

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

**O.P. No.118 OF 2016**  
and  
**A. No.5772 of 2018**

Tamal Kumar Paine

..Petitioner

Vs.

1. M/s. IndusInd Bank Ltd.

2.Mr.Jaya Chandra Babu  
Advocate & Sole Arbitrator.

3. Tutul Kumar

..Respondents

The Original Petition has been filed to set aside the Award dated 17.08.2015 passed by the Second respondent/ Arbitrator in JB/ACP. No.385/2015.

For Petitioners : Mr. E. Balaji

For Respondent-1 : Mr. K. Moorthy

For Respondent -2 : N.A.

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**O R D E R**

This Original Petition has been filed by the petitioner to set aside the Award dated 17.08.2015 passed by the Second respondent/Arbitrator in JB/ACP. No.385/2015.

2. The brief facts of the case is as follows:

The petitioner being Guarantor for the loan amount of Rs. 10,80,000/- borrowed by the third respondent herein for the purchase of vehicle, was called upon for arbitral proceedings for having committed default in making payment of instalment. In spite of notice served upon the petitioner, he did not enter appearance before the arbitral proceedings. Therefore, an Ex-parte award dated 15.05.2015 in JB/ACP No.385 of 2015 was passed by the Arbitrator allowing the claim petition filed by the first respondent herein. Being aggrieved by the same, the petitioner has filed this original petition to set aside the aforesaid arbitral award.

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3. The learned counsel for the petitioner would submit that the second respondent/arbitrator has passed the ex-parte award without affording sufficient opportunity for the parties and considering the averments raised by the petitioner. It is further stated that while the

date of hearing was fixed on 17.07.2015 by the arbitrator, the arbitrator has conducted hearing on 17.08.2015 and passed an ex-parte award. Therefore, the Ex-parte award passed by the arbitrator is contrary to law and is liable to be quashed. Hence, this Original Petition has been filed.

4. The learned Counsel for the first respondent would submit that the first respondent has also filed an application in A. No.5772 of 2018 wherein it has been stated that the Arbitrator has sent a communication dated 26.06.2015 to the petitioner to appear for hearing before arbitral proceeding on 17.07.2015. But, the arbitrator has conducted the hearing on a different date. i.e. 17.08.2015. Therefore, considering the inconsistency of hearing date fixed by the arbitrator, the petitioner may be given one more opportunity to defend his case before the arbitrator by resuming the arbitration proceedings. Hence, the learned counsel for the first respondent has filed the aforesaid application seeking for direction to adjourn the proceedings with time limit and direct the 2nd respondent/arbitrator to resume the arbitration proceedings in terms of under Section 34(4) of Mediation and Conciliation Act, 1996.

5. Considering the said fact that the petitioner has not chosen to file reply statement before the arbitrator, the learned arbitrator passed an ex-parte award and at the same time, the arbitrator has conducted arbitral proceeding on a different date, in the interest of justice, in order to give an opportunity to the petitioner, as agreed by both the parties, this Court is inclined to pass the following orders:

(i) The award dated 17.08.2015 passed in JB/ACP No.385 of 2015 by the Arbitrator is hereby set aside.

(ii) The petitioner is directed to undertake to file Vakalat and file reply statement within two weeks from the date of receipt of copy of this Order.

(iii) On receipt of reply statement and by consent of both the parties, the Arbitrator, namely, Mr.C. JayaChandra Babu, B.A., B.L., shall proceed with the proceedings in accordance with law after providing opportunity and conduct the arbitral proceedings by passing the award on merits as expeditiously as possible preferably, within a period of 12 weeks, thereafter.

(iv) Both the parties undertake to co-operate with the proceedings, for disposal of the matter by the Arbitrator, without getting unnecessary adjournments.

With the above direction, the original petition is disposed of and the application is closed.

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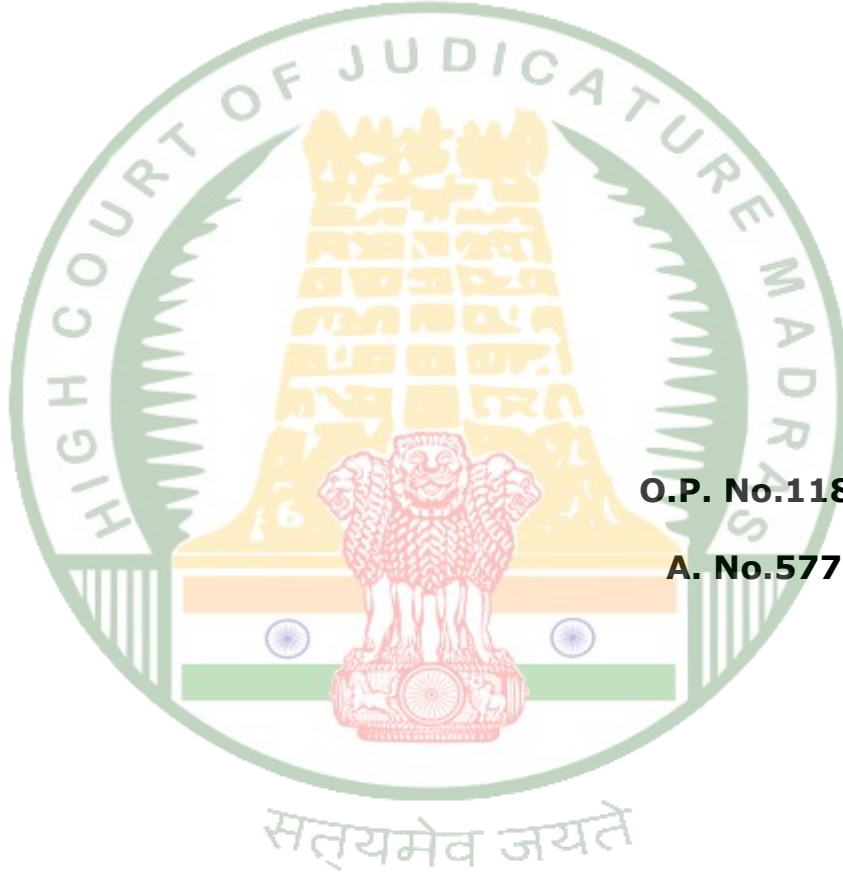


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**D. KRISHNA KUMAR, J.**

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