

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.376 of 2019
and A.No.3548 of 2019

1. K.Kaplana
2. K.Baskar @ Bashi Raja
3. K.Ramya
.. Petitioners

Vs.

1. The Manager,
Uthiramerur Branch,
Shriram Transport Finance Co. Ltd.,
Uthiramerur, Kanchipuram-603 406,
Tamil Nadu.
2. M.Boopalan,
Sole Arbitrator, (Arbitration Case No.320/2019),
No.297B, Lenin Street, Pelliypap Nagar,
Walajapet, Vellore – 632 513.
.. Respondents

Prayer : Petition filed under Section 11 and 14(2) of the Arbitration and Conciliation Act, 1996, praying to pass an order to terminate the appointment of sole Arbitrator and the arbitration proceedings of the second respondent and to pass appropriate order as this Court deems fit and proper in the circumstances of the case.

* * *

For Petitioners : Ms.P.Uma

For Respondent : Mr.K.S.Ramakrishnan for R1

R2-Arbitrator

ORDER

The petitioners have filed this Original Petition seeking for termination of the appointment of sole Arbitrator and the arbitration proceedings of the second respondent and to pass appropriate order as this Court deems fit and proper in the circumstances of the case.

2. The first petitioner-a farmer by profession is the mother of the second and third petitioners. The first petitioner's husband one Kothandan, who borrowed a sum of Rs.10,00,000/- from the first respondent by mortgaging the house property, met with a road accident on 01.12.2018 and died on 02.12.2018. The petitioners claimed that the first respondent sent a notice on 02.02.2019 directing them to pay a sum of Rs.10,92,945.66 towards the loan due within 10 days. Though the petitioners were willing to pay the principal amount and only sought time, waiver of interest and the particulars of the loan, the first respondent failed to provide any details and also went to the extent of threatening them with dire consequences with the help of henchmen. The first respondent sent another notice on 28.02.2019 reiterating the demand. The first respondent also sent an Advocate notice on 16.03.2019 demanding Rs.11,13,801/- with interest and also stating that if the petitioners fail to pay the amount, the dispute will be referred to the sole Arbitrator. The petitioners vide letter dated

22.03.2019 sought time for settlement of the loan and on compassionate grounds sought for waiver of the interest amount, etc., which was not replied to by the first respondent. At that juncture, the petitioners received a notice from the second respondent fixing the date of hearing of the arbitration proceedings. Claiming that the appointment of the second respondent is unilateral and without issuing notice as contemplated under Section 21 of the Arbitration and Conciliation Act, 1996, the petitioners have filed this petition.

3. Denying the averments of the petitioners, a counter-affidavit is filed by the first respondent, *inter alia*, stating that the plea of the petitioners they find it difficult to eke out after the sudden demise of the husband of the first petitioner is false and on the other hand, the deceased husband of the first petitioner owned a few immovable properties, which was conveniently suppressed by the petitioners. There is no bonafide in the claim of the petitioners that they are willing to settle the loan, which is proved by their conduct that they have not deposited any amount after the demise of the borrower.

4. Heard the learned counsel for the petitioners and the learned counsel appearing on behalf of the respondent.

5. Considering the submissions of the learned counsels on either side, Mr.V.Vijayshankar, Advocate, having office at No.67, Law Chambers, High Court Buildings, Chennai-600 104 (Phone No.044-25342014) is appointed as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The appointment of the Arbitrator will be subject to the disclosure and declaration made, as per the Sixth Schedule to the Arbitration and Conciliation Act, 1996 coupled with the amendments made therein.

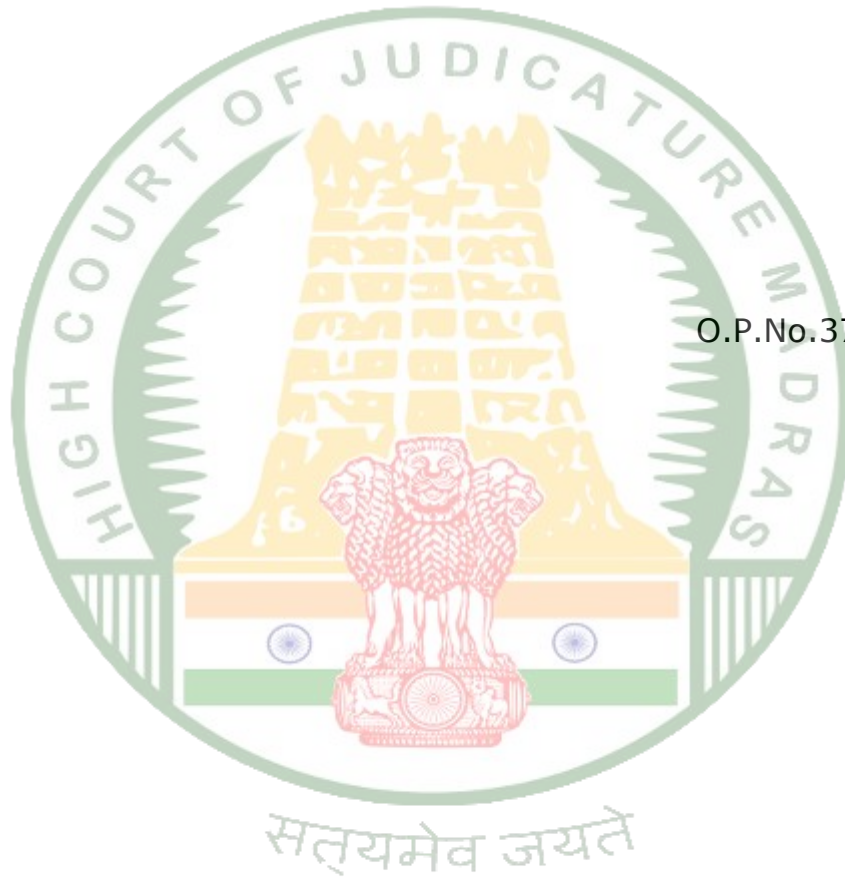
6. The Original Petition is ordered accordingly. The parties shall bear their own costs. Consequently, A.No.3548 of 2019 is closed.

26.11.2019

Index : Yes / No
Internet : Yes
Speaking Order/Non-Speaking Order
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PUSHPA SATHYANARAYANA, J.

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