

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

O.P.No. 268 of 2014

Md.Farrok

...Petitioner

Vs.

1. M/s.Shriram Transport Finance
Company Limited,
Rep. by GPA Holder Mr.S.Varadhan
Mookambika Complex 3rd Floor,
No.4 Lady Desika Road,
Mylapore, Chennai 600 004.

2. V.Pauldas
Sole Arbitrator,
No.124, Kutchery Road,
(Near Raja Kalyana Mandapam),
Mylapore, Chennai 600 004.

3. Raja Hussain

...Respondents

PRAYER: This Original Petition filed under Section 34(1) & (2)(iii) of the Arbitration and Conciliation Act, 1996 to set aside the Ex-parte Arbitration Award in Arb.Case No.966 of 2012 dated 11.07.2013.

For Petitioner : Mr.Venkatesh Mohanraj

For Respondents : Mr.K.S.Ramakrishnan for R1

Mr.V.Pauldas, Arbitrator.

ORDER

This petition is filed to set aside the Ex-parte Arbitration Award in Arb.Case No.966 of 2012 dated 11.07.2013.

2. The petitioner obtained re-finance loan towards purchase of a lorry, under Loan cum Hypothecation Agreement dated 01.05.2006, for a sum of Rs.9,69,450/-, to be repaid in 60 instalments. Since the petitioner committed default in repaying the instalments, the first respondent filed a claim petition before the Arbitrator. Since petitioner failed to appear before the Arbitrator, on 11.07.2013, the Arbitrator passed an ex-parte Award against the petitioner and the third respondent herein, directing to pay the sum of Rs.6,58,000/- together with 18% per annum from the date of claim petition till the date of realization, jointly and severally. Challenging the said award, the present petition is filed.

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3. The learned counsel for the petitioner would submit that the ex-parte Arbitration Award was passed on 11.07.2013, without the knowledge of the petitioner. It is the case of the petitioner that the award has been passed without serving any notice to the petitioner. The

arbitrator has passed the award, without granting any opportunity to the petitioner to defend his case.

4. The learned counsel for the first respondent would submit that sale notice has been served by the respondent on 10.07.2007. The said notice has been received by the petitioner. Thereafter, the notice issued by the Arbitrator to the petitioner has been returned with an endorsement "left". The learned counsel for the respondents have produced the original records pertaining to the arbitral proceedings.

5. On perusal of the original records pertaining to the Arbitral proceedings, it is found that the notice dated 01.08.2007 issued by the respondent Company has been received by the petitioner. Thereafter, the notice dated 06.11.2012 was issued to the petitioner through Registered Post Acknowledgement Due, to the same address, by the Arbitrator, calling both the parties to appear before the Arbitrator on 28.12.2012 at 3.00 p.m., has been returned unserved, with an endorsement "party left without instructions, returned to sender". However, the notice sent to the third respondent herein was not returned. Hence paper publication was caused by the respondent in a

Kannada Daily newspaper directing the first respondent to appear before the Arbitrator on 20.02.2013. But, the petitioner has not appeared on 20.02.2013 and remained ex-parte. Therefore, the ex-parte award has been passed.

6. On perusal of the typeset of papers filed along with the Original Petition, it is seen that the petitioner is residing in the same address. Therefore, there is no force in the contention of the petitioner that the said notice has not been served, to set aside the ex-parte award. As rightly pointed out by the learned counsel for the respondent, the petitioner has received the notice on 01.08.2007 and the said acknowledgement is also found in the original records. Subsequently, the communication was returned with an endorsement 'left'. Therefore, the petitioner has not disclosed the fact of receipt of the notice in the affidavit. Non-disclosing the material fact, would amount rejection of the petition. In view of the judgement of the Hon'ble Supreme Court in the case of *S.P. Chengalvaraya Naidu vs. Jagannath*, reported in **1994 (1) SCC 1**, the petitioner who approached this Court with unclean hands is not entitled to the relief.

7. Therefore, this Court is of the view that there is no warrant to set aside the ex-parte award by the Arbitrator. Hence, the Original Petition fails and the same is dismissed. No costs.

24.10.2018

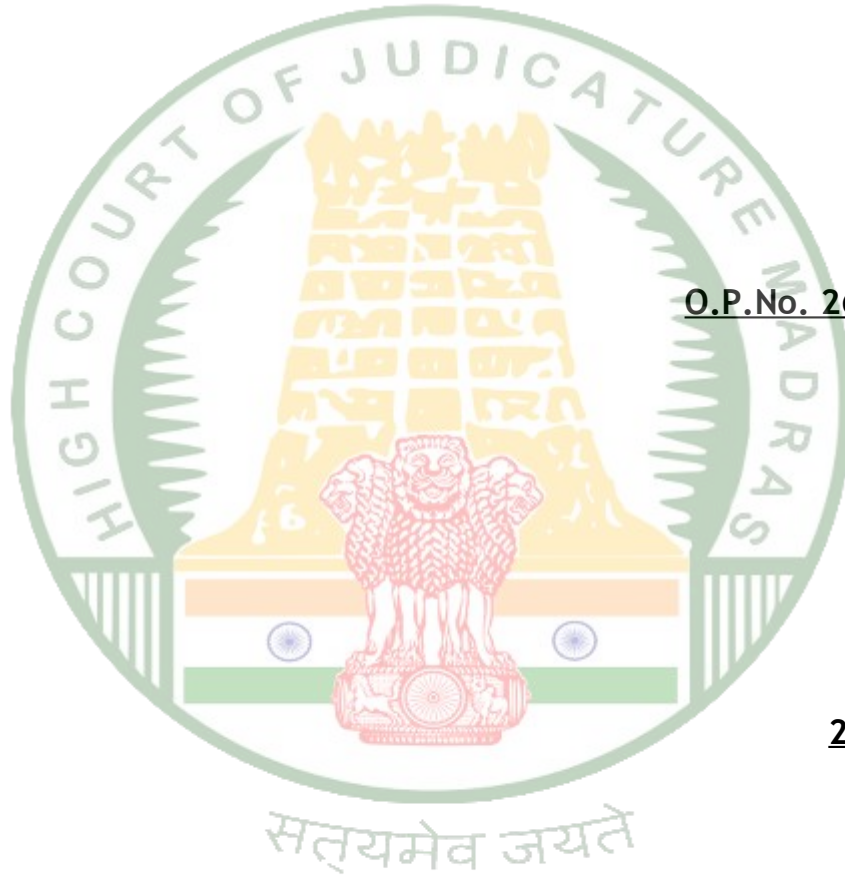
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D.KRISHNAKUMAR.J.,

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