

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

O.P. No.162 of 2014

Sasikumar Samiyappan

... Petitioner

Vs

1. M/s.Kotak Mahindra Bank Ltd.,
Rep.by its Authorities Signatory,
2nd Floor, 3 Doss India Tower,
2nd Line Beach, Parrys,
Chennai 600 001

2. K.Uthrapathi

3. D.Saravanan
Sole Arbitrator

... Respondents

Prayer: Original Petition filed under Section 34(1) and (2) of the Arbitration and Conciliation Act, 1996, to set aside the arbitration award dated 08.11.2013 passed by the third respondent in arbitration case A.C.P.(Kotak) No.293/2013.

For Petitioner : M/s.K.C.Karl Marx

For Respondents : No appearance

ORDER

The learned counsel for the petitioner submitted that the petitioner borrowed loan amount of Rs.4,05,578/- for purchase of MF 1035 DI Mahashakthi vehicle with engine No.S33789899: Chassis No:685633 from the first respondent Bank agreeing to repay the same along with interest at the rate of 36% interest per annum in monthly installments. Since the petitioner did not pay the monthly installment regularly, the first respondent has filed a claim petition before the arbitrator for recovery of the outstanding amount.

2. According to the learned counsel for the petitioner, no notice was served to the petitioner except the arbitral award copy. Challenging the exparte award, the petitioner has filed the present original petition on the ground that the third respondent without following the procedures, had passed the exparte order.

3. Notice has been served on the second respondent on 28.03.2014 and on third respondent and first respondent on 01.04.2014, but none appeared on behalf of the respondents. This Court also adjourned the original petition from time to time and posted for orders. Today also none appeared for the respondents.

4. Hence, this Court is of the view that on the basis of the available records in the original petition could be decided and this petition is taken up for disposal.

5. On perusal of the award, it is seen that the notice has been sent to the respondents and had been returned with postal remarks “refused”. Since the notice was not served on both the respondents a fresh notice was ordered to be sent to both the respondents and the matter was adjourned to 12.08.2013. Notice sent to both the respondents had been returned again with an endorsement “unserved”. Therefore, the arbitrator has proceeded with the arbitral proceedings and passed the exparte award.

6. The specific case of the petitioner is that the first respondent has marked the documents as claimants exhibits 1 to 10. But the refused notice dated 15.07.2013 has not been marked as a document. Further the respondents have not appeared before this Court. Since, both the first respondent/Company as well as the R3 arbitrator have not appeared before this Court, this Court cannot able to verify the original records to find out the fact that notice has been served on the petitioner and the same was returned with an endorsement “refused”.

D.KRISHNAKUMAR, J.,

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7. In the absence of the materials, accepting the contention of the petitioner, this Court is inclined to set aside the exparte award passed by the third respondent and the original petition is allowed. It is open to the respondents, if so advised to proceed afresh in accordance with law. Accordingly the original petition is allowed. No Costs.

24.10.2018

Index: Yes/No

Internet:Yes/No

Speaking order/Non-Speaking order

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