

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

Arb.A.No. 31 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN OP(ARB) 390/2013 of ADDL.D.C. KOZHIKODE-
III DATED 26-02-2015

APPELLANT(S) /PETITIONER:

K.P ABDURAHIMAN HAJI AGED 58 YEARS
S/O.KOYA KUTTY HAJI, LAFIR MAHAL HOUSE, KUTTY PARAMBIL
PO KARUMALA, UNNIKULAM, (VIA) BALUSSERRY
KOZHIKODE-673 574.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT(S) /RESPONDENTS:

1. M/S. SUNDARAM FINANCE LTD
NO.21, PATULLOS ROAD, CHENNAI-600 002.
2. T.T.ABDUL NAZAR
S/O.MOOSA, THOTTITHODI HOUSE, PO M.M.PARAMBA
BALUSSERY, KOZHIKODE-673 574.

THIS ARBITRATION APPEAL HAVING COME UP FOR ADMISSION ON 18-
06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

=====

Arb.A. No.31 of 2015

=====

Dated this the 18th day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is a petitioner in O.P(Arb.)No.390 of 2013 on the file of the Court of the IIIrd Additional District Judge of Kozhikode, a petition filed by him under section 34 of the Arbitration and Conciliation Act, 1996 to set aside the arbitral award passed on 21.01.2012. Before the District Court he raised a preliminary objection to the effect that the award is not sufficiently and properly stamped and therefore it is liable to be set aside. The court below considered the said contention and rejected it by the order passed on 26.2.2015. The said order is under challenge in this appeal.

2. The impugned order reads as follows:

“Petition filed u/s 34 of the Arbitration and Conciliation Act, 1996.

2. Heard both sides. As per Hon'ble High Court's decision in 2011 (4) KHC 257 when Award under the Act, filed for enforcement in a Court out side state, later transferred to a court within State of Kerala for execution, executing court is duty bound to accept execution petition with a certified copy of the award and additional stamp duty need not be paid, is directly applicable. So the stamp duty paid is proper. For evidence 13.3.2015.”

The court below has by the impugned order held that in view of the

decision of a learned single Judge of this court in **Maharashtra Apex Corporation Limited and Another V. Balaji G and Others** 2011 (4) KHC 257, the execution court is bound to accept a petition to enforce the award accompanied by certified copy of the award and additional stamp duty need not be paid and therefore the stamp duty paid on the award is proper.

3. The issue raised by the appellant is in our opinion covered against him by the decision of the Apex Court in **M. Anasuya Devi and Another v. M Manik Reddy and Others** (2003) 8 SCC 565 wherein the Apex Court held that the question whether an award has been duly stamped or not and whether it requires registration or not is not a matter which falls for consideration at the stage of considering an application under section 34 of the Arbitration and Conciliation Act, 1996. The Apex Court held that it is only at the stage of the enforcement of the award under section 36 of the Arbitration and Conciliation Act, 1996 that the aforesaid questions can be gone into. The Apex Court also held that the inadequacy of the stamp or the fact that the award is not registered are no grounds on which an award can be set aside under section 34 of the Arbitration and Conciliation Act, 1996.

In the light of the binding decision of the Apex Court, we are of

the opinion that the contention now raised by the appellant need not be gone into in the proceedings presently pending in the court below, viz; petition filed under section 34 of the Arbitration and Conciliation Act, 1996. The appeal fails and it is accordingly dismissed with observation that this judgment or the impugned order will not stand in the way of the appellant from raising the issue regarding the adequacy of the stamp duty paid on the award at the time when the award is sought to be enforced against him.

sd/-

**P.N.RAVINDRAN
JUDGE**

sd/-

**ANU SIVARAMAN
JUDGE**

kp/-

True copy

P.A.To Judge