



CRP.No.81 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 19.06.2025

Order pronounced on : 27.06.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.81 of 2023
& C.M.P.No.622 of 2023

V.Raja

..Petitioner

Vs.

1.Kotak Mahindra Bank Limited,
Rep. by its Manager,
8th Floor, Zone – 2,
TVH Agnitio Park,
No.141, Old Mahabalipuram Road,
Kandhanchavadi, Chennai – 600 096.

2.Dhatinamoorthi
3.Bakiyammal
4.Santhoshkumar
5.Vijayakshmi

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Arbitral award in I.A.No.1 of 2022 in A.C.P.No.KMBL/CE/764205/689 of 2022 dated 23.03.2022 passed by the learned Arbitrator, A.Vijayalakshmi at Chennai.



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For Petitioner : Mr.V.Raghavachari
Senior Counsel
for Mr.Ashwin Prasad

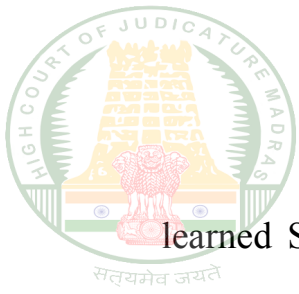
For Respondents : Mr.Thalaimalai Karthikeyan for R1
No appearance for RR2 to 5

ORDER

This Civil Revision Petition has been filed invoking Article 227 of Constitution of India, seeking to set aside the Arbitral Award in I.A.No.1 of 2022 in A.C.P.No.KMBL/CE/764205/689 of 2022 dated 23.03.2022 passed by the learned Arbitrator, A.Vijayalakshmi at Chennai.

2.Heard Mr.V.Raghavachari, learned Senior Counsel for Mr.Ashwin Prasad, learned counsel for the petitioner and Mr.Thalaimalai Karthikeyan, learned counsel for the 1st respondent.

3.Mr.V.Raghavachari, learned Senior Counsel would submit that the revision has been filed to set aside the Arbitral Award passed by the learned Arbitrator in respect of a loan transaction between the petitioner and the 1st respondent/Bank to which the respondents 2 to 5 had stood as guarantors. The



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learned Senior Counsel would further submit that the loan was agreed to be repayable in 47 monthly installments, commencing from 05.06.2019 and the petitioner had diligently paid 33 installments which is an admitted fact not denied by the 1st respondent/bank. The learned Senior Counsel would further submit that because of the intervention of the Covid-19 pandemic, the petitioner's business suffered seriously and he was not in a position to continue to fulfill his loan obligations.

4.The learned Senior Counsel for the petitioner would take me through the arbitration clause in the loan cum guarantee agreement, which is extracted hereunder for easy reference.

“11.17. In the event that the claim or dispute does not fall within the jurisdiction of the Debts Recovery Tribunal established under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, for the purposes of arbitration mentioned in clause [11.11.2]. Subject to the provisions of any law for the time being in force in India, the Courts in the state where the Agreement is executed shall have exclusive jurisdiction in relation to this Agreement, the arbitration and all matters arising in connection herewith and therewith.”

5.The learned Senior Counsel would therefore state that the proper interpretation of the said clause would indicate that only if the matter is outside the purview or scope of the Recovery of Debts due to Banks and Financial



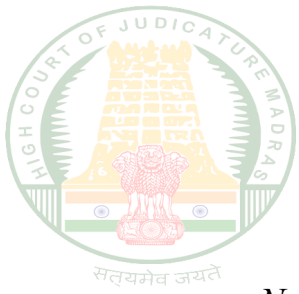
Institutions Act, 1993, alone the disputes are arbitrable and not otherwise. He

would therefore state that there is a fundamental jurisdictional error on the part of the Tribunal in assuming jurisdiction and passing orders. He would further state that the Arbitrator had issued a notice to the parties, including the petitioner and called upon the parties to attend a preliminary meeting on 23.03.2022. However, the learned Senior Counsel would state that without giving any opportunity to the petitioner, on the very same day, the Arbitrator has proceeded to pass an award in I.A.No.1 of 2022. The learned Senior Counsel would further state that pursuant to the award, the vehicle was also seized by the 1st respondent/Bank arbitrarily and high handedly. The learned Senior Counsel would also state that admittedly there is also a proceeding pending before the Debt Recovery Tribunal and therefore, arbitration is clearly not maintainable. The learned Senior Counsel would place reliance on the following decisions:

1.Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited and Another ((2020) 15 SCC 706).

2.Bhaven Construction through authorised signatory Premjibhai K.Shah Vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Another ((2022) 1 SCC 75).

3.Perkins Eastman Architects DPC and Another Vs. HSCC (India) Limited ((2020) 20 SCC 760).



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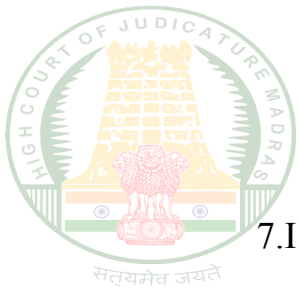
4.Kalabharati Advertising Vs. Hemant Vimalnath

Narichania and Others ((2010) 9 SCC 437).

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Relying on the above decisions, the learned Senior Counsel would therefore state that the revision petition is maintainable and the petitioner need not be driven to filing an appeal that is available under the statute.

6.Per contra, Mr.Thalaimalai Karthikeyan, learned counsel for the 1st respondent/Bank would first and foremost contend that the revision is not maintainable. If at all the petitioner questions the jurisdiction of the Arbitrator, he contends that the petitioner ought to have moved an application under Section 16 of the Arbitration and Conciliation Act and even as against the interim award passed by the Arbitrator, an appeal lies under Section 37 of the Act. He would further contend that the vehicle has been seized pursuant to the interim award passed by the Arbitrator and is kept in the yard of the 1st respondent Bank. He would further state that the 1st respondent Bank has also withdrawn the claim before the Arbitrator on 13.04.2022. The learned counsel would therefore state that the revision cannot be entertained in view of the aforesaid submissions and prays for dismissal of the Civil Revision Petition.



7.I have carefully considered the submissions advanced by the learned Senior Counsel for the petitioner and the learned counsel for the 1st respondent / Bank.

8.The Hon'ble Supreme Court, in *Deep Industries Limited's case*, has held that the statutory policy of the Arbitration and Conciliation Act, 1996, is that time lines are set down for disposal of the arbitral proceedings as well as for proceedings under Section 34 of the Act to ensure timely resolution of all matters which are provided by arbitral awards. Relying on Section 5 of the Act, the Hon'ble Supreme Court has held that the High Court, normally, will not entertain petitions under Articles 226 and 227 of the Constitution of India, bypassing the machinery created under the statute. However, in the very same judgment, it is also held that petitions can be filed under Article 227 of Constitution of India but the High Court has to be extremely circumspect in interfering, taking into account the statutory policy of the Arbitration and Conciliation Act.

9.In *Bhaven Construction's case*, the Hon'ble Supreme Court held that the ambit of Article 227 of Constitution of India is broad and pervasive and under exceptional circumstances, exercising jurisdiction by this Court invoking Articles 226 and 227 of the Constitution of India would be permissible.



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10. In *Kalabharati Advertising's case*, the Hon'ble Supreme Court held that no litigant can derive any benefit from the mere pendency of a case in a Court of law, as the interim order merges into the final order and therefore, the party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the Court. It is further held that the obligation to undo the wrong done to a party, by the act of the Court, where any undeserved or unfair advantage is gained by one party, invoking the jurisdiction of the Court, must be neutralized, since the institution of litigation cannot be permitted to confer any advantage on a party by delayed action of the Court.

11. The decision on which the learned counsel for the 1st respondent has placed reliance is the order of this Court in *P. Krishnan Vs. M. Ramachandran and Others in CRP.(NPD).No.1441 of 2021* dated 13.09.2021, where this Court held that an order under Section 16 of the Arbitration and Conciliation Act can only be questioned under Section 34 of the Act and not by way of exercise of extraordinary power of the High Court under Article 227 of Constitution of India. The said ratio, I am afraid, cannot apply to the facts of the present case since this case is not one where the petitioner moved an application under Section 16 of the Arbitration and Conciliation Act and after being unsuccessful he has approached this Court under Section 227 of Constitution of India.



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12. It is the categorical case of the revision petitioner that the constitution of the Arbitral Tribunal in the first place itself was bad in the eye of law in view of the arbitration clause agreed to between the parties. I have already extracted the said arbitration clause. It is clear that the arbitration clause would become available to the parties only in the event of the Debt Recovery Tribunal not having jurisdiction. However, in the present case, the 1st respondent Bank has already approached the Debt Recovery Tribunal and initiated proceedings which are admittedly pending. While so, the very invocation of the arbitration clause is certainly questionable and it goes to the root of the very jurisdiction of the arbitral Tribunal to take up the matter.

13. Further, as already pointed out by learned Senior Counsel Mr.V.Raghavachari, the conduct of the arbitrator also falls far short of fair play. Treating both parties equally which is a fundamental requirement of the provisions of the Arbitration and Conciliation Act.

14. From a careful reading of the judgments of the Hon'ble Supreme Court, it is clear that there is no embargo for this Court to exercise the discretionary power available under Article 227 of Constitution of India, when



there is inherent lack of jurisdiction and the same is brought to its notice by way of a revision. Having already found that the invocation of the arbitration clause itself was wholly unsustainable, this Court can certainly entertain the revision and set aside the award passed by the Arbitrator.

15. Though it is contended by the learned counsel for the respondent that the petitioner ought to have moved an application under Section 16 of Arbitration and Conciliation Act before the Arbitrator and ought to have challenged the award by way of an appeal under Section 37 of the Act, instead of rushing to this Court by way of revision under Article 227 of Constitution of India, in view of the inherent lack of jurisdiction on the part of the Arbitral Tribunal, which has assumed jurisdiction and proceeded to pass the award in a hasty manner, I am inclined to treat this as an exceptional case which would warrant interference under Article 227 of Constitution of India. The interim award passed by the Arbitrator is therefore clearly unsustainable and *ex facie* illegal and liable to be set aside.

16. Moreover, it is seen that after having secured an interim award, the 1st respondent Bank has secured the asset. Thereafter, the claim itself has been withdrawn by the 1st respondent Bank. Having obtained an interim order and



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derived benefit thereunder, it was highly unfair and improper on the part of the

1st respondent Bank to have proceeded to withdraw the claim itself.

17.In view of the above, it is a clear case where the 1st respondent Bank has proceeded to initiate Arbitration proceedings only with the ulterior motive of seizing the asset from the petitioner and having achieved such object, they have also chosen to not prosecute the main claim as well before the Arbitrator. Such conduct of the 1st respondent Bank is certainly not appreciated. In any event, the award being set aside, this Court is bound to ensure that substantial justice is done to the necessary parties. Status quo has to be necessarily restored in the present case and the respondent Bank shall therefore return the asset, viz Excavator – JCB India LTD – CB-JS205 bearing Sl.No.PUNJD20BHK2752649 to the petitioner forthwith.

18.With these above directions, the Civil Revision Petition is allowed and the award dated 23.03.2022 in I.A.No.1 of 2022 in A.C.P.No.KMBL/CE/764205/689 of 2022 is hereby set aside. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

27.06.2025

Speaking/Non-speaking order

Index : Yes/No

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To

1.The Arbitrator, Chennai.



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P.B.BALAJI.J.

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Pre-delivery order made in
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