

O.P.No.849 of 2014

SENTHILKUMAR RAMAMOORTHY,J.

This petition has been filed challenging the arbitration award dated 26.09.2014.

2.The petitioner is the first respondent in the arbitration proceedings. The dispute between the parties relates to the transportation of goods by the first respondent herein and the non-payment of transportation charges by the petitioner and the second respondent. On account of such non-payment, the arbitration clause in the consignment notes was invoked and the matter was referred to arbitration. The Arbitrator issued notice of hearing dated 14.03.2014, 05.04.2014 and 12.09.2014 to the respondents and in spite of the receipt of such notices, neither the petitioner herein nor the second respondent entered appearance in the arbitration proceedings. However, the petitioner sent an E-mail on 08.04.2014 to the Arbitral Tribunal denying its liability on the basis that it is only a clearing agent.

3.The Arbitral Tribunal held that both the petitioner and the second respondent would be liable for the payment of transportation charges and accordingly, directed them to pay a sum of Rs. 1,02,300/-(Rupees One lakh Two Thousand Three Hundred only); costs of Rs.3,000/-(Rupees Three Thousand only) towards the respondents therein share of the arbitrator's fees; and a sum of Rs.1,000/-(Rupees One Thousand only) towards the respondents therein share of costs. The said award is impugned herein.

4.I heard the learned counsel for the petitioner and the learned counsel for the first respondent.

5.The learned counsel for the petitioner contended that the petitioner is only a clearing and forwarding agent and, therefore, he is not liable for payment of transportation charges. In other words, he submitted that the goods were transported to the second respondent, which is the consignee of the goods and that, therefore, only such consignee is liable to pay transport charges. On that basis, he submitted that the impugned award is liable to set aside.

6. Per contra, the learned counsel for the first respondent contended that both the petitioner and the second respondent are liable as per the terms and conditions of the contract. In specific, the learned counsel adverted to Clause 16 of the terms and conditions of the contract of special carriage to contend that both consignor and consignee are liable to pay freight amount along with all other incidental charges to the transporter. On that basis, the learned counsel contended that there are no reasons to interfere with the Arbitration award.

7.The records were perused and the oral submissions of both sides were considered carefully.

8.The question that arises for consideration is whether the petitioner has made out a case to set aside the arbitration award under Section 34 of the Arbitration and Conciliation Act 1996.

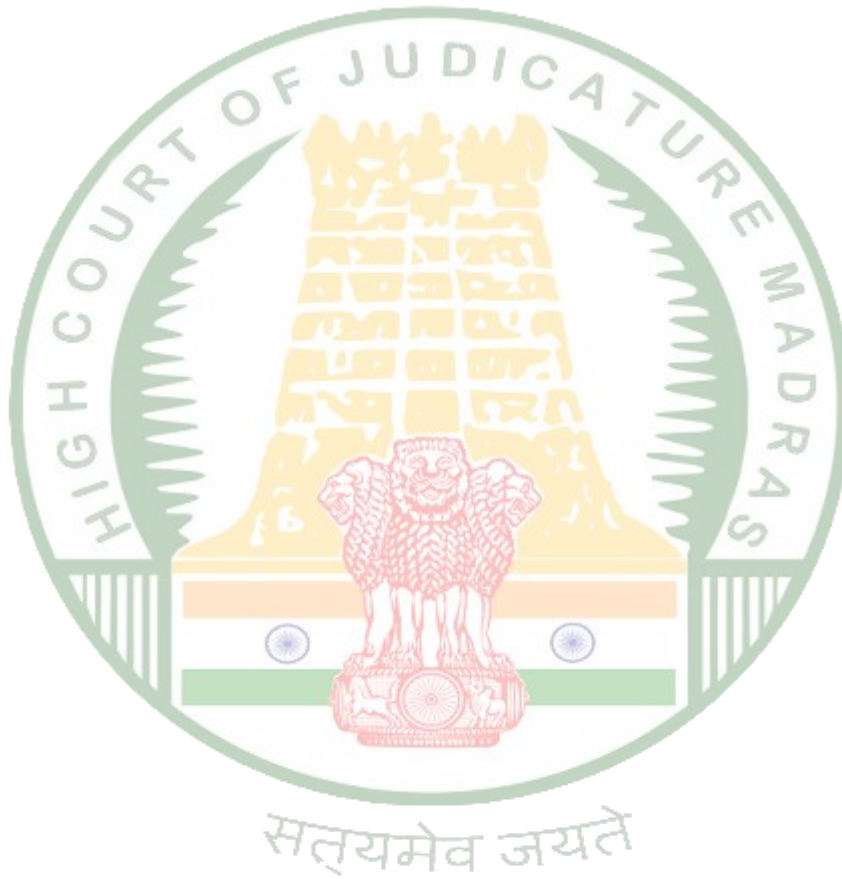
9.The award discloses that notice of hearing was sent on three occasions to the respondents therein and that the said notices were duly

served. In spite of the receipt of the said notices, the petitioner herein and the second respondent therein did not appear before the Arbitral Tribunal. As regards the petitioner, an E-mail dated 08.04.2018 was sent denying the liability on the basis that the petitioner is only the clearing agent. The same contention is advanced before this Court by the learned counsel for the petitioner. On examining the consignment notes, in particular, the terms and conditions of the contract of special carriage, it is clear that the petitioner is described as consignor in each of the consignment notes and there is no indication therein that the petitioner is an agent of the second respondent. In such circumstances, the petitioner should have attended the Arbitral proceedings and established that it is an agent of the disclosed principal namely, the second respondent and therefore, not liable. But this was not done. The Arbitral Tribunal examined the records and concluded that both consignor and consignee are liable for the payment of transportation charges. In the facts and circumstances, it cannot be stated that the petitioner herein was unable to present its case before the Arbitral Tribunal. Equally, it cannot be said that the award is contrary to public policy or patently illegal. Therefore, the petition to set aside the Arbitral award is dismissed.

Nevertheless, it is made clear that this order shall not preclude the petitioner from initiating appropriate legal proceedings to seek indemnification from the second respondent in respect of these transportation charges by duly establishing that it acted as an agent of the second respondent.

19.09.2019

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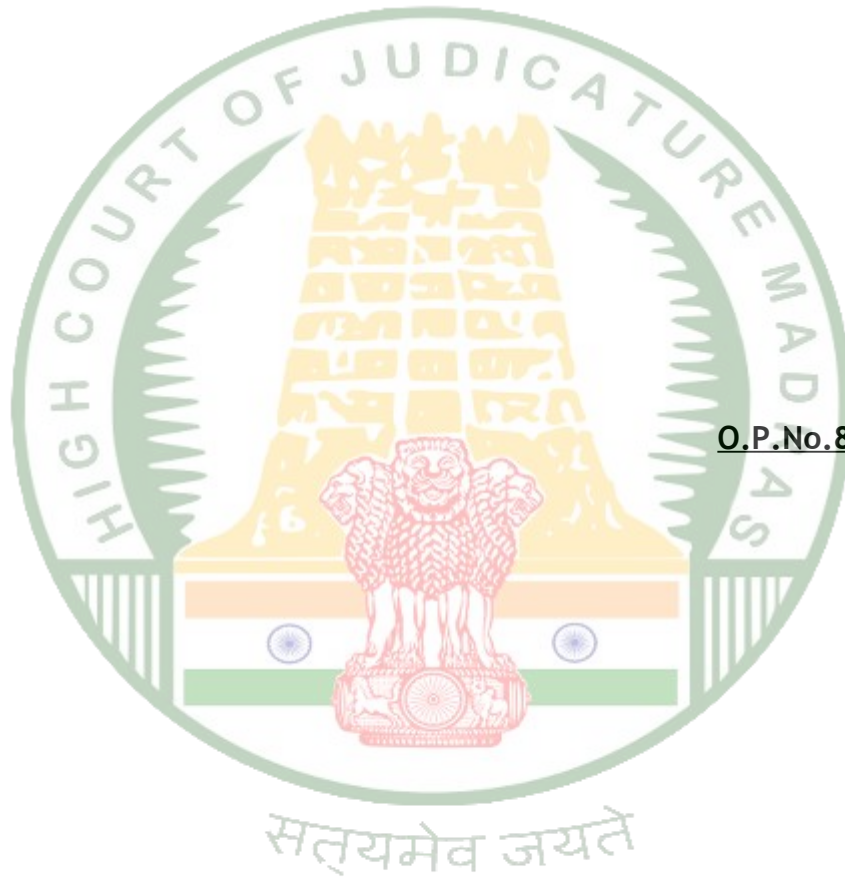


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