

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Original Petition No.865 of 2010

1. Mrs.A.A.Barakath Nisa
2. Mr.N.M.Abdul Mohammed

.. Petitioners

Vs.

1. M/s.Kasi Housing Development Limited,
Rep. by its Proprietor Mr.M.K.Mathivathanam
Plot No.91 & 92, Jawaharlal Nehru Salai,
Ashok Nagar, Chennai - 600 083.
2. Mrs.Sameema Begam,
D/o.late N.M.Mohamed Yaseen
(R-2 given up as the claim petition
was dismissed as against 2nd respondent
3. Mr.P.P.Shanmugasundaram,
Arbitrar,
No.119, Addl. Law Chambers,
High Court Buildings, Chennai - 600 104.

.. Respondents

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the arbitration Award dated 05.05.2010 passed by the third respondent.

Petitioner : Mr. Abdul Razak

Respondents : Mr.V.Pashupathi - R1

ORDER

This petition has been filed challenging the Award passed the sole Arbitrator dated 05.05.2010.

2. The main contention of the learned counsel for petitioner is that an opportunity has not been given to the petitioner. On the other hand, the Arbitrator has placed the burden to prove the negative, which is against the fundamental policy of evidence. It is the case of the petitioner that there is no agreement dated 04.02.2005, whatsoever, existed between the parties. The learned Arbitrator has simply disbelieved the contention of the petitioner and passed the Award, which has to be set aside.

3. Whereas the contention of the learned counsel for the first respondent is that there was an agreement between the parties for construction of a flat and there were clauses in the agreement and the petitioner has not paid the entire sale consideration and failed to pay a sum of Rs.59,000/-, which resulted in delay in construction of the flat and in consequence, there was escalation of price. Therefore, he suffered a loss. Hence, submitted that the Award of the Arbitrator is well settled and does not require any interference.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and perused the Award.

5. The scope of interference of the Arbitral Award under section 34 of the Arbitration and Conciliation Act is very restricted. However, the fact remains that when the Arbitrator, while passing the Award violated fundamental policy or erred basically in deciding the issue or Award on the face of the record appears to be illegal and contrary to law, the Court can set aside such an award. The main claim has been preferred by the petitioner on the basis of the alleged contract between the petitioner and the respondent's father dt. 04.02.2005 to construct a flat at the rate of Rs.3,69,000/- and he has paid a sum of Rs.3,10,000/-. The remaining amount of Rs.59,000/- has not been paid. Due to such non payment, the value of the property has been increased abnormally, therefore, the present market value is Rs.1800/- per sq.ft.. Therefore, the respondent has claimed a sum of Rs.11,70,000/- for the alleged flat.

6. It is the contention of the petitioner that, infact, the construction agreement dated 01.04.2003, alone has been entered between the parties and the agreement dated 04.02.2005 has not been entered and has disputed the existence of such an agreement. The learned Arbitrator in his Award instead of placing burden on the petitioner first to prove the agreement dated 04.02.2005, has held that the respondent has not proved non execution of the subsequent agreement dated 04.02.2005. Infact, the learned Arbitrator has placed the burden on the respondent to prove the negative, which is a fundamental error

committed by the learned Arbitrator and violated the basic principle of the Evidence Act.

7. It is further to be noted that the claim has been made as if the construction has been put up and the claimant has incurred loss of Rs.11,70,000/- due to escalation of price. Absolutely, there is no details, whatsoever, in the claim petition or in the evidence adduced before the Arbitrator as to the nature of construction and nature of price escalation. Even during the submission of the argument, the learned counsel for the respondent submitted that the flat has not been constructed so far. That being the position, awarding compensation without making any construction, without filing any evidence to show the nature of price escalation, such award violate the basic principle of law governed in India. Hence, the Award, in fact, certainly, violate the public policy and error is on the face of the record. Such an Award cannot be sustained in the eye of law.

8. Accordingly, this Original Petition is allowed. No cost.

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Index : Yes/ No

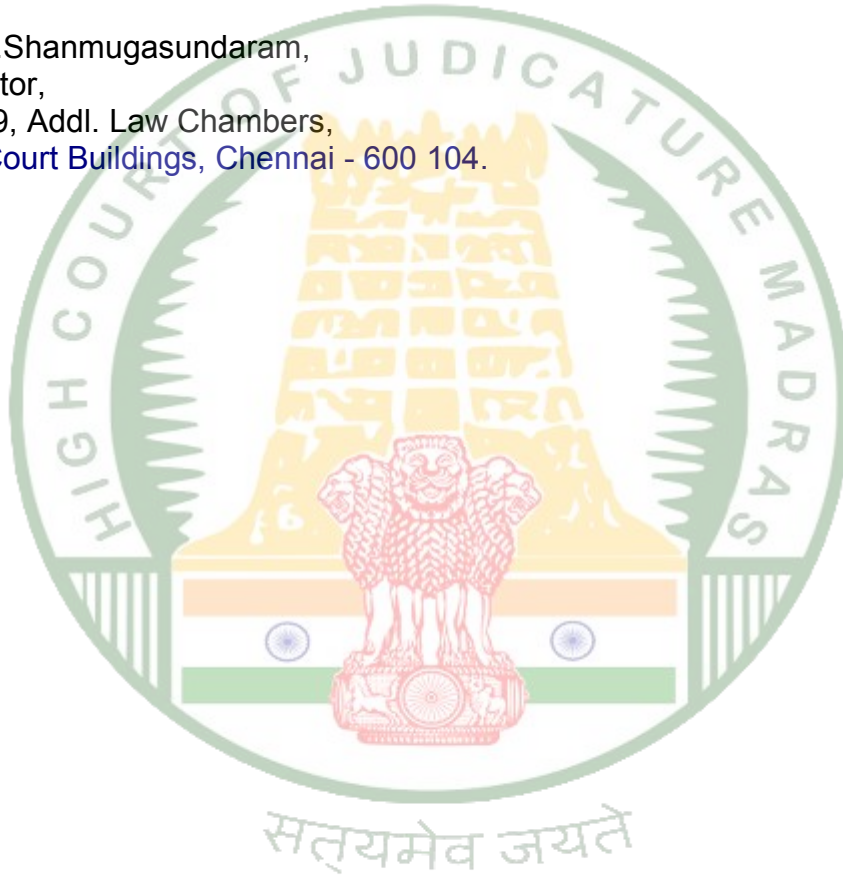
Internet : Yes

Speaking/Non-speaking Order

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To

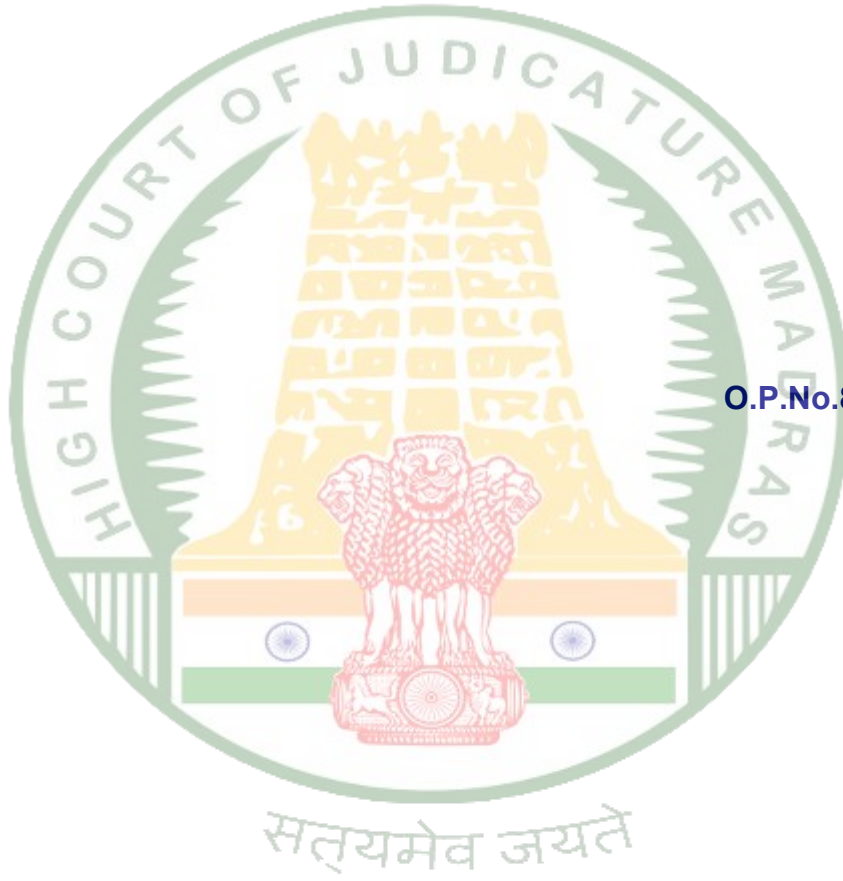
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N.SATHISH KUMAR, J.

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