

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1678 of 2016
and C.M.P.No.8989 of 2016

D.V.Loganathan

... Petitioner

Vs.

M/s.City Corp. Finance (India) Ltd.,
rep by its Manager - Legal V.Balasubramani
1st Floor, Angson Centre, 153, Greams Road,
Near Thousand Lights,
Chennai - 600 006.

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 09.02.2016 of the IX Assistant Judge, City Civil Court, Chennai in E.A.No.1346 of 2014 in E.P.No.2557 of 2012 in Arbitration Case No.42 of 2010.

For Petitioner : Mr.R.Sethuraman

ORDER

Challenging the fair and final order passed in E.A.No.1346 of 2014 in E.P.No.2557 of 2012 in Arbitration Case No.42 of 2010 on the file of the IX Assistant Judge, City Civil Court, Chennai, the 1st Judgment Debtor has filed the above Civil Revision Petition.

2. Pursuant to the Arbitral Award dated 07.11.2011, the respondent/ Decree Holder filed an Execution Petition in E.P.No.2557 of 2012. In the said Execution Petition, the revision petitioner filed an application in E.A.No.1346 of 2014 under Section 47 of the Civil Procedure Code.

3. On a perusal of the Award passed by the Arbitrator, it could be seen that the revision petitioner was duly served with the notice, however, chose not to appear before the Arbitrator and contest the matter. Therefore, the Arbitrator taking into consideration the oral and documentary evidences let in by the respondent/claimant, passed a decree in favour of the respondent/claimant. The Award passed by the Arbitrator has not been challenged by the revision petitioner under Section 34 of the Arbitration and Conciliation Act, 1996. Having failed to challenge the Arbitral Award, the revision petitioner chose to file an application under Section 47 of the Civil Procedure Code questioning the correctness of the Award passed by the Arbitrator.

4. Though the Arbitrator passed the Award on 07.11.2011, the application under Section 47 of the Civil Procedure Code was filed by the revision petitioner only on 05.11.2013. In order to circumvent the filing of

the petition under Section 34 of the Arbitration and Conciliation Act, the Judgment Debtor cannot file an application under Section 47 of the Civil Procedure Code. Even though under the Hypothecation Agreement it was provided for taking possession in case of default by the hypothecator, the respondent/Decree Holder initiated the proceedings to be decided by an Arbitrator and pursuant to the Award passed by the Arbitrator, has filed the Execution Petition. The seizure of the lorry by the respondent Bank cannot be termed as unlawful nor it amounts to breach of the terms of the contract.

5.It is also pertinent to note that the revision petitioner had also filed a Civil Suit in O.S.No.1735 of 2010 on the file of the City Civil Court, Chennai and the same was also dismissed by the trial Court. However, the revision petitioner chose not to challenge the Arbitral Award under Section 34. Now, the petitioner cannot challenge the Award under Section 34 of the Arbitration and Conciliation Act for the reason that the same is barred by limitation. The Execution Court, taking into consideration all these aspects, rightly dismissed the application.

6.I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and the same

is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed.

No costs.

Index : No
Internet : Yes
va

13.06.2016

To

The IX Assistant Judge,
City Civil Court,
Chennai.

M.DURAIWAMY,J.
va

C.R.P.(NPD).No.1678 of 2016
and C.M.P.No.8989 of 2016

13.06.2016