



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)No.628 of 2021

K.Palanivel

... Petitioner

-VS.-

P.Balamoorthi

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the order, dated 07.11.2020 passed in E.A.unnumbered (C.R.No.1055) in E.P.No.105 of 2018 on the file of the learned Additional District Judge, Dindigul in A.P.No.396 of 2017 on the file of the Arbitral Tribunal of the sole Arbitrator.

For Petitioner :Mr.M.P.Senthil
For Respondent :Mr.V.Karthick Raja
for Mr.P.Manikandan



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ORDER

This Civil Revision Petition has been filed against the order, dated 07.11.2020, in E.A.unnumbered (C.R.No.1055) in E.P.No.105 of 2018 on the file of the learned Additional District Judge, Dindigul in A.P.No.396 of 2017.

2.The Revision Petitioner was arrayed as respondent/opposite party and the respondent herein is the claimant in the arbitral proceedings. The case of the Revision Petitioner is that no opportunity was given to the Revision Petitioner to take part in the arbitral proceedings and the award was also not served on him. Hence, the Revision Petitioner has preferred the above application in the execution proceedings to declare the award, dated 16.09.2017 in A.P.No.396 of 2017 as null and void.

3.The trial Court had dismissed the above application, by order, dated 07.11.2020 by referring to the order of this Court in ***C.R.P.(PD)No.2800 of 2013*** dated 05.12.2018 between ***M/s.Janaki Spinning Mills (P) Limited vs K.Ganesan***, dated 05.12.2013 which reads as follows:



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“11.It is the case of the petitioner that he has not received the original Arbitral Award from the Arbitrator and it is also his case that the Award obtained by the respondent is a fraudulent Award. It is the further case of the petitioner that he has not been delivered with the signed copy of the Arbitral Award by the Arbitrator.”

12. The Arbitration and Conciliation Act, 1996 is a special code by itself which is a self contained code. It is settled law that special law will prevail over the general law when the special law provides for a remedy. The Arbitration and Conciliation Act provides for a remedy under Section 34 to challenge the Arbitral Award and therefore, without approaching the competent Court under Section 34, the petitioner has filed an application under Order 23 Rule 1(3) CPC seeking permission of the Court to withdraw Arbitration OP No.141 of 2010 filed under Section 9 of the Arbitration and Conciliation Act with liberty to file a fresh petition under Section 34 of the Arbitration and Conciliation Act to challenge the Arbitral Award. Order 23 Rule 1(3) CPC is not applicable to applications under the Arbitration and Conciliation Act as the said provision applies only to suits. If a party has not received proper notice of the appointment of the arbitrator or the Arbitral Award was obtained fraudulently, the only recourse available to the aggrieved party is to file an application under Section 34 of the Arbitration and Conciliation Act. Since the Arbitration and Conciliation Act is a special law, this Court is of the considered view that Order 23 Rule 1 CPC will not apply for an application under Section 9 of the Arbitration and Conciliation Act”

4.Challenging the same, the present Civil Revision Petition has been filed.

5.The learned Counsel for the Revision Petitioner contended that the



petitioner should have been given an opportunity by the claimant's Counsel to forward the award passed and in the absence of a copy of the award not being served on him and in consonance with Order 23 Rule 1 CPC, the Revision Petitioner is deprived of challenging the order passed by the Arbitrator.

6. *Per contra*, the learned Counsel for the respondent refuted the contentions raised by the learned Counsel for the petitioner by contending that the order passed by the Executing Court is a well considered order and needs no interference of this Court. The learned Counsel also relied on the order of this Court in **2014 SCC OnLine Mad 6576** between **M.Masood vs Parisal Beevi**, wherein, this Court has held as follows:

9. *The learned counsel for the petitioner also relied on the order dated 10.12.2009, made in C.R.P.D.(MD) No. 2059 of 2009 [P. Seyyammal v. R. Chinnasamy], wherein in paragraph No. 6, this Court has held as follows : -*

“6. I have given my anxious consideration on the submissions made by the learned counsel appearing on either side. As the lower Court has dismissed the E.A. filed by the petitioner without numbering the same, there is no need to issue notice to the respondents. According to me, when the petition is filed, the Court should not go into the merits of the petition and firstly the court must number it, if the petition is otherwise in order. Only after numbering the same and after giving sufficient opportunity to the petitioners and then only the Court could decide the issue and before numbering the petition the Court should not have gone into merits of the matter and pass orders.



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Hence, the order of the lower Court is set aside. The lower Court is directed to number the E.A.S.R. No. 9014 of 2009 in E.P. No. 428 of 2004, if it is otherwise in order, and proceed with E.P. No. 428 of 2004, in accordance with law. The lower Court is directed to consider the Claim Petition (E.A. Sr. No. 9014 of 2009 before passing any order in the petition filed by the decree holder for confirming the auction."

7.Considering the submissions made by the learned Counsel for the petitioner as well as the respondent and the order passed by this Court in M.Massod's case (referred supra), this Court is of the view that there is no illegality or irregularity in the order passed by the Court below and the same is confirmed.

8.It is open to the Revision Petitioner to file an application under Section 34 of Arbitration and Conciliation Act, 1986 and it is left open to the Competent Authority to examine the genuineness of the request made by the Revision Petitioner to accept the delay. The Court shall pass orders after hearing the claimant. Though it is the case of the Revision Petitioner that copy of the order was not served on the petitioner as contemplated under Section 31(5) of Act, it is for the lower Court to examine the same and to ascertain



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whether the copy of the award was served on the Revision Petitioner.

9. In fine, the Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

04.12.2024

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

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To

The Additional District Judge, Dindigul.



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N.SENTHILKUMAR, J.

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