

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DINDIGUL

PRESENT: Thiru. P. Saravanan, B.L.,

Additional District Judge, Dindigul.

Saturday, the 7th day of November 2020

E.A. No. unnumbered (C.R. No.1055)

in

E.P. No.105/2018

K. Palanivel

..... Petitioner/Respondent/

Opposite party

/VS/

P. Balamoorthi

.... Respondent/Petitioner/Claimant

This petition is coming up before this court in the presence of Thiru. P. Velumani, Counsel for the Petitioner, and having stood over for consideration this Court delivered the following:

ORDER

Petition filed U/S 47 of C.P.C., prays to declare the award dated 16.09.2017 passed in A.P. No.396/2017 is a false and fraudulent one, null and void and in-executable.

2. **Brief averments of petition as follows : -**

The petitioner is the respondent in the above E.P. The Respondent created the Arbitration award for the purpose of filing E.P., The alleged award in A.P. No.396/2017 is false and fraudulent one. On receipt of the notice in E.P., the petitioner had applied certified copies in E.P. and obtained copy of award in A.P. No.396/2017. The award has been created with the help of the friends of the respondent. The petitioner has not received any notice in arbitration. He has no knowledge about the arbitration award till the notice received in the E.P., The petitioner has not borrowed any loan from the respondent nor executed the alleged pro-note. The alleged arbitration is baseless and absurd. Hence, the

petitioner come forward with this petition to declare the alleged award passed in A.P. No.396/2017, dated 16.09.2017 is false, fraudulent, null and void and in-executable.

3. **Points for consideration :**

Whether the petition is maintainable ?

4, **Points :**

The petitioner is the respondent in the above E.P., The respondent filed the above E.P. to attach and sell the petition mentioned properties to enforce the arbitration award passed in A.P. No.396/2017. Originally the said E.P. was taken on file by the Principal District Court, Dindigul and made over to this court. In the E.P., counter has been filed on 22.01.2019. On 30.01.2020, petitioner side arguments was heard. From 11.02.2020 onwards, E.P. is pending for respondent's side argument. On 25.09.2020, the present E.A., has been filed by the petitioner, *which was returned by this court on 05.10.2020 raising the maintainability by stating that without filing application under section 34 of Arbitration and conciliation Act before the proper forum how this application is maintainable ?* Thereafter, the same has been represented on 16.10.2020. The learned counsel appearing for the petitioner would submit that being executing court, this court has to go through whether the decree is executable or not ? To support his arguments, he relied upon

- 1) 2018 (1) L.W. Page 509 – N. Mohan and others -vs- Ejaz Khilji
- 2) 1994 (2) L.W. Page 28 – Papanna P.V. and others -vs- K. Padmanabaiah

In the above decisions, it was held that the prime duty of the executing court, is to frame an issue regarding executability of the decree.

5. The main contention of the petitioner is that (a) he has not borrowed any amount (b) no arbitration agreement (c) he has no knowledge about the appointment of the arbitrator (d) he has not given consent for arbitration (d) award copy not received from the arbitrator (e) entire arbitration

proceedings are fabricated. This court perused the award copy which has been filed along with the E.P., On perusal of the award, it is revealed that the notice was not served on the respondent in the award. On paper publication, the respondent in the award was set exparte. Along with the award there is no postal receipts to show that the copy of the arbitral award was sent to the respondent as provided U/S 31 (5) of Arbitration and Conciliation Act. Even assuming that the entire award proceedings is fabricated one, this court has to see that whether this court has power to set aside the arbitration award, by invoking Sec.47 of C.P.C., The award in question was passed under arbitration and conciliation Act which is a special Act. When the Special Act itself gives power to set aside the award under the Section 34 of Arbitration and Conciliation Act, without resort the particular section, the petitioner cannot invoke the General Law. At this juncture, it is relevant to relied upon the decision of Hon'ble ***High Court of Madras IN- M/S. Janaki Spinning Mills (P) Limited – vs – K. Ganesan, dated 05.12.2018 C.R.P (PD) NO.2800/13 by the Hon'ble Justice, Abdul Quddhose.***(Indian Kanoon.org/doc/21703051) In the said decision, the Hon'ble High Court held that in

Para : 11

“It is a case of the petitioner that he has not received the original arbitral award from the arbitrator and it is also his case that award obtained by the respondent is a fraudulent award. It is the further case of the petitioner is that, he has not been delivered with the signed copy of the arbitral award, by the arbitrator.”

Para : 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 U/S 34, the petitioner has filed an application under order 23 rule 1(2) of C.P.C. seeking permission of the court to withdraw the Arbitration O.P. No.141/2010, filed under section 9 of Arbitration and Conciliation Act with liberty to file a fresh petition under 34 of Arbitration and Conciliation Act to challenge the arbitral award. Order 23 rule 1 (3) of C.P.C. is not applicable to the application 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 arbitral award was obtained fraudulently. The only recourse available to the agreed party is to file an application under section 34 of Arbitration and Conciliation Act. Since the Arbitration and Conciliation Act is a special law, this court is of consider view that order 23 **rule 1 C.P.C.** will not apply for the application under section 9 of Arbitration and Conciliation Act.”*

6. In view of the above said decision, the decisions relied by the petitioner is not applicable for the facts and circumstances of the case. Because, the award in question is governed by the special law which provides for a remedy Under section 34 to challenge the arbitral award and therefore without approaching the competent court U/S 34 of Arbitration and Conciliation Act, the petitioner has filed an application which is not maintainable and answer this issue accordingly.

In the result, this petition is rejected as not maintainable.

Dictated to the stenographer, transcribed and typed by her, corrected by me and pronounced in the open court, on this the 7th day of November 2020.

Sd/- P. Saravanan,

Additional District Judge,
Dindigul.

Additional District Court,
Dindigul.

E.A. No. unnumbered (C.R. No.1055)

in

E.P. No.105/2018

ORDER :

Dated:07.11.2020