

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

O.P.No. 534 of 2015

P. Nainar

...Petitioner

Vs.

1. M/s.Cholamandalam Investment
and Finance Company Limited,
Rep. by its Senior Legal Co-ordinator
Dare House, NO.2 NSC Bose Road
Parrys, Chennai 600 001.

2. Mrs. K. Damayanthi
Sole Arbitrator,
B.No.34, Plot No.331, 2nd Main Road,
Vijaya Nagar, Velachery
Chennai 600 042.

3. Ms. Maliammal

...Respondents

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PRAYER: This Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award passed by the 2nd respondent in Arbitration Case No.D0766/2011 dated 27.11.2014.

For Petitioner : Mr.M. Lenin Samuel
For Respondents : Mr.D. Pradeep Kumar for R1

ORDER

This petition is filed to set aside the Award passed by the 2nd respondent in Arbitration Case No.D0766/2011 dated 27.11.2014.

2. Learned counsel for the petitioner would submit that the petitioner is an illiterate senior citizen and the 3rd respondent, his daughter was married to one Kandhakutty and the aforesaid Kandhakutty has approached the petitioner and obtained signature in several forms. On the basis of said forms, the said Kandhakutty had obtained loan in the name of the petitioner. At a later stage only, the petitioner came to know that the aforesaid unfilled forms have been utilised to obtain a vehicle loan, without the consent of the petitioner, for a sum of Rs.1,19,990/- from the first respondent, for purchase of GC 1000 (Auto) vehicle bearing Registration No. TN 74 K 6715. The petitioner made a complaint to the Superintendent of Police, Kanyakumari District on 18.04.2008 and the same was acknowledged by him on 21.04.2008,

alleging that the petitioner was cheated and the same was also informed to the first respondent. The petitioner came to know about the illegal contract entered between the parties, only in the year 2008. Further, the first respondent has approached the 2nd respondent Arbitrator and subsequently the ex-parte award has been passed by the 2nd respondent. According to the learned counsel for the petitioner, no notice was served on the petitioner, by the Sole Arbitrator. Therefore, he could not appear before the Arbitrator and agitate the proceedings before the Arbitrator. Challenging the ex-parte award, the petitioner has preferred the present petition before this Court.

3. According to the learned counsel for the first respondent, the petitioner has received the notice from the first respondent Finance Company, informing him to pay the outstanding due amount of Rs.92,481/- and failing which an Arbitrator will be appointed to resolve the issue, as per the terms of Agreement. The said notice was addressed to the petitioner as well as the 3rd respondent, who is the daughter of the petitioner. Both the parties have received the aforesaid notices. Thereafter, the Arbitrator has sent notices to the petitioner and the said

notices were returned for one reason or the other. Therefore, as per Section 3 of the Act, treating the same as 'deemed to be served', the Arbitrator has passed the Award. According to the first respondent, the present O.P is filed only to delay the proceedings and not allowing the first respondent to enjoy the fruits of the Award passed by the Arbitrator in his favour.

4. Heard the parties and perused the original Arbitral records produced by the respondents.

5. The learned counsel for the petitioner has raised the ground for setting aside the award that no notice was served by the Arbitrator to appear in the arbitral proceedings. On perusal of the original records placed before this Court, it is found that the Arbitrator has sent a notice on 04.10.2011 addressing the parties to appear before the Arbitrator on 08.11.2011 at 3.00 p.m., in the premises of the Arbitrator for enquiry. The aforesaid notice was returned as 'unclaimed' by both the parties. Thereafter, the Arbitrator has sent a notice on 08.11.2011 informing the petitioner and his daughter 3rd respondent to

apper for enquiry on 28.02.2012 at 3.00 p.m. The aforesaid notice has also been returned by the petitioner and the 3rd respondent, with an endorsement " refused to receive". The said covers are found in the records. Again, on 28.02.2012, the Arbitrator has sent a notice to the petitioner and the 3rd respondent directing to appear for enquiry on 29.05.2012 at 15.00 hours. The said notice was also returned with an endorsement "party out of station". The said acknowledgements are also found in the original records. Admittedly, the petitioner has received the award copy of the arbitral proceedings. The notice dated 10.08.2011 sent by the first respondent has been received on behalf of the petitioner and the subsequent notices have been returned with an endorsement, either 'refused' or 'out of station'. However, the award copy has been received. Therefore, there is no force in the contention of the petitioner that the 2nd respondent Arbitrator has not afforded an opportunity to the petitioner to appear before the Arbitrator. Hence, the issue raised by the petitioner is liable to be rejected.

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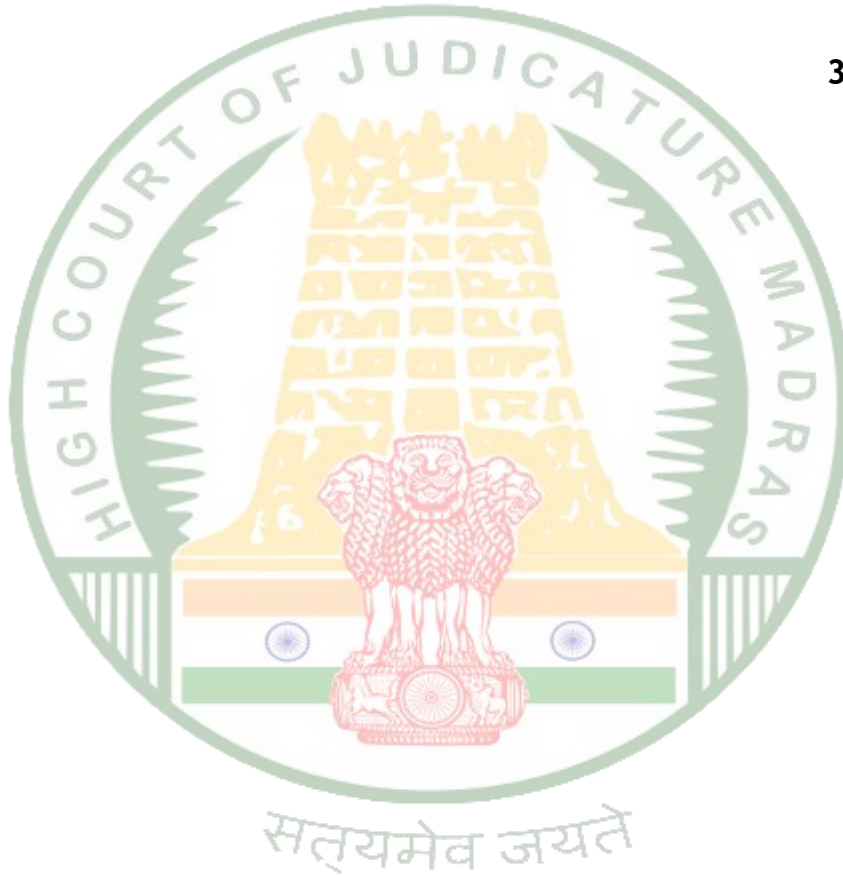
6. The other contention of the petitioner is that his son-in-law Kandhakutty has obtained his signatures in the unfilled forms and the

said forms have been misused to obtain the loan for purchase of the vehicle and that the petitioner was not aware of the loan agreement entered between the parties. In support of his contention, the petitioner has also drawn the attention of this Court to the complaint preferred by him to the Superintendent of Police, Kanyakumari on 18.04.2008, alleging that the said unfilled forms have been misused for creating forged documents to obtain the loan. Eventhough, copy of the said complaint has been filed in the typeset of papers, no such ground is raised in the petition. It is surprising that when such a serious allegation is made before the Superintendent of Police in the year 2008, no action has been taken by the petitioner to prove the genuineness of the allegation made in the complaint. If at all the allegation of the petitioner is true, he should have approached the appropriate forum to prove the fraud of the 3rd respondent. No materials have been placed to prove the effective steps taken to question the said agreement. On perusal of the records as well as the representation made to the Superintendent of Police, since no steps have been taken by the petitioner to substantiate the allegation, would clearly show that the said allegation is unfound and the same is rejected.

7. In view of the above facts, this Court finds no error or illegality in the award passed by the Arbitrator. Hence, this Original Petition is dismissed. No costs.

31.10.2018

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D.KRISHNAKUMAR.J.,

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