violates all the procedures under the Arbitration and Conciliation Act, the same cannot be allowed to be executed. Without going into any of the issues raised by the petitioner, the executing Court has merely held that the application under Section 47 of the Code of Civil Procedure is not maintainable. According to the learned counsel, all the questions arising between the parties in a suit can be adjudicated under Section 47. As per Section 36 of the Arbitration and Conciliation Act, an award is treated as a decree. Therefore, the findings of the Court below are to be set aside.

4. On the other hand, the learned counsel for the respondent would submit that Section 47 of the Code of Civil Procedure will apply only to the



decree which has been passed in a suit and not for an arbitration award. He would further contend that instead of challenging the award under Section 34 of the Arbitration and Conciliation Act, the petitioner resorted to the proceeding under Section 47 of the Code of Civil Procedure, which is not maintainable.

5. I have perused the entire materials. It is to be noted that to invoke the proceedings under Section 47 of the Code of Civil Procedure, there must be a decree arising from the suit instituted between the parties. In this regard, Section 47 of the Code of Civil Procedure can be extracted hereunder:-

“47. Questions to be determined by the Court executing decree?

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

.....”

6. A reading of the above provision would show that the questions



arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree, can be determined by the Court executing the decree. Therefore, to invoke Section 47 of the Code of Civil Procedure, decree should have been passed in a suit. Therefore, when there was no suit pending between the parties, Section 47 cannot be applied mechanically for an arbitral award.

7. In this context, the Apex Court in *Paramjeet Singh Patheja v. ICDS Ltd, (2006) 13 SCC 322* has held that the legal fiction provided for under Section 36 of the Arbitration and Conciliation Act, 1996 is for the limited purpose of facilitating the execution of the arbitral award and the same cannot be stretched to equate an arbitral award with a decree. The Apex Court has categorically held in the above judgment that the arbitral award is not a decree, except a legal fiction under Section 36 for the purpose of execution itself. In that view of the matter, the very application under Section 47 of the Code of Civil Procedure to decide the arbitral award is not maintainable.



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8. A Division Bench of this Court in *J.Vidyanathan v. I.Jitesh Kumar and another* (O.S.A.Nos.112 & 113 of 2019 dated 13.02.2020) has held that non-issuance of notice during the arbitral proceedings is one of the grounds to invoke Section 34 of the Arbitration and Conciliation Act, 1996. In case the Court exercising the power under Section 34 of the Arbitration and Conciliation Act, 1996 comes to the conclusion that the proceedings before the arbitrator is vitiated for non-issuance of notice, then the entire award would go. In such case, question of nature of transaction and the liability would not arise. However, such question cannot be raised by way of filing an application under Section 47 of the Code of Civil Procedure.

9. In view of the above settled position of law, this Court is of the view that the grounds raised in the application under Section 47 can be raised under Section 34 of the Arbitration and Conciliation Act while the award is being challenged. Whereas in this case, without challenging the award, as a matter of right, an application under Section 47 of the Code of Civil Procedure is not maintainable. Hence, I do not find any merit in this revision. Accordingly, the revision petition is dismissed. Consequently,



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interim order stands vacated and the C.M.P.No.23619 of 2023 is also
dismissed. No costs.

Index: yes/no
Neutral citation : yes/no

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To

1. The learned XXVI Assistant Judge
City Civil Court
Chennai 600 104



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N.SATHISH KUMAR, J.

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