

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

O.S.A No. 460 of 2018
and
C.M.P.No.21352 of 2018

M/s.Dharma Constructions,
Rep by A.Dharma Reddy ...Appellant

-vs-

1.M/s.IndusInd Bank Ltd.,
Rep by its POA S.T.Krishnekumar,
having its Consumer Finance Division at
No.115 & 116, G.N.Chetty Road,
T.Nagar, Chennai - 600 017.

2.V.Adishesu

3.S.Rajeni Ramadass
Arbitrator ...Respondents

Original Side Appeal filed Under Order XXXVI Rule 11 of O.S.
Rules r/w Clause 15 of the Letters Patent to set aside the fair
and final order dated 18.06.2018 passed in O.P.No.561 of 2011.

For Appellant : Mr.S.Gopinathan

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

Appellant is the petitioner before the learned single Judge. There was a default committed by the appellant pursuant to the loan agreement entered into between the parties on 06.08.2007. The machinery was repossessed and sold. For the remaining amount, the arbitration clause was invoked. The award was passed on 11.04.2011 and it was challenged before the learned single Judge. The learned single Judge, after finding that the award is

speaking one and relevant materials have been taken into consideration including the order, was pleased to dismiss the Original Petition filed by the appellant. Incidentally, it was held that the case of the appellant would not come within the purview of Section 34 of the Arbitration and Conciliation Act, 1996. Challenging the same, the present Original Side Appeal has been filed.

2.Learned counsel appearing for the appellant has submitted that pursuant to the loan agreement, the machinery was sold. It was a unilateral action. The machinery was sold for a meagre sum. This aspect has not been taken into consideration properly by the Arbitrator as well as the learned single Judge.

3.The rigour imposed on the Court while exercising the power under Section 34 of the Arbitration and Conciliation Act, 1996 would be equally applicable to an appeal arising out of the order passed thereunder, especially when a finding has been rendered that there is no perversity in the award. The appellant did not dispute the documents marked by the first respondent under Exs.A1 to A6. Ex.A2 is the loan agreement executed by the appellant. Ex.A3 is the copy of the invoice raised. There was a final demand notice issued intimating the termination of loan agreement and reference of dispute to arbitration. Thereafter, Exs.A5 and A6 are the copies of the statement of accounts and the statement of additional financial charges. Thus considering the above, the learned Arbitrator was pleased to pass the award, which has been approved by the learned single Judge.

4.In such view of the matter, we do not find any error warranting interference. Accordingly, the Original Side Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
The Sub Assistant Registrar,
Original Side, High Court, Madras.

+lcc to Mr.S.Gopinathan, Advocate sr.85776

O.S.A.No.460 of 2018

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srg 25/01/2019