

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2018

CORAM

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

Original Petition No.691 of 2013

MMTC Limited rep. by its
General Manager N.Prasanna Chandran ... Petitioner

Vs.

1.South India Corporation (Agencies) Ltd.,
(SICAL) rep. by its Vice President,
Adyar House, Chennai - 85.

2.Justice K.Swamidurai (Retd.),
Arbitrator. ... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation
Act, 1996 to set aside the Award dated 20.05.2013.

For Petitioner : Mr.M.Santhanaraman

For Respondents : No appearance

ORDER

Heard the learned counsel appearing for the petitioner. Despite
service of notice, none appears for the respondents.

2.The first respondent was the handling agent of the petitioner dealing with cargo and manure - Urea and Phosphate. Two agreements have been entered into for the aforesaid purpose on 09.01.1995 and 15.07.1995. As there was mishandling resulting in losing of the goods, the agreements were terminated. The first respondent initiated arbitration proceedings by making claims. The petitioner also made counter claims.

3.The issues were framed and arguments have been heard. The award was reserved on 02.07.2007. However, without answering the relevant issues, the award was delivered on 20.05.2013. In the award, most of the claims of the first respondent were allowed as against few of the counter claims. It is put into challenge by the petitioner in this original petition.

4.Learned counsel appearing for the petitioner would submit that there is an unexplained inordinate delay in the award passed. The principle which is otherwise to be made applicable to the Courts in delivering the judgment, after hearing the arguments, will have to be extended in such a case. The learned Arbitrator did not even answer

all the issues but passed a cryptic award. In fact, there were 11 issues framed. Thus the award will have to be set aside.

4.A perusal of the award would show that 11 issues have been framed but not answered. In such view of the matter, this Court is of the view that the award cannot be sustained in the eye of law. The said submission made by the learned counsel appearing for the petitioner also deserves to be considered in the affirmative. When the arguments were concluded and the pronouncement of award was reserved as early as 2007, there is no justification in delivering it after nearly a period of six years. What weighed in the mind of the learned Arbitrator could never be known to anybody. Despite service of notice, none appears for the second respondent also. The Apex Court has already set aside the judgments of the High Courts in such situations. One can reasonably presume that the Court which reserves judgment was bound to loose the contentions raised after considerable period of time. Even with respect to commercial litigations, the time limit is fixed. There is no explanation forthcoming for the inordinate delay in delivering the award, that too, without answering the issues framed.

5. In such view of the matter, this Court is inclined to set aside the award. Accordingly, the same is set aside. Liberty is given to the parties to seek fresh arbitration proceedings, if so advised.

6. Though the learned counsel for the petitioner submits that challenge is only to the disallowed portion with specific reference to the award of the claim made in favour of the first respondent and the disallowed portion insofar as the counter claims, this Court is not inclined to accept the said submission. When once a finding is given on the ground of non-answering the issues and the delay in delivering the award, the consequence will have to follow. The petitioner cannot be permitted to approbate and reprobate. Therefore, it is made clear that the award as a whole is hereby set aside.

7. In the result, the original petition is allowed. No costs.

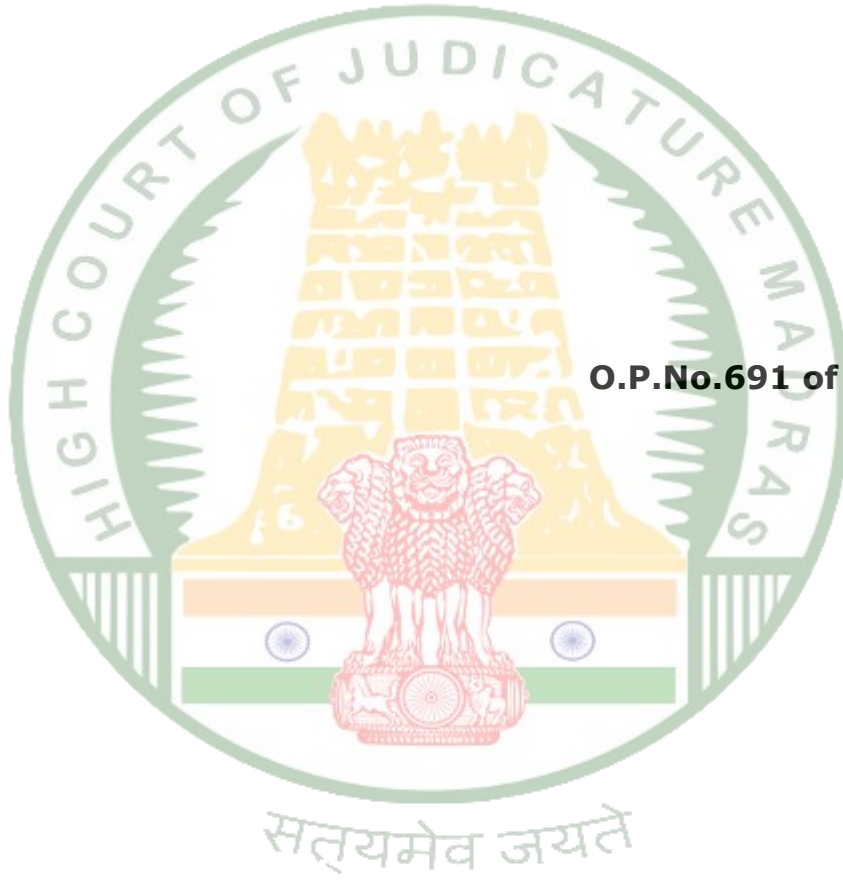
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Index: Yes/No
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M.M.SUNDRESH,J.

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