

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

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

O.P.No.349 of 2013

M/s Angel Capital & Debt Market Ltd.,
G1, Akruthi Trade Centre,
Road No.7, MIDC Marol,
Andheri (E), Mumbai-400 093.
Maharastra.

..Petitioner

Vs.

1.Mr.K.C.Parasurami Reddy,
G2, Sai Apartments,
PO Seethanna Dhara,
North Extension,
Vishakhapatnam,
Andra Pradesh-530 013.

2.Mr.R.Subramanian,
Arbitrator,
National Stock Exchange of India Ltd.,
2nd Floor, Ispahani Centre, Door No.123-124,
Nungambakkam High Road, Nungambakkam,
Chennai-600 034.

.... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 01.04.2009 passed in Arbitration Case No.A.M.F&O/C-0319/2008 and allow the claim made by the petitioner.

For Petitioner : Mr.P.Gurusamy

For Respondents : No appearance

ORDER

The first respondent has executed a Member Client Agreement dated 25.05.2007 and was trading with the petitioner in F&O segment as also cash segment of NSE. As there lies an outstanding amount due to the petitioner from the first respondent in the ledger account, after issuing notices, the arbitration clause was invoked.

2. During the arbitration, the first respondent did not appear. The notice sent was returned with an endorsement "no such person". The learned Arbitrator has dismissed the claim on the sole ground that the petitioner has not produced the supporting document to substantiate either placement of orders by the first respondent or receipt of contract notes by the first respondent. Challenging the same, the present original petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the transactions are on-line and therefore, the award passed by the learned Arbitrator requires reconsideration.

4. Unfortunately, the first respondent has not been served though the award was passed way back in the year 2009. This petition was numbered in the year 2009 after condonation of the delay. Therefore, at every point of time, the petitioner was not diligent in proceeding with the matter.

5. This Court does not find any error in the award passed. Merely because the transactions were on-line, it will not take away the duty of the petitioner in filing the copies of the same before the learned Arbitrator. Admittedly, no document was filed in support of the claim. The learned Arbitrator has given a finding that the evidence was lacking for the relevant period though some materials were produced. Secondly, the first respondent was not served admittedly. The endorsement saying "no such person" cannot be construed as a proper service. The same position continues even before this Court. Now more than

eight years have elapsed. Therefore, looking from any perspective, this Court is of the view that this petition is liable to be dismissed. Accordingly, the original petition stands dismissed. No costs.

raa

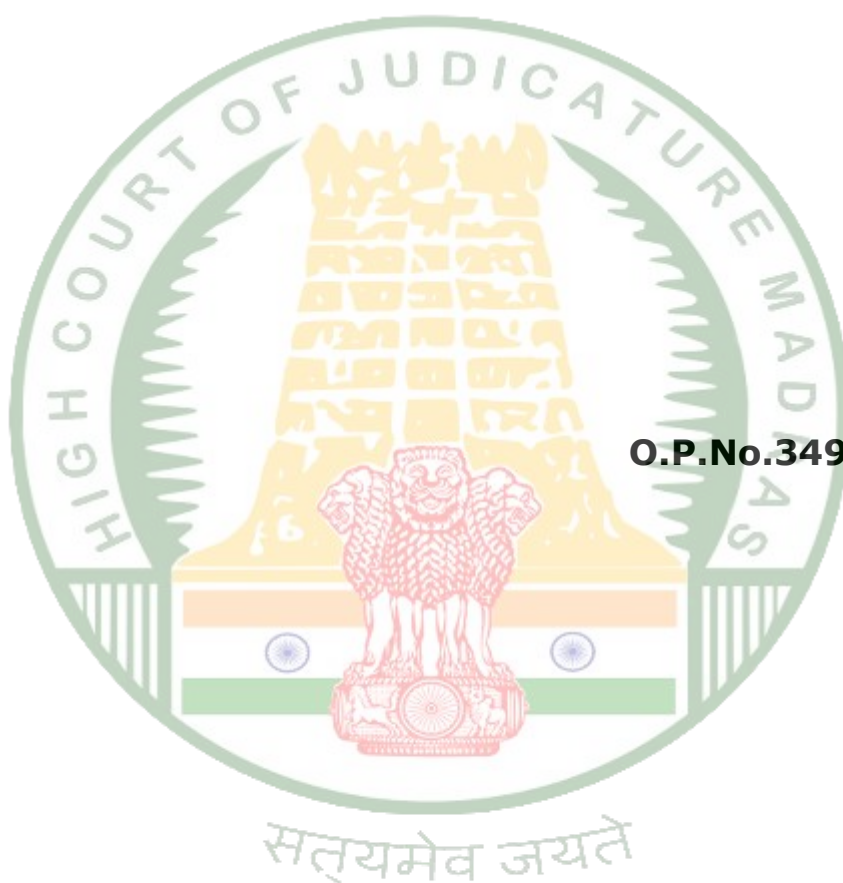
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M.M.SUNDRESH,J.

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