

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

O.S.A.No. 114 of 2019
and
C.M.P.No.10386 of 2019

1. Dr.J.Saravana Moorthy
2. Sarasa Kavitha ... Petitioners/Appellants
Vs.
1. Kotak Mahindra Bank Ltd.,
1st Floor, Ceebros Centre,
39, Montieh Road, Egmore
Chennai - 600 008.
2. Mr.C.Prasana Venkatesh
The Sole Arbitrator
Chennai. Respondents/Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of O.S.Rules read with Clause 15 of Letters Patent against the Order and Decree dated 05.02.2019 in Arb.O.P.No. 852 of 2018 on the file of this Court Original Petition Praying that this Hon'ble Court be Pleased to pass an order

- a)to set-aside the award dated 20.06.2018 and
b)to pay the Cost of the application.

For Appellants : Mr. M.Velmurugan
For Respondents : Mr.M.Arunachalam

J U D G M E N T

(Delivered by DR.VINEET KOTHARI, J)

The only contention raised before us in the present Appeal under Section 37 of the Arbitration and Conciliation Act 1996 is that on account of breach of principles of

natural justice, the award in question passed against the appellants Dr.J.Saravana Moorthy and his wife Sarasa Kavitha, deserves to be set aside.

2. The learned counsel for the appellants has submitted that unfortunately the first appellant suffered a serious illness of brain tumour and had undergone surgical intervention and owing to the process of the said trauma, even his wife could not attend the arbitral proceedings and defend the claim of the first respondent Bank, Kotak Mahindra Bank Limited. The award in question has been passed against them on 20.06.2018 for a sum of Rs.19,27,372/-. The Petition filed under Section 34 of the Act also came to be rejected by the learned Single Judge, by order dated 05.02.2019.

3. The learned counsel for the first respondent-Bank however has supported the impugned Judgment and submitted that the second appellant was also a qualified Doctor and was able to defend the claim and nothing prevented her from defending the claim before the arbitral Tribunal.

4. The learned counsel for the appellants submitted that against the decretal sum of Rs.19,27,372/- lakhs, the appellants had already deposited with the first respondent-Bank a sum of Rs.7/- lakhs pursuant to an interim order dated 26.04.2019.

5. Having heard the learned counsels for the parties, we are of the opinion that interest of justice would be served, if the appellants are given one more opportunity to defend the claim of the first respondent-Bank before the learned Arbitral Tribunal in view of the over riding medical reasons owing to which by sufficient cause, they were prevented from defending the proceedings before the Arbitral Tribunal in an appropriate manner. This grant of further opportunity will however be subject to the condition that the appellants deposit a further sum of Rs.5/- lakhs directly with the first respondent-Bank. The aforesaid deposit of total sum of Rs.12/- lakhs with the Bank itself shall remain subject to the final award to be passed by the Arbitral Tribunal again.

6. We accordingly allow the Appeal and set aside the order dated 05.02.2019 of the learned Single Judge as well as the Arbitral Award dated 20.06.2018 and restore the matter back to the Arbitral Tribunal for deciding the case afresh in accordance with law. In view of the long lapse of period, the Arbitral Tribunal shall given an adequate opportunity to both the sides to defend their claim and pass

fresh award within a period of six months from today. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsg

1.The Arbitral Tribunal,Madras.

2.The Sub Assistant Registrar,
Original Side, High Court,Madras

3.Mr.C.Prasana Venkatesh
The Sole Arbitrator
Chennai.

+1cc to Mr.M.Arunachalam , Advocate SR.No. 61550

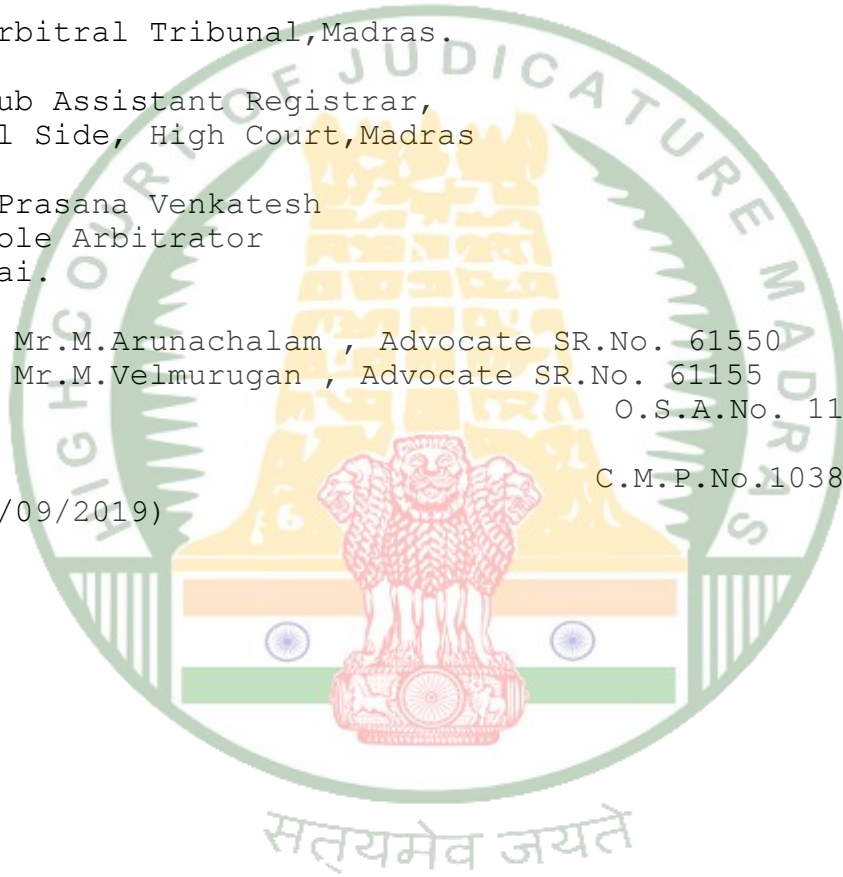
+1cc to Mr.M.Velmurugan , Advocate SR.No. 61155

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A.SK(03/09/2019)



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