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In the High Court of Judicature at Madras

Dated : 25.4.2019

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The Honourable Mr. Justice T.S.SIVAGNANAM
and

The Honourable Mrs. Justice V.BHAVANI SUBBAROYAN

Original Side Appeal No.110 of 2019 & CMP.No.10229 of 2019

1.Mr.E.P.Paramasivam

2.Mr.K.S.Ganeshkumar

...Appellants/Petitioners

Vs.

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

...Respondent/Respondent

APPEAL under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the fair and decretal order dated 25.1.2019 made in O.P.No.1172 of 2018.

OP.No.1172 of 2018 : Original Petition filed under Section 34 of the Arbitration and Conciliation Act 1996 to set aside the exparte Arbitral Award dated 04.04.2017 made in Arbitration Case No.MS/SF/204/2014 passed by the Sole Arbitrator.

For Appellants : Mr.K.Kumareshbabu for
Mr.V.Balamurugane

Judgment was delivered by T.S.SIVAGNANAM, J

We have heard Mr.K.Kumareshbabu, learned counsel appearing on behalf of Mr.V.Balamurugane, learned counsel on record for the appellants.

2. This appeal has been filed by the appellants under Section 37 of the Arbitration and Conciliation Act, 1996 against the order dated 25.1.2019 passed by the learned Single Judge O.P.No.1172 of 2018.

3. The said original petition was filed challenging the award dated 04.4.2017 passed by the learned Arbitrator.

4. The only ground, on which, the appellants challenged the award passed by the learned Arbitrator was on the ground that it



was in violation of the principles of natural justice and that the first appellant did not have proper notice of the proceedings.

5. The said contention was examined by the learned Single Judge and it was rejected by holding that the appellants had sufficient opportunity to appear before the learned Arbitrator and contest the proceedings and that the plea raised by the appellants was not justified. Furthermore, the learned Single Judge observed that a person, who borrows money, is liable to repay the same and that he cannot escape on technicalities. In fact, when the proceedings were pending before the learned Single Judge, the Court suggested that the parties could have a discussion and work out a settlement and on that ground, the matter was adjourned. However, the appellants were not interested in settling the matter. The learned Single Judge further noted that the appellants slept over the matter for more than 18 months and that even though they were set ex parte, they were given reasonable opportunity of hearing. Therefore, the learned Single Judge rendered a finding that on merits, there was no valid reason to interfere with the award passed by the learned Arbitrator.

6. Admittedly, the scope of interference of an order passed under Section 34 of the Act by exercising the powers under Section 37 of the Act is limited. Even before us, the learned counsel for the appellants has canvassed the very same contentions as canvassed before the learned Single Judge by referring to paragraph 12 of the award. The learned Arbitrator clearly recorded that both the appellants herein, who were the respondents before him, received the notice from him fixing the sitting on 31.7.2014. That apart, the first appellant filed his counter statement. Thereafter, the further hearing notice was acknowledged by the second appellant. It is not known as to whether the first appellant had refused to receive the notice or the notice was not properly sent.

7. In our considered view, there is no conflict of interest between both the appellants and both of them have been contesting the matter from 2013 onwards jointly. It is very hard to believe that the first appellant had no knowledge of the proceedings. But, the second appellant received the notice. Furthermore, though the second appellant received the notice of hearing on 23.10.2014, he did not choose to appear on that day. In our considered opinion, the procedure adopted by the learned Arbitrator cannot be faulted. It is not a case that there is a violation of the principles of natural justice. For the reasons stated above, we hold that the appellants have not made out any



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case to interfere with the order passed by the learned Single Judge.

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8. Accordingly, the original side appeal fails and is dismissed. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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

Copy to : Mr.M.Sowundarapandian, B.A., B.L.,
(Retd., District and Sessions Judge)
Arbitrator,
No.55/38, Teachers Colony, Venkataraman Nagar,
Adyar, Chennai -20.

+1 cc to M/s.P.Muthukumarasamy, Advocate Sr.No. 40196

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