

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2017

CORAM

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

Original Petition No.22 of 2010

1.M/s.Das Lagerway Wind Turbines
Ltd., 16, Cenotaph Road,
Teynampet, Chennai - 18.

2.V.R.Raghunathan

.. Petitioners

Vs.

1.M/s.Manipal Finance Corporation
Ltd., Manipal House,
Manipal - 576 119.

2.B.I.Sharma,
Advocate, Udupi - 576 101.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 10.05.2001 in his Arbitration Proceedings No.43 of 1998.

WEB COPY

For Petitioners : Mr.A.J.Jawad

For Respondents : No appearance for R1

ORDER

Seeking to set aside the award dated 10.05.2001 in Arbitration Proceedings No.43 of 1998, the present Original Petition has been filed.

2.On 15.12.1995, a lease agreement was entered into between the petitioners and the first respondent with the petitioners as lessee. Pursuant to the lease agreement executed, the petitioners being the lessee took on lease the schedule mentioned properties viz., the assets. The petitioners did not pay the lease amount and thereafter, the arbitration clause was invoked, after duly calling upon the petitioners to pay the amount and on their failure to comply with the same.

3.On 01.06.1998, the learned Arbitrator issued notice to the petitioners. On receipt of the said notice, a reply dated 30.06.1998 was sent by the learned counsel appearing for the petitioners seeking time and requesting for copies of the documents. A further letter was sent by the counsel dated 05.11.1998, challenging the jurisdiction of the learned Arbitrator including the territorial jurisdiction.

4.By order dated 05.12.2000, the Arbitral Tribunal rejected the challenge made but the order sent to the petitioners to the last known address could not be served as it was returned with the endorsement 'left'. After waiting for quite a period of time, an award was passed by the learned Arbitrator.

5.The award is a speaking award. The learned Arbitrator took into consideration various materials including Exs.P1 to P9. Apart from the above said documents, the evidence adduced on behalf of the first respondent was also taken into consideration. The learned Arbitrator made a recording that copies of all the documents sought for have been sent to the petitioners' advocate and they are accordingly served.

6.The award was served through counsel. Thereafter, the petitioners' advocate sent a letter dated 08.06.2011 along with a petition seeking to set aside the award. It was accordingly rejected on 15.06.2001. Challenging the aforesaid award, the present original petition has been filed.

7.Strangely, this original petition has been filed on 21.10.2009 after a period of eight years. Thus, the very original petition itself is not maintainable and clearly barred by limitation as prescribed under the Limitation Act. The petitioners cannot feign ignorance as they did admittedly file the petition to set aside the award, which would clearly establish the fact that they were aware of the award. The petition filed was also returned on 15.06.2001. Even earlier, the petitioners were served with notice and appeared through lawyer. The communication sent by the lawyer dated 30.06.1998 was also replied by furnishing the documents. The petitioners deliberately did not pursue the matter thereafter. The communication of the order dated 05.12.2000 was to the last known address of the petitioners. It is for them to give change of address. Even otherwise, at least from the year 2001 onwards, when they filed the petition to set aside the award, they are aware of it. Hence looking from any perspective, this Court is unable to hold that this petition is maintainable in law.

8.One more aspect is also to be seen. For the past seven years, the first respondent has not been served even in this petition. The petitioners have been consistent in dragging on the matter.

9. In view of the above, the Original Petition stands dismissed. No costs.

22.11.2017

Index: Yes/No
mmi



WEB COPY

M.M.SUNDRESH,J.

mmi



O.P.No.22 of 2010

WEB COPY 22.11.2017