

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.290 of 2011

V.Varaprasad

.. Petitioner

Vs.

1. M/s.Citicorp Finance (India) Ltd.,
Rep. By its Power Agent
1st Floor, Angson Centre,
153, Greams Road,
Chennai – 06.

2. Mr.B.Venkataratnam

3. G.Ashokapathy
Sole Arbitrator,
Orient Chambers, No.90 (Old No.78),
4th & 5th Floor, Armenian Street,
Chennai – 01.

.. Respondents

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 04.03.2011 passed by the third respondent.

For Petitioner : Mr.K.M.D.Muhilan

For Respondents : Ms.M.Deepthadevi
for M/s.S.Vasudevan

ORDER

This petition has been filed challenging the Award dated 04.03.2011 passed by the sole Arbitrator.

2. The main contention of the petitioner is that notice has not been served on the petitioner. According to him, the notice issued by the petitioner has been returned since he was out of station. Such being the position, there shall not be any deemed service of notice as per Section 27 of the General Clauses Act, 1897. The notice has been returned unserved due to non availability of the petitioner in the premises and therefore, deemed service cannot be pressed into service. Hence, it is his contention that the entire Award has to be set aside. In support of her contentions, she relied upon the judgements in **Rudramuni Devaru Vs. Shrimad Maharaj Niranjan Jagadguru and others** reported in **1997 SCC OnLine Andhra Pradesh 98** and **A.Sudershan Vs. Mannan (Shabir and another)** reported in **2005 SCC OnLine Karnataka 173**.

3. Whereas, the learned counsel appearing for the respondent submitted that admittedly the petitioner had appeared before the Arbitrator and engaged a counsel and further date of hearing has also been communicated to the petitioner. Despite service of notice, he did not appear and therefore, the entire

proceeding has been proceeded exparte. Hence, it is his contention that once, the petitioner has participated in the proceedings, subsequent non appearance of the parties will definitely lead to exparte Award. Hence, the Award cannot be interfered.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the entire materials available on record.

5. A perusal of the entire materials, it is an admitted fact that the hearing date was fixed on 17.06.2009 for which notice has been sent to the petitioner. The above notice has been received by the petitioner on 24.06.2009. The petitioner has infact has appeared through his counsel one Mr.Jayakumar. Thereafter, the matter has been adjourned. In the subsequent hearing as the petitioner has not appeared, the matter was proceeded exparte. That being the case, it cannot be said that the petitioner has not been given reasonable opportunity and principle of nature justice has been violated. Once, notice has been served and the petitioner has participated in the proceedings at some point of time, it cannot be said that for every hearing there must be service of notice. To contend that for every hearing, proper notice has to be given and if such interpretation is given, no proceedings shall see its logical end. When the

parties expect notice for every hearing, such position will lead to enormous delay.

6. It is an admitted fact that after receipt of notice, the petitioner participated in the proceedings and he is well aware of the proceedings. Therefore, it cannot be said that no opportunity has been given to the petitioner. Further the judgments relied on by the petitioner cannot be applied to the facts of the case in view of the fact that the petitioner is aware of the proceedings and infact he has participated in the proceedings. In view of the above, there is no merits in this petition and this petition is liable to be dismissed.

7. Accordingly, this Original Petition is dismissed. No cost.

10.07.2019

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Index : Yes/ No

Internet : Yes

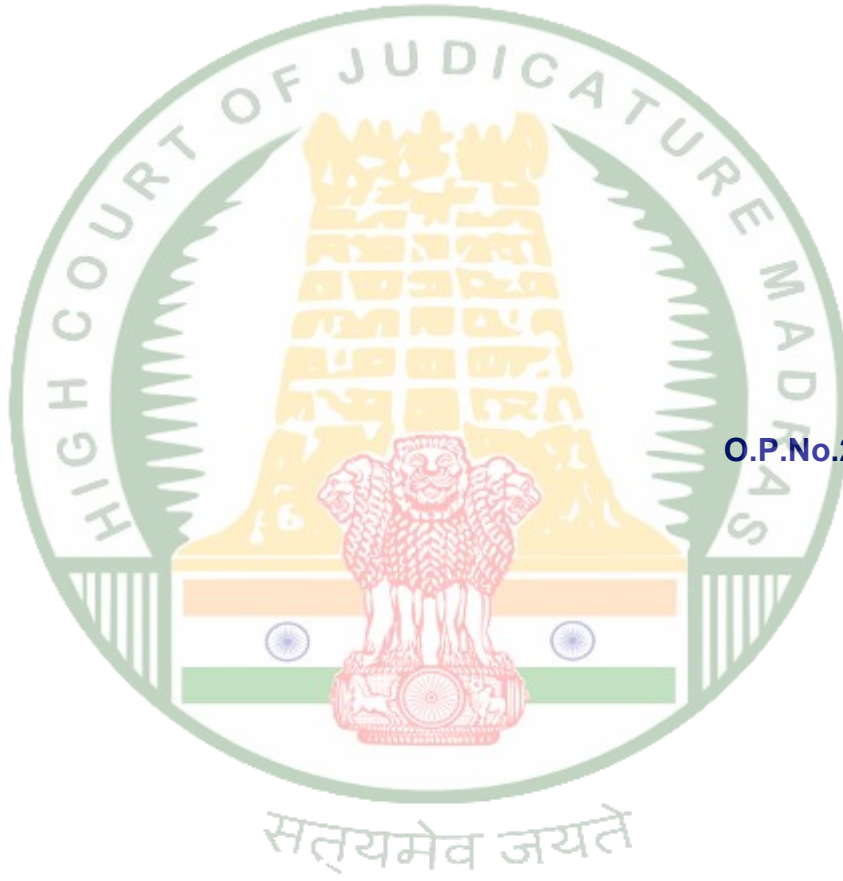
Speaking/Non-speaking Order

To

M/s.Citicorp Finance (India) Ltd.,
1st Floor, Angson Centre,
153, Greams Road, Chennai – 06.

N.SATHISH KUMAR, J.

vrc



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