

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

O.P.No.373 of 2010

K.Gopalakrishnan,
S/o Krishnasamy,
No.28/43-B, II Street, Gill Nagar,
Choolaimedu, Chennai-94.

..Petitioner

Vs.

1.M/s Himachal Pradesh Horticultural
Produce Marketing Corporation,
Represented by its Regional Manager.

2.R.Ratnaswamy
Arbitrator, 4, Narayanan Street,
Mahalingapuram, Chennai-600 034.

3.M/s C.M.Ekambaram,
A partnership Firm,
Represented by its Partners,
No.4, Bunder Street, Chennai-600 001.

4.E.Sekar,
No.2/1, East Mogappair,
M.M.D.A., Colony, Chennai-600 050.

5.E.Ramamurthy (Deceased),
Rep., by its Legal Representatives
No.12/12, First Main Road,
East Main Road, East Mogappair,
M.M.D.A., Colony, Chennai-600 050.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 20.10.2008 passed by the second respondent.

For Petitioner : Mr.G.K.R. Pandian

For Respondents : No appearance

ORDER

This original petition has been filed seeking to set aside the award dated 20.10.2008 passed by the learned Arbitrator.

2.The first respondent, being the claimant, entered into an agreement with the petitioner and the first respondent in the Arbitration Award, which is a partnership firm. The firm was acting as a broker on behalf of the first respondent herein for marketing apples. Ex.A2 is the copy of the agreement between the first respondent and the firm.

3. Despite the undertaking given by the firm, the amount due to the claimant was not paid and therefore, after issuance of notice, arbitration proceedings have been initiated pursuant to the orders passed by this Court. The firm has undertaken to pay the balance and confirmed it under Ex.A5, which was signed by none other than the petitioner. The petitioner has also issued eight cheques. The cheques were dishonoured. The legal notice issued were not replied.

4. Accordingly, before the Arbitrator, none appeared for the respondents therein, except the petitioner herein, who has been arrayed

as respondent No.2 therein. The learned Arbitrator, after considering Exs.A1 to A11, passed an Award for a sum of Rs.6,34,083/- with interest at 18% per annum on Rs.4,61,564/- from the date of filing the claim.

5. The petitioner has also contended that the claim is barred by limitation. However, placing reliance upon Ex.A4, which shows that the petitioner has acknowledged the liability as early as on 31.03.1992, the proceedings have been initiated within a period of three years thereafter. It was, accordingly, held that the claim was not barred by limitation.

6. Another contention was raised by the petitioner stating that the firm was dissolved. Having found that there is no record to show that the firm was dissolved under the Partnership Act, the said contention was also rejected.

7. In the result, a sum of Rs.6,34,083/- along with interest at 18% per annum was awarded. The said amount of Rs.6,34,083/- is inclusive of liability of Rs.3,88,092.28 demanded under Ex.A4 by the first respondent.

8. The learned counsel appearing for the petitioner would submit that the claim is barred by limitation. This Court does not find any merit in the said contention. A factual finding has been given to the effect that liability

has been acknowledged on 31.03.1992 by the petitioner. The records would also show that the proceedings have been initiated within three years.

9. One another contention raised by the petitioner is that awarding of interest at 18% on the sum of Rs.4,61,564/- cannot be sustained in the eye of law. Though it is a commercial transaction, taking into consideration the law laid down by the Apex Court, this Court is of the view that in the interest of justice, the rate of interest fixed has to be reduced. Accordingly, this petition stands allowed modifying the interest awarded at 18% on the sum of Rs.4,61,564/- to 12 % per annum. In all other respects, the award is confirmed.

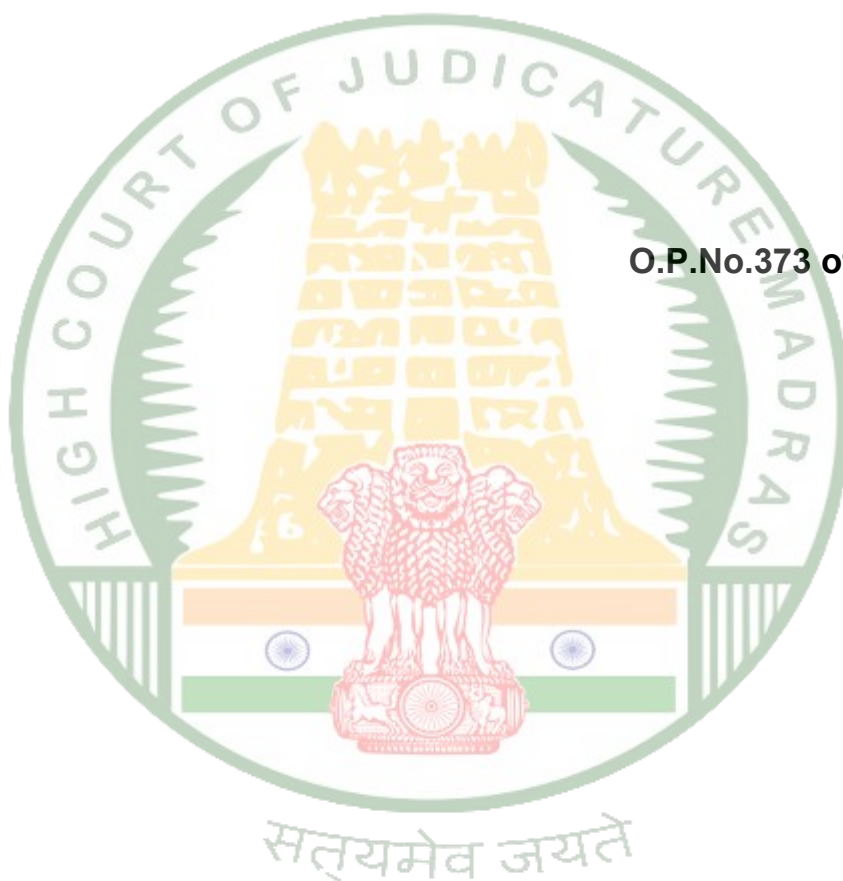
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M.M.SUNDRESH,J.



O.P.No.373 of 2010

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