

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P.Nos.796, 797 of 2019

G.Varalakshmi ... Petitioner in O.P.No.796 of 2019

1.G.V.S.Raghuram
2.G.Varalakshmo
3.P.Narasimha Rao ... Petitioners in O.P.No.797 of 2019

vs.

M/s.Axis Bank Ltd., Rep by its
Authorised Signatory, 4th Floor,
New No.38, Old No.165,
Arcot Road, Kodambakkam,
Chennai 600 024. ... Respondents in both OP's

COMMON PRAYER: This Original petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 pleaded to set aside the award A.C.P. (AXIS-AGRI) Nos.167, 172 of 2019 respectively dated 10.07.2019 passed by the learned Arbitrator against the petitioner.

For Petitioners : Ms.K.Parameshwari
in both OP's

For Respondent : Mr.N.Muthukumaran
in both OP's

COMMON ORDER

These two petitions are filed to set aside the separate arbitral awards both dated 10.07.2019. The petitioners in each of these Original Petitions submit that agricultural loans were availed from the respondent bank with a specific repayment period and that payments were made from time to time towards repayment of the said agricultural loan. It is further submitted that subsequently a Link Document Cum Supplemental Deed was executed on 10.07.2017 and that, by this document, the repayment schedule was modified, so as to commence from 30.04.2019. However, the respondent bank initiated arbitration proceedings without reference to and without taking into consideration the said Link Document Cum Supplemental Deed. On that basis, it is submitted that the impugned arbitral awards dated 10.07.2019 were pronounced by the arbitral tribunal. The said awards are challenged.

2.I heard the learned counsel for the petitioner and the learned counsel for the respondent bank. The learned counsel for the petitioner re-iterated that the re-scheduling of repayment under the Link Document Cum Supplemental Deed dated 10.07.2017 was not disclosed by the respondent bank before the arbitral tribunal and that, therefore, this material document was

not taken into consideration and that it goes to the root of the matter. It was further submitted that the termination of the agreement by letter dated 22.04.2019 was also done without reference to the Link Document Cum Supplemental Deed. The learned counsel for the petitioner would further submit that the petitioner was not in a position to participate in the proceedings before the arbitral tribunal and was, therefore, unable to present the case before the arbitral tribunal. For all these reasons, it was submitted that the impugned arbitral awards are liable to be set aside.

3.In response, the learned counsel for the respondent bank submitted that the Link document cum Supplemental Deed was inadvertently not filed in the proceedings before the arbitral tribunal. He further submits that the said document has a material bearing on the cases and that, therefore, the respondent bank is willing for de novo arbitration.

4.The records were examined and the oral submissions of both sides were considered. It is evident from the record and from the submissions of the learned counsel for the petitioner and the respondent that the respondent bank did not submit the Link Document Cum Supplemental Deed dated 10.07.2017 before the arbitral tribunal and that the non consideration of this

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document had a significant and material bearing on the out come. Keep in mind the above facts and the submissions of the learned counsel for the respondent bank that the respondent bank is ready and willing to conduct de novo arbitration proceedings, the arbitral awards dated 10.07.2019 are liable to be set aside.

5. Accordingly, the arbitral awards dated 10.07.2019 are hereby set aside. However, the respondent bank is granted leave to initiate de novo arbitration proceedings in accordance with the contract. If such proceedings are initiated, the respondent shall be entitled to the benefit of Section 14 of the Limitation Act, 1963 in respect of the time taken in these proceedings.

6. With the above observations, these Original Petitions are allowed.

Index : Yes / No
Internet : Yes / No
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