

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

OP.No.1025 of 2017

1.G.Sathish Kumar
2.Abip @ Habeep Petitioners

Vs

1.M/s.Shriram Transport Finance Company Limited
Chennai-19

2.V.Paul Das, Sole Arbitrator
Chennai-11 Respondents

Prayer:- This Original Petition is filed, under Section 34 of the Arbitration and Conciliation Act, 1996, seeking to set aside the Arbitration Award, dated 14.05.2016, passed by the Arbitrator, the 2nd Respondent herein, in Arbitration Case No.1032 of 2016.

For Petitioners : Mr.A.Velmurugan

For Respondents : Mr.S.Elangovan for
M/s.K.S.Ramakrishnan-R2

Mr.V.Pauldas-R2

ORDER

This Original Petition is filed, under Section 34 of the Arbitration and Conciliation Act, 1996, seeking to set aside the Arbitration Award, dated 14.05.2016, passed by the Arbitrator, the 2nd Respondent herein, in Arbitration Case No.1032 of 2016.

2. This Court heard the learned counsel on either side.

3. According to the learned counsel for the Petitioners, without either serving notice or giving sufficient opportunity to the Petitioners, in the aforesaid arbitral proceedings, the impugned award had been passed by the Arbitrator, the 2nd Respondent herein and hence, it is illegal and perverse and accordingly, liable to be set aside.

4. As per the directions of this Court, the Arbitrator has produced the original records pertaining to the impugned arbitral proceedings before this Court today.

5. On perusal of the said original records, it is seen that the Arbitrator had sent a notice, dated 05.03.2016 to the Petitioners and the same was received by the 1st Petitioner on 23.03.2016, as is evident from the acknowledgement card. However, in respect of the 2nd Petitioner is concerned, no acknowledgement is placed before this Court to show that the said notice was served to the 2nd Petitioner. The impugned award was passed on 14.05.2016.

6. In the impugned award, it was recorded by the Arbitrator that in spite of notice dated 05.03.2016 being sent to the Petitioners and paper publication being effected in the Tamil Newspaper, Malai Murasu, on 21.4.2016, the Petitioners had not appeared before him on 23.04.2016 and remained exparte from 23.04.2016. However, on further perusal of the said original records, it is seen that no such evidence or material is available to show such paper publication being effected on the said

date.

7. Considering the said facts, relating to service through notice as well as paper publication, the learned counsel for the 1st Respondent has submitted that the matter may be remitted back to the 2nd Respondent, Arbitrator for consideration afresh. The learned counsel for the Petitioners has also agreed for the matter being sent back to the 2nd Respondent for consideration afresh.

8. In view of the above and by consent of both the learned counsel for the Petitioners and the 1st Respondent, this Original Petition is disposed of, with the following directions:-

i. The impugned award, dated 14.05.2016, made in Arbitration Case No.1032 of 2016 is set aside.

ii. The 1st Respondent shall furnish a copy of the claim petition to the Petitioners within a period of one week from the date of receipt of a copy of this order.

iii. On such receipt of a copy of the claim petition, the Petitioners shall submit their written submissions before the Arbitrator/the 2nd Respondent, within a period of two weeks thereafter.

iv. The Arbitrator/ the 2nd Respondent shall take up the matter once again, consider and pass orders, afresh, on merits and in accordance with law, within a period of eight weeks thereafter.

v. Both the parties shall cooperate with the Arbitrator for disposal of the arbitral proceedings within the said period.

vi. There will be no order as to costs.

19.09.2018

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Srcm

N.KRISHNAKUMAR, J.

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OP.No.1025 of 2017

19.09.2018