

(1953) 09 MAD CK 0016

In the Madras High Court

Case No : Civil Revision Petition No. 462 of 1953

Ramaswami Servai and Others

APPELLANT

Vs

Muthiralayee and Others

RESPONDENT

Date of Decision : 02-09-1953

Acts Referred:

Arbitration Act, 1940 — Section 17
Limitation Act, 1908 — Article 158

Citation : AIR 1954 Mad 560 : (1954) 67 LW 41

Hon'ble Judges : Chandra Reddy, J

Bench : Single Bench

Advocate : K. Parasaran, for the Appellant; V. Somasundaram, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddy, J.—This is a petition filed against file order of the District Munsif, Ramanathapuram, overruling the preliminary objection

raised by the present petitioner that the respondents could not be heard inasmuch as they had not filed an application to set aside the award within

thirty days of the receipt of the order or notice by them. The petitioner filed on 17th November 1952 the award dated 10th July 1952 into court

with a request that a decree might be passed in terms of the award. Notice of this was served on the respondents on 28th November 1952. Within

thirty days of the receipt of notice, that is, on 5th December 1952, the respondents filed a counter attacking the genuineness and validity of the

award. In that counter it was prayed that the court might be pleased to pass an order dismissing the petition. The basis of the preliminary objection

already referred to above was that as there was no application with a prayer to set aside the award within thirty days as required by Section 17 of

the Arbitration Act and Article 158 of the Limitation Act, the objections of the respondents could not be entertained.

2. The view of the trial court is contested in this revision petition. It is urged that the counter affidavit filed by the respondents does not amount to

an application envisaged in Section 17 of the Arbitration Act in that it is not styled as an application and does not bear any court fee stamp. I find it

difficult to accede to this contention. The word ""application"" has not been denned either in Section 17 or anywhere in the Arbitration Act or in the

Limitation Act. That being the case can it be postulated that although the form of application to be presented as required u/s 17 of the Arbitration

Act is not prescribed, the court should insist on a particular form of application to be presented with court fee stamp affixed thereon.

3. ""Application"" is defined in rule 2 Sub-rule (2) of the Civil Rules of Practice and Circular Orders, Vol. I and it includes execution applications,

execution petitions and interlocutory applications whether written or oral. If as contemplated in this rule an application could be an oral one, I do

not find any need for an application in any particular form with the court fee affixed thereon. What is required u/s 17 of the Arbitration Act is to

give notice to the parties concerned, regarding the request for setting aside the award. Court fee is payable on any document because of the

provisions of the Court-fees Act. If the provisions of the Court-fees Act do not require payment of court-fee with regard to any document I do not

think how a party can be compelled to affix court fee stamp on any application or petition.

4. This view of mine gains support from a decision of the Bombay High Court in -- Gopalji Kallianji Vs. Chhaganlal Vithalji, . There, the learned

Judges observed that it is sufficient compliance with the requirements of Section 17 of the Arbitration Act, if some notice is given to the proper

office that the party objects to the award and that in that particular case the relevant affidavit had been brought to the notice of the proper office. It

was also pointed out that for purposes of the Indian Limitation Act the date on which the application is filed is the date on which it can be said that

the application is made. It is unnecessary to refer to the other decisions which are cited by either side as they are not quite relevant to the question

to be decided in the particular case. I think the view of the trial court that the counter affidavit filed by the respondents is an application within the

meaning of Section 17 of the Arbitration Act and is, therefore, sufficient compliance with the terms thereof is sound. It is not necessary to make it in any particular form & to affix court fee stamp of any value. It follows, therefore, that the order of the trial court is correct and must be affirmed.

The civil revision petition is dismissed with costs.