

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.08.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

O.P.No.178 of 2013
and A.No.6015 of 2018

1.M.Mohanraj
2.P.Murthy

...

Petitioners

versus

1.M/s.Sundaram Finance Ltd.,
No.21, Pattulas Road,
Chennai - 2.

2.Mr.Santhanakrishnan,
Retired District Judge,
Arbitrator,
Old No.5, New No.11/2,
1st Main Road, Jothi Nagar,
Ekkattuthangal.

...

Respondents

PRAYER: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 15.11.2012 in Arbitration Case No.SK/SF/153 of 2012.

For Petitioners : Mr.C.R.Prasanan
For Respondent No.1 : Mr.S.Suresh

ORDER

This Original Petition has been filed challenging the award dated 15.11.2012 in Arbitration Case No.SK/SF/153 of 2012 passed by the learned Arbitrator.

2. Though several grounds have been raised by the learned counsel for the petitioners, the main ground with regard to the petitioners before this Court that no notice was served to them for hearing date on 06.11.2012, the learned Arbitrator has set *ex parte*. The first respondent has filed another Application in this regard in Application No.6015 of 2018 before this Court expressing no objection to resume the arbitration proceedings by the learned Arbitrator.

3. The learned counsel for the first respondent submitted that though the original records could not be produced, the award clearly indicate that several opportunities have been given to the petitioners. Hence, it is his contention that in the event of award being set aside, a fresh Arbitrator may be appointed and the documents, which were filed before this Court may be treated as original documents, since the original documents could not be traced.

4. On perusal of the entire proceedings makes it clear that the claim has been preferred for Rs.7,01,262.61 said to be the amount due for availing Tractor and Harvester. It is the case of the first respondent that the petitioners had executed loan agreement on 17.12.2009. The second petitioner herein stood as a Guarantor on the loan agreement of Rs.15,24,000/-, which was repayable in 35 monthly installments. As the petitioners committed default,

the matter was referred to the learned Arbitrator.

5. The findings of the learned Arbitrator makes it clear that the notice dated 01.06.2012 was originally sent to the petitioners for hearing to be held on 19.06.2012. However, the first petitioner was not served and the second petitioner was served but the second petitioner sent a letter dated 18.06.2012 seeking an adjournment. Despite that, again the claim statement and documents were sent to the petitioners on 01.08.2012 for sitting to be held on 28.08.2012 and the second petitioner has appeared personally and sought to file a counter. Therefore, the proceedings were adjourned on 11.09.2012. On 11.09.2012, both the petitioners were called absent and hence, set *ex parte*. However, the second petitioner sent a telegram seeking adjournment, which was received after 11.09.2012. Therefore, fresh notice was issued to the petitioners on 17.10.2012 for hearing to be held on 06.11.2012. But both the petitioners have evaded to receive the above said notice and hence, they were set *ex parte*.

6. Despite several opportunities were given to find out whether the RPAD notice dated 17.10.2012 for hearing to be held on 06.11.2012 has sent by the Arbitrator, no records whatsoever produced before this Court. It is the contention of the learned counsel for the first respondent that the original records could not be traced. Whereas the learned counsel for the first

respondent herein has also filed an Application expressing their no objection to receive the proceedings by the Arbitral Tribunal permitting the petitioners to file their counter and to take participate in the proceedings.

7. As the notice sent for hearing to be held on 06.11.2012 has not been established the original records and the first respondent has also filed separate Application in Application No.6015 of 2018 for hearing of the matter by the learned Arbitrator, this Court is of the view that the notice dated 17.10.2012 for hearing to be held on 06.11.2012 has not been served. It is well settled that for every hearing, proper notice to be given. Admittedly, the first petitioner has sought an adjournment by telegram. When there is no materials available to show that the notice sent to the future hearing, it is to be concluded that no opportunity whatsoever given to the petitioners and it is against the provisions of the Arbitration and Conciliation Act.

8. In view of the same, the award dated 15.11.2012 in Arbitration Case No.SK/SF/153 of 2012 passed by the learned Arbitrator is set aside and the first respondent is at liberty to appoint a fresh Arbitrator, within a period of two months from the date of receipt of a copy of this order and the petitioners are entitled to present their defence. Since the original documents are already lost, the copies of the documents relied upon by the first respondent before this Court

can be treated as claim documents. The petitioners are at liberty to produce their counter and documents before the Arbitral Tribunal. The Arbitral Tribunal shall dispose of the matter, within a period of four months thereafter. The parties are at liberty to raise their additional plea with regard to the sale of hypothecated goods, namely, Tractor and Harvester.

9. With these observations, this Original Petition is allowed. Consequently, connected Application is closed. However, there is no order as to costs.

22.08.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

Note : Issue Order Copy on 28.08.2019

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N.SATHISH KUMAR, J.,
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