

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

O.S.A.No.2 of 2015
and
M.P.Nos.1 and 2 of 2015

Ramanaiah Naidu GariapatiAppellant/Appellant

Vs.

1. Citicorp Finance (India) Limited
Represented by its Power of Attorney Holder
Mr.V.Balasubramani
I Floor, Angson Centre
153 Greams Road
Chennai - 600 006

2. Mr.D.Saravanan
Sole Arbitrator
No.90(73), "Orient Chambers"
IV Floor, Armenian Street
Chennai - 600 001

...Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the fair and decretal order of Hon'ble Mr.Justice M.Duraisamy dated 19.09.2014 made in O.P.No.798 of 2012.

For Appellant : Mr.Thriyambak J.Kannan

For Respondent : Mr.Abdul Quddhose

J U D G M E N T
(made by V.RAMASUBRAMANIAN, J.)

The appeal arises out of the dismissal of a petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside an arbitral award.

2. Heard Mr.Thriyambak J.Kannan, learned counsel for the appellant and Mr.Abdul Quddhose, learned counsel for the respondent.

3. Sans unnecessary details, it is to be pointed out that the arbitral award dated 09.10.2009 was an ex-parte award. In the award, the Arbitrator stated in paragraph 5(a) that the Tribunal's notice dated 21.11.2008 for the hearing to be held on 19.12.2008 sent to the appellant herein and his wife returned unserved. Again in paragraph 5(e) of the award, the Tribunal recorded that the proceedings dated 07.08.2009 sent along with the claim statement and the supporting documents to the appellant herein, providing them a final opportunity to file their objections, neither returned served nor unserved.

4. Therefore, contending that without a proper and fair opportunity of hearing, an award had been passed, the petitioner filed O.P.No.798/2012 on the file of this court under Section 34 of the Act. It should be pointed out that the appellant was the borrower and his wife was the guarantor. The award was as against both of them.

5. In the petition under Section 34, the main contention of the appellant was that without even completing the service of notice in the arbitral proceedings, the Arbitrator proceeded to pass ex-parte award and that therefore, the case fell under the category of Section 34(2) (b) (ii) of the Act.

6. However in the course of hearing of the petition, the learned Judge summoned the records from the Arbitrator and found as a matter of fact, two acknowledgement cards. Both the acknowledgement cards bear the date seal of the Department of Post as 24.08.2009 and they contain the signature of the wife of the appellant.

7. Therefore, on facts, the learned Judge found that the appellant and his wife had in fact been served with the notice of hearing before the Arbitrator and that what was recorded in paragraph 5(e) of the award, was an incorrect reflection of the records. Not stopping at that, the learned Judge appears to have called upon the appellant and his wife to be present in the court to verify whether the signature found in the acknowledgement cards was that of the appellant's wife. According to the learned counsel for the respondent, the wife of the appellant conceded. However this fact is not recorded in the order of the learned Judge. But, the learned counsel for the appellant, is unable to dispute the fact that the appellant and his wife were summoned before the

Court.

8. In the light of his finding that the acknowledgement cards found in the records of the arbitral proceedings contain the signature of the appellant's wife, the learned Judge overruled the only basis on which the award was challenged and dismissed the main original petition. Aggrieved by the dismissal of the main petition, the appellant is on appeal.

9. Contending that as per the very award of the learned Arbitrator, service of notice on the appellant has not been completed and also contending that even as per the stand taken by the respondent, notices had not been served, the learned counsel for the appellant argued that the learned Judge was not entitled to come to his own conclusion on the basis of the records, contrary to what was recorded by the Arbitrator himself. In other words, his contention is that considering the limited jurisdiction available to the court under Section 34 of the Act, the learned Judge ought to have gone only by what was recorded by the Arbitrator and not by the original records.

10. But we don't think so. When the postal acknowledgement cards are very much available in the file and when the acknowledgement cards also contain the signatures, the learned Judge was entitled to come to a prima facie conclusion as to whether service was in fact completed or not. The statement made in paragraph 5(e) of the award, cannot be said to be actually in favour of the appellant. The statement proceeds on the footing that the notice was not returned either served or un-served. The said statement, is nothing but an ineffective method of recording what had actually happened. Therefore, we do not think that the appellant can really take advantage of the position recorded by the Arbitrator contrary to what was available on records.

11. The learned Judge actually found that the respondent had initiated execution proceedings and that as against the execution proceedings, the appellant and his wife moved a Civil Revision Petition in C.R.P.No.976/2014 on the file of the Andhra Pradesh High Court. A Division Bench of the Andhra Pradesh High Court appears to have entertained the revision and granted a conditional order of stay. But the conditional order was not complied with.

12. Apart from the above, the learned Judge also found that what was financed by the first respondent was the purchase of two Volvo Tippers under a loan agreement dated 28.03.2005. Despite an application filed under Section 9 of Act by the respondent and despite by an order appointing the Commissioner, the warrant could not be executed. The first respondent company claims that the

vehicles could not be traced. However, it is claimed by the appellant that the vehicles are very much available at site in Madhya Pradesh. But nevertheless the fact remains that the Commissioner could not execute the warrant and seize the vehicles.

13. Therefore taking into account all the above facts cumulatively and on the basis of the postal acknowledgement cards, the learned Judge has found that the arbitral award was not to be interfered with. We do not think that there is any illegality in the order of the learned Judge upholding the award. Therefore, the appeal is dismissed. There will be no order as to cost. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

asr

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

1 CC to M/s. S.Vasudevan, Advocate SR.No. 8913

1 CC to M.Thriyambak J. Kannan, Advocate SR.No. 8791

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O.S.A.No.2 of 2015

UG (CO)
PSI (24.03.2015)

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