

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2016

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

Original Petition No.179 of 2015

and

Application No.3112 of 2016

M.A.K.Earth Movers

A Partnership Firm rep.by its

M.Kulothungan, Chennai 600 082.

.. Petitioner

vs

1. L& T Finance Limited

Registered Office at L & T House,

Ballard Estate, Mumbai 400 001.

Corporate Office at No.3-B, Laxmi Towers

C-25, G Block, Bandra Kurla Complex

Bandra (E), Mumbai 400 051.

Also at: L& T Finance limited

rep.by its Zonal Legal Manager

Mr.C.Balasubramanian, Chennai-8.

2. A.Santosh Kumar

3. A.Sasikumar

... Respondents

4. Bharat B.Jain, Arbitrator

[4th respondent deleted as per

order dated 24.06.2016 in O.P.No.179 of 2013]

Prayer: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the Arbitration Award No.315 of 2013 dated 13.05.2013.

ORDER

1. This a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, whereby, the challenge is laid to the award, dated 13.05.2013.

2. In her counter affidavit, filed on behalf of first respondent-company, which is the contesting respondent, a preliminary objection is being raised, stating that the petition has been filed beyond limitation.

3. This aspect of the matter was brought to fore, by the counsel for the first respondent, at the hearing held on 08.08.2016, at which point of time, the counsel for the petitioner said, as between the very same parties, another award was passed by the very same Arbitrator, on the same date, as the award impugned in the present proceedings, and therefore, service of the award, which is sought to be demonstrated by the first respondent in the present proceedings, is in fact effected to the other proceedings.

3.1. It is in this background, I had directed the first respondent, vide order, dated 08.08.2016, to bring to Court, the record of the other proceedings.

4. I have perused the record of both proceedings, which has been filed in Court by the first respondent.

5. Counsel for the petitioner has also perused the record of both the proceedings.

6. It is clear, upon perusal, that the copy of the award impugned in the present proceedings has been served not only on the petitioner, but also on respondent Nos.2 and 3.

6.1. To be noted, respondent No.2, is the partner of the petitioner firm, while respondent No.3, stood as guarantor in the loan taken by the petitioner.

7. As a matter of fact, the record shows, that the award impugned in the present proceedings was also served on Mr.Kulothungan. As would be evident

from the cause title, the present proceedings have been initiated by the petitioner, via Mr.Kulothungan. The acknowledgement due cards, show receipt by the partner i.e., respondent No.2 and guarantor of the petitioner i.e, respondent No.3, on 20.05.2013. Furthermore, the record shows that the petitioner, i.e., the firm itself had also received the award on 20.05.2013. Section 34 petition has been filed, admittedly, on 30.04.2014. Clearly, the petition is way beyond time and therefore, cannot be entertained. This Court has no power to condone the delay. **[See Union of India v. Popular Construction Co., (2001 (8) SCC 470)]**

8. Accordingly, the petition is dismissed. Consequently, application bearing number : A.No.3112 of 2016 is closed.

9. At this stage, counsel for the petitioner says, that the petitioner firm is willing to buy any other second hand machinery, (i.e.,hydraulic excavator) which the respondent No.1, may sell in an auction, in the near future.

10. Mr.D.Pradeep Kumar, learned counsel for the respondent No.1 says, that since the equipment in issue,

has already been sold, the possibility of sale of such equipment could be explored, only if an equipment of like nature is available and an auction qua the same, is conducted by his client.

11. The submission of counsels is taken note of. It is however, made clear that this is not a direction of the Court and, it is for the parties to arrive at a methodology for the sale or purchase of the equipment if when available and sold in auction.

12. Registry will put back the records pertaining to this case in a sealed cover. The records pertaining to the other proceedings shall be returned to Mr.D.Pradeep Kumar, learned counsel for respondent No.1, after taking his acknowledgement in that behalf.

Sd/.R.S.A.J

09.09.2016

//Certified to be a true copy//
Dated this the day of 2016.

S.s/24.10.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.