

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2016

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, THE CHIEF JUSTICE

and

THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

O.S.A.No.18 of 2016

1.Kamal Dayal Choudhary
2.Rajesh Bhanaote ... Appellants

Versus

1.Ashok Leyland Finance Ltd.,
94, 3rd Floor, 'Minerva House'
SD Road, Secunderabad-3.
Corporate Office at
Sudharsan Buildings,
No.86, Chamiers Road,
Chennai-600 018.

2.D.Saravanan, Arbitrator,
346, Thambu Chetty Street,
1st Floor, Chennai-600 001. ... Respondents

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent against the Order and Decreetal order dated 10.12.2015 made in Application No.1089 of 2015 in Transfer O.P.No.303 of 2007 on the file of this Court.

Prayer in A.No.1089 of 2015:

Application praying that this Hon'ble Court be pleased to condone the delay of 1718 days in filing the application for setting aside the order of dismissal of the petition for setting aside the award of the Second respondent.

Prayer in Tr.O.P.No.303 of 2007:

a)Set aside the award dated 09/07/2003 passed in favour of the first respondent on all aspects;

b) direct the first respondent to pay to the petitioner the Costs of this Petition.

For Appellants :: Mr.AR.L.Sundaresan, S.C., for
Mr.AL.Ganthimathi

For Respondents :: Mr.S.R.Sundar

JUDGMENT

(Judgment of Court was made by M.M.Sundresh.J.,)

The first respondent, being a financier, has initiated arbitration proceedings against the appellants invoking the terms of the hire purchase agreement dated 24.02.2001. The first appellant was the hirer and the second appellant was the guarantor to the said agreement. An award was passed by the second respondent on 09.07.2003 on merits. A challenge was made by the appellants to the award passed in the arbitration O.P.No.998 of 2003 on the file of the City Civil Court, Chennai. Thereafter, it was transferred to this Court and re-numbered as Transfer O.P.No.303 of 2007.

2. Before this Court, the appellants were represented by a counsel. When the matter was posted before the learned Master, there was no representation on behalf of the appellants on several occasions. Thus, it was posted before the Court by the learned Master for further orders.

3. The learned single Judge has directed the registry to print the name of the appellants and post the matter on 22.04.2009 for further hearing. Thereafter, on 10.06.2009, the learned counsel on record for the appellants reported no instructions during the hearings. Despite the appellants' names having been printed, there was no representation and hence, the case was posted under the caption "for dismissal". As there was a continued absence of the appellants, Tr.O.P.No.303 of 2007 was dismissed for non prosecution on 25.02.2010.

4. Seeking to set aside the order dated 25.02.2010 passed in Tr.O.P.No.303 of 2007, the appellant has filed an application in A.No.1089 of 2015 with a delay of 1718 days in filing the application to set aside the order of dismissal.

5. The learned single Judge has dismissed the said application on 10.12.2015 on the ground that it is not open to the appellants to contend that they being illiterates were not aware of the legal consequences after having chosen to engage a Lawyer on their behalf. It was further held that there was delay at every stage attributable on the part of the appellants.

Challenging the said order, the present original side appeal has been filed.

6. The learned counsel appearing for the appellants submitted that the interest charged by the first respondent is exorbitant. The appellants having shown sufficient cause for condoning the delay, the learned single Judge ought to have condoned it instead of dismissing the application.

7. Per contra, the learned counsel appearing for the first respondent submitted that there is a huge delay and the same has not been explained properly. The application lacks bona fides. It is the appellants, who filed the arbitration O.P. No.303 of 2007. Therefore, they cannot plead ignorance and they have come to the Court only after execution petition was filed. The rate of interest has been fixed based upon the terms of the agreement governing the parties. Therefore, according to the counsel for the first respondent, interference of this Court is not warranted.

8. In the course of arguments, it was also brought to the notice that the project work assigned to the appellants had been cancelled on account of forged bank guarantee submitted. The machinery was, in fact, taken for the said project and there are numerous such cases inter se the parties arising from similar transactions for which payment is due to the first respondent/financier. The submission on behalf of the first respondent, thus, is that the appellants somehow want to save the immovable property though there are huge outstandings against the appellants relating to various transactions and the present endeavour is devious and desperate one towards that objective.

9. As rightly submitted by the learned counsel appearing for the first respondent, it is the appellants, who challenged the award passed by the second respondent. Therefore, it is for them to prosecute the same before the Court. They have kept quiet for more than five years. The affidavit filed in support of the petition seeking condonation of delay is bereft of material particulars. They have come to the Court just to avoid the execution of the award. It is seen from the proceedings relating to E.P.No.... of 2013 that even as early as on 01.03.2014, after receipt of notice, the first appellant sought to file objections to the execution petition. Even thereafter, there is a delay of more than six months in filing the application to set aside the order dated 25.02.2010 dismissing the Tr.O.P.No.303 of 2007 for non-prosecution. The award was passed as early as on 09.07.2003. The Transfer O.P.No.303 of 2007 has been dismissed as early as on 25.02.2010. The appellants have been dragging on the matter for more than a decade. The merits of the award cannot be challenged by the

appellants in this proceeding which relates to their plea for condoning the delay. It has not been disputed that the rate of interest was levied based upon the terms of the agreement governing the parties. The learned single judge has passed the order after considering the relevant materials and thus, we do not find any infirmity warranting interference. Accordingly, the Original Side Appeal fails and the same is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

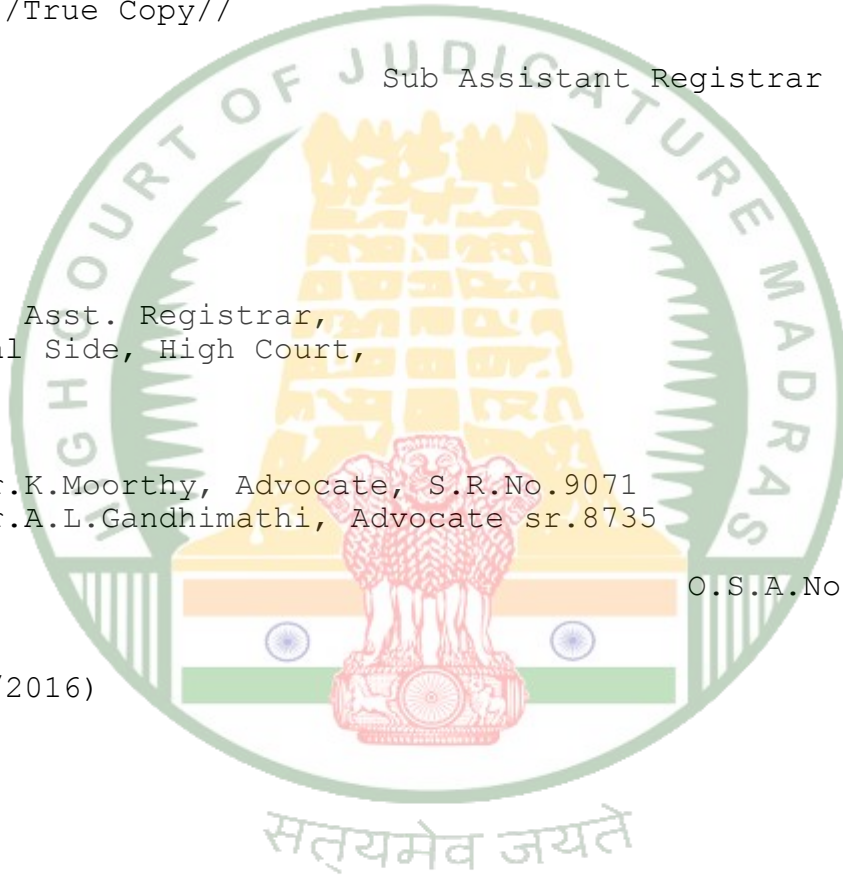
To

1.The Sub. Asst. Registrar,
Original Side, High Court,
Madras.

+1cc to Mr.K.Moorthy, Advocate, S.R.No.9071
+1cc to Mr.A.L.Gandhimathi, Advocate sr.8735

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skv (CO)
srg (25/02/2016)



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