

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2017

CORAM

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

Original Petition No.462 of 2010
and
Application No.2653 of 2010

Ashok Kumar Gopal

.. Petitioner

Vs.

1.M/s.Kotak Mahindra Bank Limited,
Vinay Bhavya Complex,
4th Floor,
159-A, C.S.T. Rad,
Santacruz (E),
Mumbai 400 098.

2.Vinod Kumar Mishra,
Sole Arbitrator,
D-1, Sudha Hospital,
Gokul Dham,
Goregaon (E),
Mumbai 400 063.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 12.03.2010 passed by the second respondent.

For Petitioner : Mr.S.Kanniah

For Respondents : No appearance

ORDER

Seeking to set aside the award dated 12.03.2010, the present Original Petition has been filed.

2. The matter stands adjourned from time to time. On 11.10.2017, there was no representation for the first respondent and the matter was directed to be posted on 12.10.2017 and accordingly, when the matter was taken on 12.10.2017, at the request of the learned counsel for the first respondent, it was adjourned to 24.10.2017 and once again adjourned to 31.10.2017 "for orders". Even today also there is no representation for the first respondent.

3. The first respondent has filed a claim petition before the learned Arbitrator invoking arbitration clause alleged to have been in existence as per Clause 32.2 of the agreement interse parties.

4. It is a case of payment allegedly due from the petitioner for the usage of credit cards. Award was passed in the the absence of the petitioner.

5. It is contended by the learned counsel for the petitioner that Clause 32.2 does not provide for arbitration. This Clause only provides for jurisdiction of the Court being Mumbai.

6. An application was filed in A.No.2653 of 2010 by the first respondent in the main O.P. seeking a direction to the petitioner in O.P. for furnishing security to the tune of Rs.1,14,172.85 on the premise that they have contemplated to initiate an arbitral proceedings to furnish security for the dues payable by the petitioner in O.P. wherein, following averments have been made in paragraph No.9:

"I respectfully submit that as per arbitration clause (clause 32.2) "Any dispute, difference and/or claims arising out of in connection with or in relation to this Agreement shall be settled by Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and subsequent statutory amendment, if any, to the Act, by a Sole Arbitrator to be appointed by the Bank". The High Court of Madras in which the concerned regional office/branch is situated shall have exclusive jurisdiction in relation to this agreement for all arbitration all matters. Arising in connection herewith and therewith

shall be settled by Single Arbitrator to be appointed by the Bank. The respondent without repaying his outstanding amount wants to deliberately evade the repayment of his credit card outstanding. The Applicant Bank is going to appoint a Sole Arbitrator to resolve the dispute. In the mean while, the petitioner came to understand that the respondent on the evil advise of his relatives trying to sell his assets including schedule movable properties to their parties to defraud the Applicant Bank. Hence, the petitioner is constrained to approach this Hon'ble Court to preserve the assets of the respondents for execution of the Arbitrator award, as the same should not remain a mere paper award. Hence, the prima facie case made out and balance of convenience is in favour of the petitioner and against the respondent."

7. The first respondent has categorically stated in paragraph 9 of the affidavit filed in support of Application No.2653 of 2010 that an arbitrator would be appointed in future. The prayer in the application is also pending initiation and the disposal of the arbitration proceedings. Though the date of the application is 28.04.2010, the award was passed as early as on 12.03.2010.

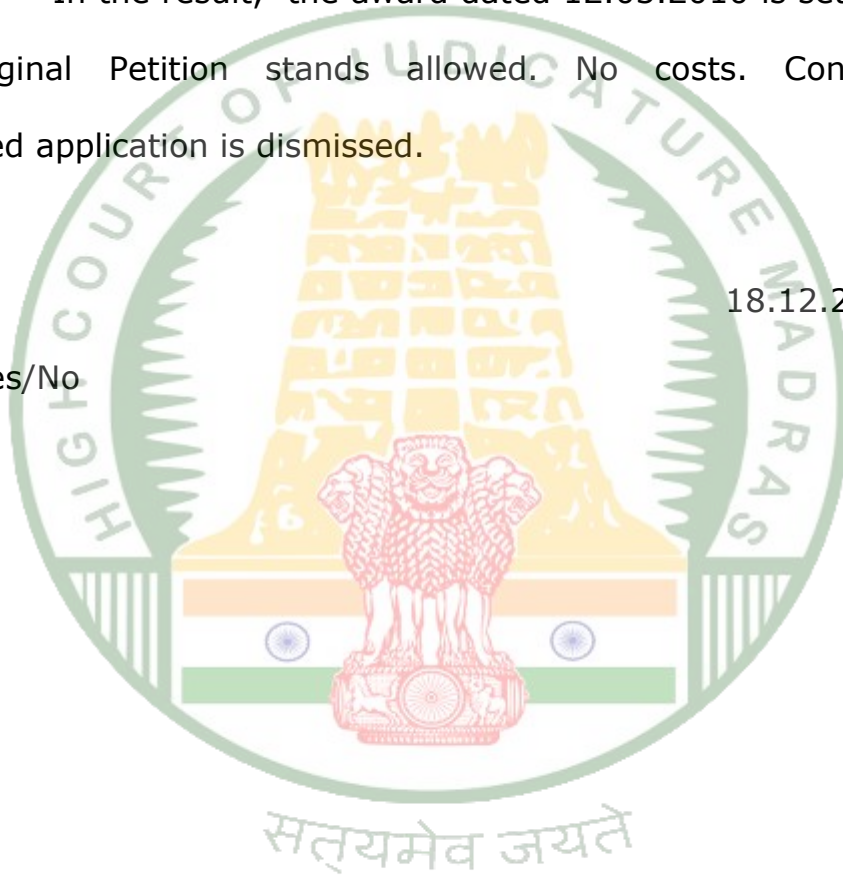
8. In such view of the matter, this Court has no other option except to set aside the award.

9. In the result, the award dated 12.03.2010 is set aside and the Original Petition stands allowed. No costs. Consequently, connected application is dismissed.

18.12.2017

Index:Yes/No

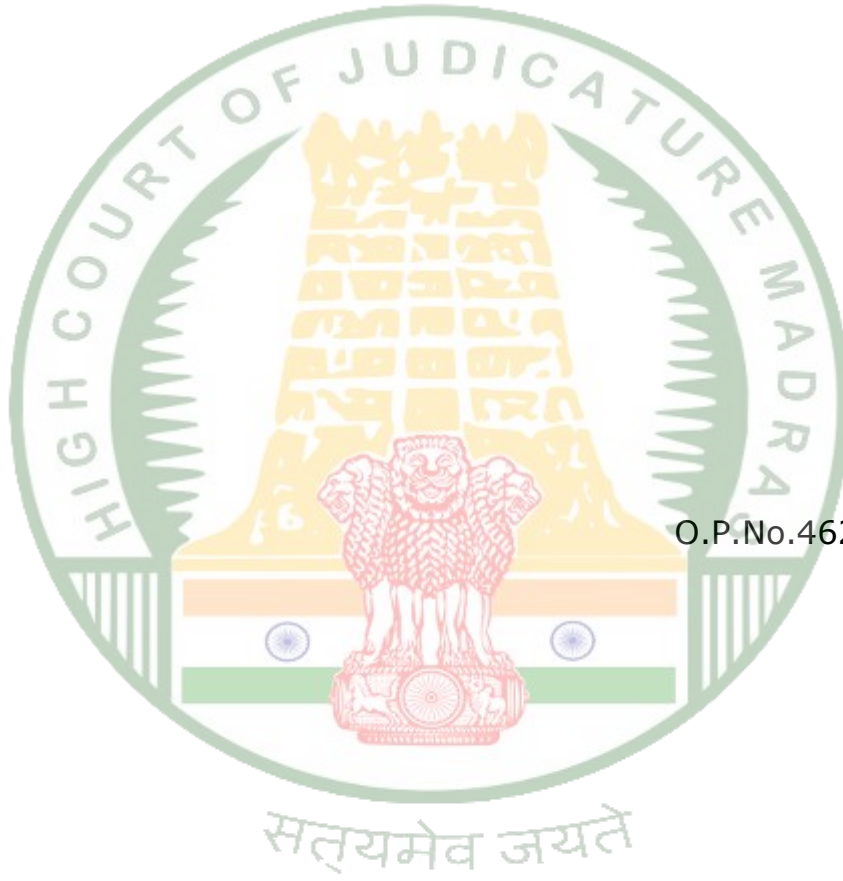
cla



WEB COPY

M.M.SUNDRESH,J.

cla



O.P.No.462 of 2010

WEB COPY

18.12.2017