

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM

THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

O.P.No.762 of 2019

M/s.The Commonwealth Trust (India) Limited,
7/1136, South Manachira Road, Post Box No.5,
Calicut-673 001, Kerala.

... Petitioner

VS.

Union of India through
Divisional Superintendent,
Southern Railway,
Represented by Senior Divisional Manager,
Palghat, Southern Railway,
Part Town, Chennai-600 003.

... Respondent

PRAYER: This Original petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, prayed to set aside the Award dated 28.03.2019 passed by the learned Arbitrator.

For Petitioner : Mr.Rahul Balaji

For Respondent : Mr.P.T.Ramkumar,
Standing Counsel (Railways)

ORDER

This petition is filed to set aside the arbitral Award dated 28.03.2019.

2. I heard the learned counsel for the petitioner and the learned counsel for respondent.

3. The learned counsel for the petitioner submitted that the learned Arbitrator had entered upon reference on 08.03.2019 and scheduled a hearing on 22.03.2019. The petitioner had also made necessary arrangements to attend the hearing on 22.03.2019. However, the learned Arbitrator adjourned the scheduled hearing at short notice from 22.03.2019 to 25.03.2019, which was not a suitable date for the petitioner. Accordingly, the petitioner requested the learned Arbitrator to adjourn the hearing on 25.03.2019, but the learned Arbitrator refused to do so, set the petitioner ex parte and proceeded to pronounce the impugned order.

4. In effect, the contention of the learned counsel for the petitioner is that the petitioner was unable to present its case before the arbitral Tribunal and that, therefore, the arbitral Award is liable to be set aside under Section 34(2)(a)(iii) of the Arbitration and Conciliation Act, 1996 (the Arbitration Act).

5. In response, the learned counsel for the respondent pointed out that all pleadings were duly completed by the parties and that the case was ready for hearing. He further submitted that, therefore, the matter may be remitted so as to provide an opportunity to the petitioner to make submissions on merits based on the pleadings available with the arbitral Tribunal.

6. Upon consideration of the oral submissions and on examination of records, I find that the petitioner has not been provided a reasonable opportunity to present its case especially in view of the adjournment of the hearing from 22.03.2019 to 25.03.2019 and the refusal to accede to the request for adjournment. Therefore, the petitioner has made out a case to set aside the award as per Section 34(2)(a)(iii) of the Arbitration Act. A remission under Section 34(4) of the Arbitration Act may not be appropriate in the facts and circumstances inasmuch as the case needs to be decided on merits after providing a reasonable opportunity to the petitioner. Nevertheless, as contended by the learned counsel for the respondent, the parties may be directed to proceed on the basis of the pleadings already filed in the matter, albeit subject to the right to supplement or amend the same in accordance with the Arbitration Act.

SENTHILKUMAR RAMAMOORTHY,J

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7. Therefore, the Original Petition is allowed and the Award dated 28.03.2019 is hereby set aside. However, the parties are granted leave to resolve the dispute by arbitration based on the pleadings that are already on record. In addition, the parties are at liberty to supplement or amend pleadings, if so intended, in accordance with the Arbitration and Conciliation Act, 1996.

12.11.2019

Speaking Order/Non-speaking Order

Index : Yes/No

Internet: Yes/No

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O.P.No.762 of 2019