

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.03.2018

CORAM

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

O.P.No.647 of 2017

Rajagopalan,
S/o S.Venkatachalam,
D-5, Mahadevan Apts.
305, TTK Road, Alwarpet,
Chennai-600 018.

.. Petitioner

Vs.

1.M/s Shriram City Union Finance Ltd.,
having its Registered Office at:
No.123, Angappa Naicken Street,
Chennai-600 004.
and its Administrative office at
No.21, Royapettah High Road,
Mylapore, Chennai-600 004.
Rep., by its Authorised Signatory
Mr.Ganesh Sanker.

2.Mrs.Bharathi Rajagopalan,
Proprietrix of M/s Bardwaj Associates,
Flat No.10, 3rd Floor, Padmasri Apt.,
No.34, Jayalakshmipuram 1st Street,
Nungambakkam, Chennai-600 034.
Also at D-5, Mahdevan Apts.,
305, TTK Road, Alwarpet,
Chennai-600 018.

3.A.K.Suresh Kumar, S/o M.Kannan,
No.23, Srinivasa Iyengar Street,
West Mambalam, Chennai-600 023.

4.S.D.Rama Prabha,
D/o Sivakumar, No.8, Armugam Street,
Triplicane, Chennai-600 005.

5.D.Bhaskar, Sole Arbitrator,
No.1, 3rd Floor, Rathinammal Street,
Rangarajapuram, Kodambakkam,
Chennai-600 024.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to call for the entire records relating to the Arbitration Award in Arbitration Case No.7 of 2015 dated 15.09.2015 passed by the learned Arbitrator, the 5th Respondent herein and set aside the same.

For Petitioner : Mr.P.T.Geotom

For Respondents : Mr.R.Umashankar for
M/s Sri & Sankar Associates

ORDER

The petitioner and the second respondent are the husband and wife. The second respondent sought for loan from the first respondent under Ex.A1 dated 23.08.2011, for running a business, in which she is a Proprietrix of M/s Bardwaj Associates. The petitioner and respondents 3 and 4 stood as guarantors. Accordingly a sum of Rs.20 lakhs was

sanctioned under Ex.A3.

2. The second respondent paid only 12 instalments and thus, committed default. A demand notice was issued on 25.07.2014 under Ex.A6. Despite the same, the petitioner and respondents 2 to 4 did not make the payment. Thus, an arbitration clause was invoked by letter dated 03.09.2014. The letter sent to the second respondent was returned as unserved. The Tribunal thereafter issued arbitration notice to all the respondents. The notice sent to the petitioner and the first respondent were served. The notice sent to the third respondent was returned as "Refused" and the one sent to the fourth respondent was returned as "not known".

3. During the proceedings, the petitioner was represented by the counsel, who filed vakalath. There was also the counsel representing the second respondent, who undertakes to file vakalath. From 19.11.2014, the matter stood adjourned on numerous occasions at the instance of the petitioner and the second respondent. All these facts have been narrated in paragraphs 5 and 6 of the Award. The petitioner filed a petition under Section 16 of the Arbitration and Conciliation Act, 1996, which was also dismissed. Thereafter, the matter stood adjourned on quite few occasions.

Conveniently, the petitioner and the second respondent did not appear. Accordingly, they were set ex-parte along with others and thereafter, relying upon Exs.A1 to A8, an Award was passed. The aforesaid Award is sought to be predicated before this Court only by the petitioner, who was arrayed as the second respondent before the Tribunal.

4. The learned counsel appearing for the petitioner would submit that he was the third party to the loan agreement. He never stood as a guarantor. It is done clandestinely by the second respondent being his wife. Now they are living separately. Proceedings have also been initiated by the first respondent against the second respondent under Section 138 of the Negotiable Instruments Act, 1881. Thus, the Award requires to be interfered with.

5. The learned counsel appearing for the first respondent would submit that the factual narration made by the Tribunal itself would be sufficient to dismiss the petition. This Court cannot go into the factual adjudication made. The contention raised is only an after thought. The proceedings initiated against the second respondent under Section 138 of the Negotiable Instruments Act, 1881, would not stand as a bar to proceed against the principal borrower and the guarantor, by way of an adjudication

before the Tribunal.

6. The Tribunal passed an Award based upon the relevant records. The petition filed by the petitioner was dismissed. Thereafter, the petitioner has not chosen to appear before the Tribunal. Having aware of the proceedings before the Tribunal, the petitioner cannot feign ignorance on the ground of not knowing further proceedings. After all, the petitioner was represented by the counsel. The vakalath was very much intact. Notices were sent on the petitioner and the second respondent on the very same address. Thus, the contention of the petitioner that he was wrongly implicated into the loan agreement as a guarantor by his wife cannot be countenanced. Even otherwise, it is the matter between the petitioner and the second respondent. The fact that the petitioner and the second respondent are the husband and wife is not in dispute. They have been living together during the proceedings in the same address. The Tribunal was not expected to wait for the parties to render its Award. Admittedly, there is a default committed. The initiation of the proceedings under Section 138 of the Negotiable Instruments Act, 1881, cannot be a bar for the adjudication by the Tribunal. Such a scope and ambit are totally different and that the petitioner and respondents 3 and 4 are not the parties therein. The liability of the petitioner and respondents 3 and 4 is

admittedly co-extensive along with the second respondent, being the guarantors. This Court cannot embark on a journey into a facts sought to be raised by a party, who did not appear before the Tribunal, invoking Section 34 of the Arbitration and Conciliation Act, 1996. The Award was passed by considering Exs.A1 to A8. Thus, this Court does not find any merit in this petition and accordingly, the original petition stands dismissed. No costs.

7. However, this Court finds the awarding of 18% interest cannot be sustained in the eye of law being high as against the normal rate of interest levied post award till its realisation. Accordingly, the rate of interest awarded by the Tribunal at 18% is reduced to 12%.

16.03.2018

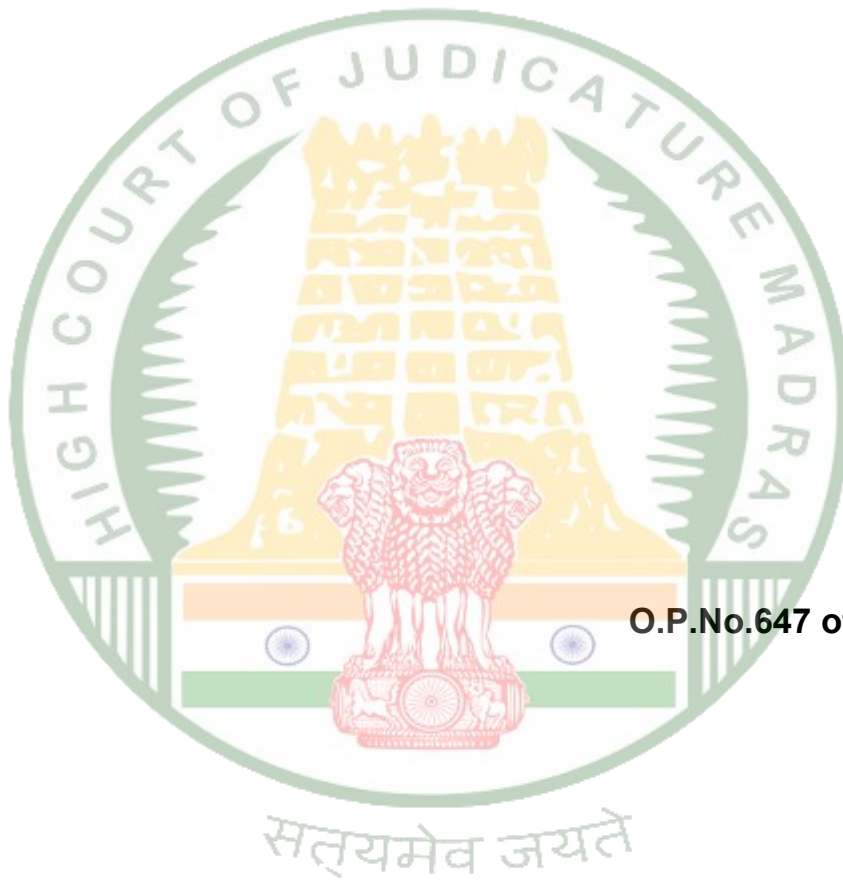
raa

सत्यमेव जयते

WEB COPY

M.M.SUNDRESH,J.

raa



O.P.No.647 of 2017

WEB COPY

16.03.2018