

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2017

CORAM

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

O.P. No.648 of 2016

1.M/s.Brindavan Energy and Infra Pvt. Ltd.
Rep by its Director Mr.Vaddadi Kaameswararao
having address at Unit No.07
Neelkanth Shopping Archade Chs,
Nr. Vijaya Bank, Plot No.39
Opp Fine Arts Soc, RC Marg
Chembur East, Mumbai – 400 017.

2.Mr.Vaddai Kameswararao
S/o.Venkata Ramalingamurthy
New Asha Nagar CHS Ltd.
Plot No.34, H.No.10
Chembur, Mumbai – 400 089.

3.Mr.Pashant Venkatrama Vaddadi
S/o.Venkata Ramalingamurthy
New Asha Nagar CHS Ltd.
Plot No.34, H.No.10
Chembur, Mumbai – 400 089.

... Petitioners

Vs.

M/s.Shriram City Union Finance Limited
Having its Registered Office at
No.123, Angappa Naicken Street
Chennai – 600 001.

And its Administrative Office at

No.221, Royapettah High Road
Mylapore, Chennai – 600 004.

Represented by its Authorised Signatory
C.Gracy

... Respondent

Petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 to set aside the award dated **17.07.2009** 15.06.2016 passed in Arbitration Case No.134 of 2015 by the learned Sole Arbitrator.

For Petitioners : Mr.K.Ramasamy

For Respondent : Mr.Umashankar
for M/s.Sri & Shankar Associates

ORDER

This Original Petition is filed under Section 34 of the Arbitration & Conciliation Act, 1996, to set aside the award dated 15.06.2016 passed by the learned Sole Arbitrator.

सत्यमेव जयते

2.The first petitioner is the borrower and the others are guarantors. An agreement was entered into in the nature of a loan agreement between the petitioners and the respondent under Ex.A4 dated 30.04.2013 for a sum of Rs.15,00,000/- [Rupees Fifteen Lakhs Only].

3.As per the aforesaid loan agreement, the petitioners agreed to repay the amount with interest in 24 equal instalments. The petitioners paid only 9 instalments amounting to Rs.10,72,753/- [Rupees Ten Lakhs Seventy Two Seven Fifty Three Only] as seen from the statement of accounts marked as Ex.A7.

4. The cheques issued by the petitioners also bounced and therefore, a claim has been made by the respondent for a sum of Rs.1,000/- [Rupees One Thousand Only] for each dishonoured cheque.

5.In view of the failure of the petitioners to make the payments, the respondent asked the petitioners to make the same, which was followed by issuance of legal notices. Thereafter, the arbitration clause was invoked.

6.The learned Arbitrator issued notice to the petitioners, which was served by fixing the date of hearing as 06.01.2016. Thereafter, the matter stood adjourned on more than three occasions. Ultimately, the award was passed on 15.06.2016 by taking into

consideration the relevant materials, especially, Exs. A1 to A7. Accordingly, an award was passed directing the petitioners to pay a sum of Rs.11,28,170/- [Rupees Eleven Lakhs Twenty Eight Thousand One Hundred and Seventy Only] along with future interest @ 18% per annum.

7.The learned counsel appearing for the petitioners would submit that there is a violation of principles of natural justice. Though the notice was served, the petitioners could not make an effective representation, in view of the illness of the counsel. The petitioners being residents of Mumbai, the learned Arbitrator ought to have issued subsequent notices. In support of his submission, the learned counsel relied on the following decisions:

- (1) ***Prem Nath and Another Vs. Om Prakash*** reported in ***Indian Law Reports Vol. IX Page No.413;***
- (2) ***Dipti Bikash Sen and Another Vs. India Automobiles Ltd*** reported in ***1978 SCC Online Cal 95:AIR 1978 Cal 454;***
- (3) ***M/s.Lovely Benefit Chitfund & Finance (P) Ltd. Vs. Puran Dutt Sood and Ors.*** Reported in ***ILR 1983 I Delhi;***

8.The learned counsel also submits that some of the claims

go beyond the agreement and there is no basis for making a claim for dishonoured cheque. Interest has been wrongly taken into account. In any case, there cannot be an interest of 18% even after the award.

9.The learned counsel appearing for the respondents would submit that it is an award on merit. No ground is made out for invoking Section 34 of the Arbitration and Conciliation Act, 1996. The petitioners did receive the notice. Thereafter, the matter stood adjourned on few occasions before passing the award. The award has been passed placing reliance upon Ex.A4. Hence, no interference is required.

10.From the varied submissions made by the learned counsels, it is clear that the notices have been served. The learned Arbitrator need not wait for the parties to appear. It is their duty to appear before the learned Arbitrator. Though the first hearing was held on 06.01.2016, it was adjourned from time to time i.e. from 28.01.2016 to 24.02.2016.

11.Therefore, the contention raised by the learned counsel for the petitioners cannot be accepted. To invoke the power under

Section 34 of the Arbitration and Conciliation Act, 1996, the petitioners have to establish before the Court that they were not served with the notices, which is not the case before us. The decision relied upon by the learned counsel for the petitioners are not applicable to the case on hand. The object to the enactment is to resolve the dispute in an effective and speedy manner. Thus, the contention of the learned counsel for the petitioners on the ground of not giving sufficient opportunity stands rejected.

12.The other contentions also cannot be countenanced. The claim of Rs.1,000/- for each dishonoured cheque is as per the terms and conditions of Ex.A4. The legal expenses will have to be necessarily included being a part of the claim. After all, it is the petitioners who warranted the action. Therefore, the expenses incurred, which they have worked out, have to be paid.

13.During the pendency of the proceedings, the petitioners deposited certain amount. These amounts can be credited at the time of execution before the Court. For the said purpose, the respondents are permitted to withdraw the same, without even filing any application. This Court also finds that the interest levied is on the

higher side. If I may go by the reasoned view of the Apex Court, the interest has to be a reasonable one, especially, after the award is passed. Therefore, the interest ordered by the learned Arbitrator in the award passed is reduced to 12% as against 18%.

14. In so far as future interest claim is concerned, which forms part of the claim made by the respondents, this Court does not find anything wrong, as it is bound by the terms and conditions of the contract, from which the petitioners cannot wriggle out.

15. With the above said modifications, the petitions are dismissed. No costs.

07.11.2017

maya/mfa

Internet: Yes/No

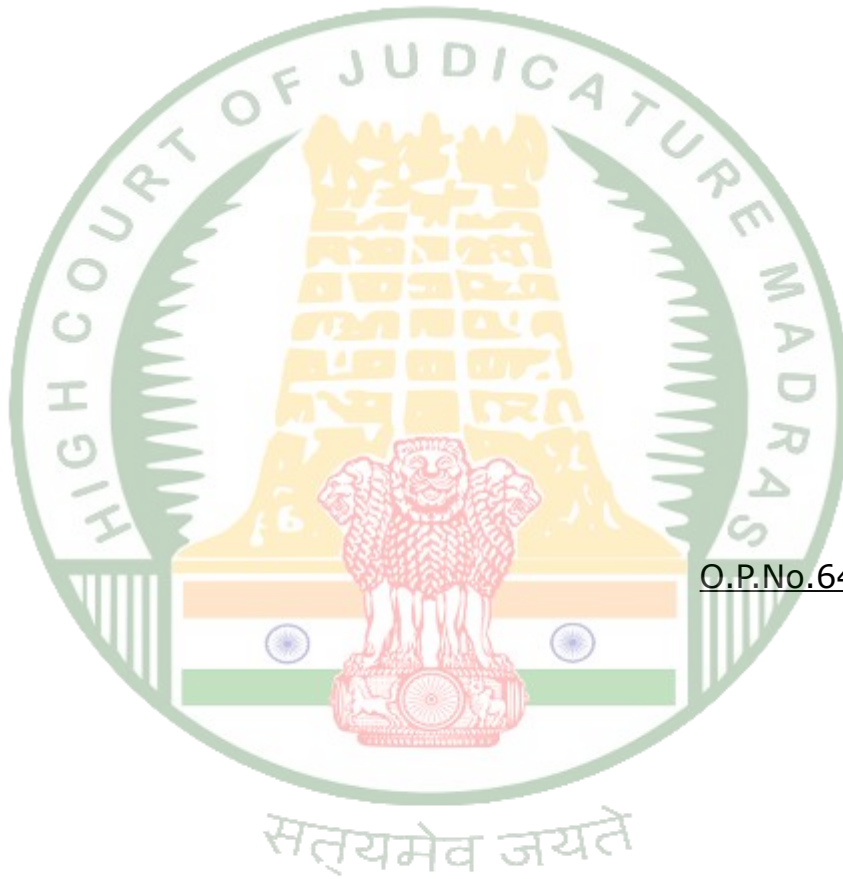
Index: Yes/No

Speaking /Non-speaking order

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M.M.SUNDRESH, J.

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O.P.No.648 of 2016

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07.11.2017