

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2019

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P.No.583 of 2013

Peter J. Dennis

... Petitioner

vs.

1. M/s.Sundaram Finance Limited,
No.21, Pattullos Road,
Chennai-600 002.

2. P.M.Ramani,
Sole Arbitrator,
B-20, Plaza Manor,
Karumariamman Koil Street,
Vadapalani, Chennai-600 026.

... Respondents

PRAYER: This Original petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, prayed to set aside the Award dated 18.07.2013 of the Arbitrator passed in Arbitration Case No.PMR/SF/98 of 2010.

For Petitioner : Mr.M.Rajaraman for
M/s.M.Krishnakumar & P.K.Panneer Selvam

For Respondent : Mr.T/Srinivasaraghavan for R1

ORDER

This petition is filed to set aside the arbitral Award dated 18.07.2013.

2. The dispute arises out a loan agreement dated 31.05.2006. According to the first Respondent, the amounts due and payable under the said loan agreement were not paid by the Petitioner and, therefore, the arbitration clause in the loan agreement was invoked. By the Arbitral Award dated 18.07.2013 (the Award), the Arbitral Tribunal directed the Petitioner to pay a sum of Rs.6,98,920/- with interest thereon at 18% p.a. from 28.02.2011 till realization along with costs to the first Respondent herein. The Award is challenged herein under Section 34 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act).

3. I heard the learned counsel for the Petitioner and the learned counsel for the first Respondent.

4. The learned counsel for the Petitioner submitted that a loan of Rs.12 lakhs was availed by the Petitioner from the first Respondent in order to purchase construction equipment, viz. Pochlain L & T Komatsu Machine, for

use in quarrying. He further submitted that the loan was repayable in 36 installments and that 26 installments were paid, in full, and a portion of the 27th installment was paid. He further submitted that the Petitioner received a notice demanding the outstanding amount and that, thereafter, it appears that arbitration proceedings were initiated by the first Respondent.

5. As regards the arbitration proceedings, he submitted that a hearing took place on 31.08.2010 and that, thereafter, there was no further progress in the arbitration. Almost three years later, the a notice was served at the Petitioner's residence for a hearing on 02.07.2013. According to the learned counsel, the Petitioner was out of station when the notice was served and he came to know about the hearing only on 03.07.2013. Upon coming to know about the hearing, he contacted the learned Arbitrator and was informed that the enquiry had been completed on 02.07.2013 and orders were reserved in the matter. He further submitted that he received a copy of the Award dated 18.07.2013 on 26.07.2013 and, thereafter, filed the present petition.

6. On the basis of the above facts and circumstances, the learned counsel submitted that the Petitioner was not provided sufficient opportunity and was, therefore, unable to present his case before the Arbitral Tribunal.

7. In response, the learned counsel for the first Respondent submitted that the claim statement in the arbitration was filed in 2013 and not in 2010 as wrongly stated by the Petitioner. He further submitted that the learned Arbitrator issued a peremptory notice dated 18.06.2013, whereby the Petitioner was clearly put on notice that the Arbitral Tribunal would not grant any further adjournments in the matter as sufficient opportunity had been given to the parties. He also relied upon the judgment of the Delhi High Court in the case of **PAPPU RAMASARE CHOURASIYA & OTHERS V. M/S.RELIGARE FINVEST LTD.**, decided on 6th July, 2015 in FAO (OS) 165/2015, wherein, at paragraphs 7 and 8, the Delhi High Court took note of the fact that a peremptory notice had been issued by the Arbitral Tribunal prior to proceeding ex parte in the matter and that, therefore, there was no infirmity in the arbitral Award. He also relied upon the judgment of the Hon'ble Supreme Court in the case of **P.R.SHAH, SHARES AND STOCK BROKERS P. LTD. v. B.H.H. SECURITIES P. LTD., AND OTHERS**, [2011] 168 COMP CAS 1 (SC) and, in particular, internal page No.11 of the said judgment, wherein it was held that the Court does not sit in appeal while hearing a petition under Section 34 and that such a petition cannot be entertained unless one of the grounds under

Section 34(2) of the Arbitration and Conciliation Act is satisfied. On this basis, the learned counsel for the first Respondent submitted that the petition to set aside the Award is liable to be rejected.

8. The records were examined and oral submissions of both sides were considered carefully. The main question that arises for consideration in this case is whether the Petitioner was provided a reasonable opportunity to submit his case before the Arbitral Tribunal. In specific, the question is whether Section 34(2)(a)(iii) of the Arbitration and Conciliation Act was violated by the Arbitral Tribunal. The said Section 34 (2)(a)(iii) reads as follows:

“(2) An arbitral award may be set aside by the Court only if-
(a) the party making the application furnishes proof that
(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;”

9. On perusal of the facts and documents in this case, it is the admitted position that the first hearing took place on 31.08.2010 and that the next hearing in the matter was almost after three years, i.e. on 02.07.2013. On

perusal of the Award, I find that there is a reference therein to a critical hearing on 16.07.2013 when the first Respondent/claimant adduced evidence and exhibited relevant documents based on which it appears that the Arbitral Tribunal reserved the matter for pronouncing the Award.

10. From the original records of the Arbitral Tribunal, as produced before this Court, I do not find any notice for the hearing which was held on 16.07.2013. I also do not find a record of the minutes of the proceedings held on 02.07.2013 or evidence to show that the said minutes of the hearing on 02.07.2013 was served on the Petitioner, thereby informing the Petitioner that he had been set ex parte.

11. In view of the aforesaid facts, the question that is required to be decided is whether reasonable opportunity was provided to the Petitioner. In contrast to the judgment of the Delhi High Court cited supra, in this case, the Petitioner was not communicated with the minutes of the hearing where he was set ex parte and was also not provided notice for the critical hearing that took place subsequently. As regards the judgment of the Hon'ble Supreme Court in the **P.R. SHAH case (supra)**, the principle therein is that, in a Section 34 petition, the petitioner is required to be make out a case under one of the

grounds under Section 34(2) of the Arbitration Act. In this case, in view of the non-issuance of notice for the hearing on 16.07.2013 and in view of not dispatching the minutes of the proceedings dated 02.07.2013, I find that there is violation of Section 24(2) and (3) read with 34(2)(a)(iii) of the Arbitration Act.

12. For the above said reasons, the Award dated 18.07.2013 is liable to be set aside and, accordingly, the same is hereby set aside and the Original Petition is allowed. Nonetheless, it is necessary that the dispute between the parties be resolved on merits. Consequently, the first Respondent is granted leave to initiate *de novo* proceedings in accordance with the contract between the parties. If such proceedings are initiated, the first Respondent shall be entitled to the benefit of Section 14 of the Limitation Act, 1963 in respect of the time taken in conducting the arbitral proceedings and this petition. In view of the facts and circumstances, there shall be no order as to costs.

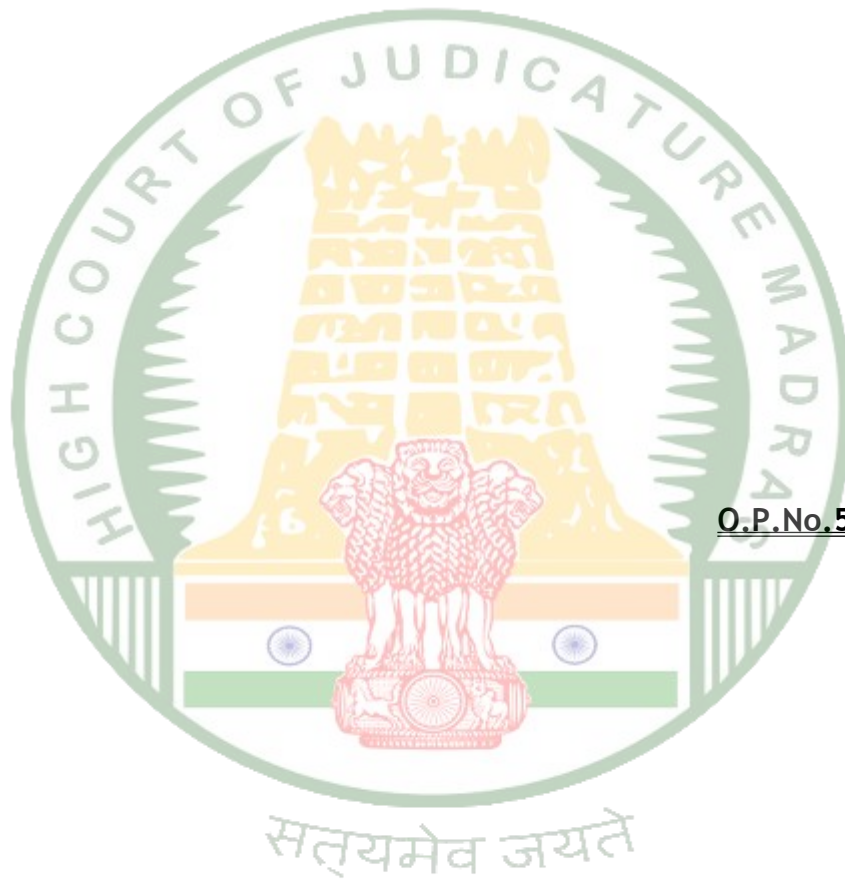
28.11.2019

Speaking Order/Non-speaking Order
Index : Yes/No
Internet: Yes/No
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SENTHILKUMAR RAMAMOORTHY, J

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