

In the High Court of Judicature at Madras

WP.No. 109 of 2021

Sivesh varshan @ Sivakumar
S/o. Maruthai,
“Subiksham”,D.No.18/115B,
II, Cross, Anna Nagar,
Kulithalai 639104
Karur Dist

Petitioner

Versus

1 The High Court of Judicature
At Madras represented by its
Registrar General
Chennai-600104

2 The Union of India represented
By The Law Secretary,department of
legal affairs, Ministry of Law and
Justice 4th Floor, A-Wing,
Shastri Bhawan
New Delhi-110 001

3 The state of Tamil Nadu represented
By Secretary, Law and Justice
St.George Fort
Chennai-600009

Respondents 1,2 and 3

I, Siveshvarshan, s/o.Marudai Residing at “Subiksham”
D.No.18/115B, II, Cross, Anna Nagar,Kulithalai 639104,
Karur Dist, having temporarily came down to Chennai do
solemnly affirm and state on Oath as follow: -

1. I humbly submit that I have approached the present counsel to file this Public Writ Petition. The present counsel also agreed to file the Writ petition without any fees as *pro bona* services and he collected a sum of Rs. 1000.00 only towards Court fees payable for this writ petition. I submit that I have not filed any other Public Interest Litigation regarding the present dispute. To my knowledge no other person has also filed Public Interest Litigation before this Honorable court or any other court on this cause of action. I hereby give an undertaking to pay the cost if this Hon'ble court finds that this petition intended for personal gain or oblique motive. Further I submit I have filed this petition out of my own funds. I submit that to my knowledge no public interest arising on the same issue is filed anywhere My abhor No.749046319994, my PAN No. APUPS4277A, my income does not exceed 2,00,000 this year

2. I pray that this Honourable court may be pleased to issue a writ of declaration that the "Madras High Court (Arbitration) Rule 2020" as framed in exercise of Section 82 of the Arbitration and Conciliation Act 1996 and published in Official Gazette of State of Tamil Nadu on 17.03.2021 is ultra vires of plenary statute of Arbitration and Conciliation Act 1996 and Commercial Courts Act 2015 as amended upto date and *void ab initio* and to grant such other reliefs as this Honourable court may think fit and proper in the facts and circumstance of the case and thus render Justice
3. I am the sole respondent in Ar.OP 49/2020 filed by legal heirs of deceased borrower Mr.Pandian arising out of an ad-hoc arbitration proceedings.
4. The petitioners therein did not comply with provisions relating to pleadings of Civil Procedure Code as amended by the schedule to Commercial courts Act2015.
5. The petitioners, in that case though,have admitted factum of payment and signature in the arbitration agreement but disputed contents of arbitration agreement citing the ante date the arbitration agreement stamp paper bears. Even though the deceased borrower had settled my claim amount by cheque and he was facing criminal trial for its dishonour without any murmur.

6. The learned district judge , Karur did not execute the interim order under section 17 of Arbitration and Conciliation Act dated 17.06.2020 hence CRP(MD)547/2020 has to be filed. Which is pending till date , the borrowers alienated the property by now.
7. In view of my aforesaid circumstances I am specially interested and I have working knowledge of the laws and practice relating to arbitration. I do not seek in this writ petition any relief which is directly in issue in any of the aforesaid Arbitration case and none of the matters to be decided in this case have any bearing on my arbitration case. Hence no relief in respect of my arbitration case is prayed for herein.
8. The Arbitration and Conciliation Act 1996(Central 26 of 1996)on 16th August 1996.
9. The section 82 of arbitration and conciliation act provided that the High court may make rules consistent with the Act as to the proceedings before the courts under the Act.
10. Subsequently the Parliament of India passed the Information Technology Act 21 of 2000 which came into force on 9th June 2000.
11. Section 2 (e) of the information Technology Act 2000 designates the Union of India as the appropriate government for making

appropriate rules for the purpose of that Act. There is no power for further delegation of powers of any appropriate government under the said Act. Hence it is the Union of India which is the

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only competent authority to prescribe procedure for the purpose of section 6 of the said Act.

12. It is submitted that all the Arbitration and Conciliation Act 1996 the Information Technology Act 2000 were passed in exercise of the legislative power under entry 13 of the union list in VII Sch of our constitution, in pursuance of the resolution of the United Nations Assembly.
13. The parliament passed the other law called Commercial Courts Act 2015 which was put into effect on 23rd October 2015. It is humbly submitted that section 10 of the Commercial Court Act indicated its intention of parliament to constitute the commercial court as an exclusive court for commercial arbitration. Further section 15 provides for transfer of all proceedings pertaining to Arbitration and Conciliation Act to the said courts so constituted and it specifically states that all pending cases to be decided in accordance with procedure contemplated under commercial courts Act. All the principal district courts in Tamil Nadu have been designated as commercial courts. But they treat the petition under arbitration and Conciliation Act as any other petition procedure.
14. With the advancements in Information Technology, virtual hearing and electronic deposit of awards under proceedings of arbitration came to be adopted in arbitration so they are governed only by the Information Technology Act 2000 and other allied statutes like Rule 6 of order XI of civil procedure code as applicable to commercial courts .
15. The procedure contemplated under Madras High Court Arbitration Rules 2020 in a proceeding under section 34 though designated as summary, it does confer any right on the successful party to seek termination of proceedings in accordance with order XIII A of Civil procedure code. When I approached the concerned District court, I was turned away by orally citing the Rules and summary procedure in it. I submit that if my petition for judgement before trial was admitted i would have been in the worst case scenario, awarded security for payment of award amount under Rule 7 of the CPC as applicable to commercial courts Act.

Hence having left with no other efficacious alternate relief I have to file this writ petition before this Honourable court invoking extraordinary Jurisdiction of this Court under Article 226 of the Constitution of India and it is humbly submitted, to the best of knowledge and information of the petitioner, no other writ petition nor any other petition challenging this Rules is pending before any court on the same cause of action

Grounds

- (a) The respondent no 1 is not competent to draw rules namely Madras High Court Arbitration Rules in repugnant with Commercial courts Act 2015 and Civil Procedure Code 1908 as applicable to commercial courts.
- (b) Even Respondent No.1 is to rely on section 122 of Civil Procedure Code on a presumption delegation rule making powers under section 122 of Civil Procedure Code is intact for the commercial courts Act and could be invoked to sustain the subordinate legislative authority. Necessary approval under section 126 is not obtained from Respondent No. 2 nor from Respondent No. 1 as for union Territory of Pondicherry is concerned.
- (c) The impugned Rules though provide for the cost being awarded in a proceeding under section 34 of Arbitration and Conciliation Act. The arbitrator having become functus Officio, no executable award or an order executable under section 36 of Civil Procedure Code is provided. Thus proceedings under section 34 or 37 of Arbitration and Conciliation Act 1996 or even in proceedings under Article 136 of Constitution of India before the Supreme court can be dragged vexatious thus ultimately depriving the value of the award as being done Arb OP no 49 of 2020 on the file Principal District Judge Karur. Ultimately this absence procedure for collection of cost undermines Rule of law under Article 14 of constitution of India.
- (d) It is humbly submitted there are execution petitions Under Order 21 Rule 1, filed by the borrowers/ award-debtors as the claimant-finance company refuses to receive the award money and keep the high interest bearing loan alive. The CRP(MD)598 of 2021 is one such petition, yet those interests of the borrowers as secured under Order 21 are not considered in drafting the Rules.
- (e) The Rule 6 of Order XI Commercial Courts Act relating to electronic records of arbitral proceedings are concerned, they owe their existence to the provisions of the Information Technology Act 2000. Hence The Respondent No1 can not tweak those rules by the way of subordinate legislative authority under section 82 of the Arbitration and Conciliation Act 1996. There is no parliamentary approval for impugned Rules.
- (f) In case of the state of Tamil Nadu vs Krishna Murthy reported in 2006 (4)SCC 517 it was held subordinate legislative Rules can be challenged if they are inconsistent with any enactment. In this

case the impugned Arbitration Rules is inconsistent with commercial courts Act 2015.

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- (g) It is humbly submitted that Rule 12((IV) of said Rules is not consistent with section 2(e) Arbitration and conciliation Act 1996 as the same contemplates for the transfer arbitral proceedings to additional district judge who is not principal court of original jurisdiction as per definition of district judge as occurring in section 3(17) General clause Act or where the commercial Courts have been constituted, the commercial disputes related Arbitration proceedings can only be transferred to the notified commercial Courts under the Commercial Courts Act.
- (h)The Arbitration and Conciliation Act 1996 Section 43k and 43L provides for depository of award and other records but the newly impugned Rules 8(IV) and (V) provides for the summoning of evidence from the Arbitral Tribunal. This kind Rules provides for the procedures leading to entropy in commercial disputes .
- (i) It is humbly submitted that Section 21 of the Commercial Courts Act provides for the obstante powers to the provisions of the Act, Hence no subordinate Rules can be framed inconsistent with the said Commercial Courts Act.
- (j) It is humbly submitted that in Alka Chandevvar Vs.Shamshul Israr Khan reported in 2017 (16)SCC119 the apex court held that section 29(5) of the Arbitration and Conciliation Act can be invoked by the Arbitration to secure obedience of order of the Tribunal, by the way of contempt of Tribunal under the contempt of Courts Act as in the case of proceedings before the court. However the impugned Rules does not contain any procedure to be followed in such cases.

It is prayed that this Honourable court may be pleased , by the way of interim order, to stay the operation of Madras High Court (Arbitration) Rules 2020 and published in the Official Gazette of the State of Tamil Nadu on 17.03.2021 and thus render justice.

It is prayed that this Honourable court may be pleased by the way of interim order, direct the Commercial Courts in Tamil Nadu and Union Territory of Puducherry to follow the procedure envisaged under Commercial Courts Act 2015 and thus render justice

Hence it is prayed that this Honourable court may be pleased to issue a writ of declaration that the “Madras High Court (Arbitration) Rule 2020” as framed in exercise of Section 82 of the Arbitration and Conciliation Act and published in Official Gazette of State of Tamil Nadu on 17.03.2021 a is ultra vires of plenary statue of Arbitration and Conciliation Act 1996 and Commercial Courts Act 2015 as amended upto date and *void ab*

***initio* and to grant such other reliefs as this Honourable court may think fit and proper in the facts and circumstance of the case and thus render Justice**

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Solemnly affirmed Before me and signed before
Me at Chennai
ON 07.04.2021 Advocate

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