

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.SUNDAR

O.P.No.666 of 2017

1.M/s.JBR Construction,
Rep. by its Managing Director J.Baskar,
No.153, Bazaar Street,
Namagiripet Post,
Rasipuram Taluk,
Namakkal 637 406.

2.Hemameenakshi

... Petitioners

Vs.

1.M/s.Citicorp Finance India Limited,
Rep. by its Manager - Legal,
No.2, Ground Floor,
Club House Road, Anna Salai,
Chennai-2.

At present having office at
Acropolis - 9th floor,
New No.148, Old No.68,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.

2.K.S.Gowthaman,
Sole Arbitrator/Advocate
in C.P.No:KSG/CCFIL/01/2017
New No.49, 224-B, IV Cross Street,
Natesa Nagar, Virugambakkam,
Chennai-92.

... Respondents

Original Petition filed under Section 34(2)(iii) of the Arbitration and Conciliation Act, 1996, to set aside the award dated 28.07.2017 passed by the

<http://www.judis.nic.in> 2nd respondent in C.P.No.KSG/CCFIL/01/2017.

For Petitioners : No appearance
For 1st Respondent : Mr.V.Balasubramani

ORDER

Read this in conjunction with and in continuation of earlier proceedings before this Court dated 12.02.2019, 26.02.2019, 06.03.2019, 07.03.2019 and 08.03.2019 which reads as follows :

"Order dated 12.02.2019

Read this in conjunction with and in continuation of earlier proceedings dated 16.03.2018.

Mr.S.Lakshmikanth, representing the counsel on record for the petitioners expresses regret for non appearance in the previous hearing.

Learned counsel submits that petitioners' counsel do not have instructions from the petitioners and seeks a fortnight's time to file a memo to that effect.

Mr.V.Balasubramani, learned counsel for first respondent is before this Court.

List this matter on 26.02.2019."

"Order dated 26.02.2019

Matter mentioned. Read this in conjunction with earlier proceedings.

At request of petitioner, list this matter on 06.03.2019."

"Order dated 06.03.2019

Ms.K.Bhuvaneswari, learned counsel representing the counsel on record for the contesting first respondent is before this Court, but there is no representation for the petitioner.

List on 07.03.2019."

"Order dated 07.03.2019

Ms.K.Bhuvaneswari, learned counsel representing the counsel on record for the contesting first respondent is before this Court, but there is no representation for the petitioner.

List this matter under the caption 'FOR DISMISSAL' tomorrow i.e., 08.03.2019."

"Order dated 08.03.2019

Mr.Lakshmikanth, learned counsel representing the counsel on record for the petitioners is before this Court and a memo dated 07.03.2019 has been filed, wherein the counsel on record for petitioners has reported 'no instructions'. The aforesaid memo reads as follows:

'MEMO FILED BY THE COUNSEL FOR THE PETITIONER

1.The case in O.P.No.666/2017 came up for hearing on 26.02.2019 and the petitioners did not report any instructions as to how to proceed with the case.

2. Despite sending a notice dated 26.02.2019 the petitioners have not turned up to give instructions.

3. Hence, I report, no instructions and our name from the cause list may be removed.

It is therefore humbly prayed that this Hon'ble Court may be pleased to take up the memo on the file and thus render justice.

Dated at Chennai on this the 7th day of March 2019.

Sd/-

Counsel for petitioner'

2.Be that as it may, learned counsel expresses regret for non appearance yesterday. Registry will therefore not show the caption 'FOR DISMISSAL' in the next listing.

3.Mr.M.Arunachalam, learned counsel for contesting first respondent is before this Court.

4.From the case file placed before me, it is seen that the instant OP has not been admitted, but notice has been issued.

5.Registry to list this matter under the caption 'NOTICE REGARDING ADMISSION' showing the name of the petitioners together with their full/complete addresses as in the short and long cause titles of the OP in the next listing.

6.List this matter on 19.03.2019."

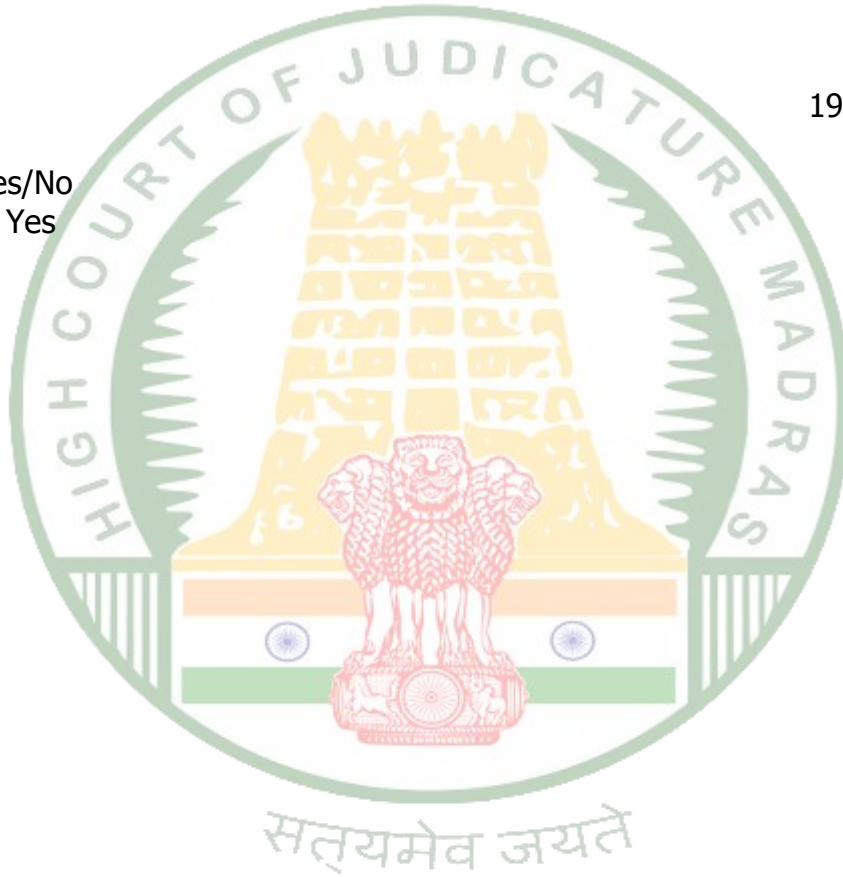
2.Pursuant to the previous proceedings dated 08.03.2019, in the cause list today, names of both the petitioners in instant OP together with their full/complete address as in the short and long cause titles of instant OP were shown, but, there is no representation. However, Mr.V.Balasubramani, learned counsel on record for contesting first respondent is before this Court and he is ready to argue the instant OP. To be noted, the second respondent is the Sole Arbitrator who constituted the Arbitral Tribunal which passed the impugned award dated 28.07.2017 which has been called in question in the instant OP.

3.Be that as it may, names of the petitioners were called out aloud thrice in the first call and there was no response. With the intention of giving one more opportunity to the petitioners, case was passed over and called again at the end of the list. In the second call also, the position was no different, while Mr.V.Balasubramani, learned counsel for the contesting first respondent is before this Court and he is ready to argue the matter.

4.This Court is informed that no new counsel has entered appearance on behalf of petitioners. In the light of the trajectory of the previous hearings which have been extracted and reproduced supra and in the light of the hearing today, instant OP is dismissed for default/non prosecution.

19.03.2019

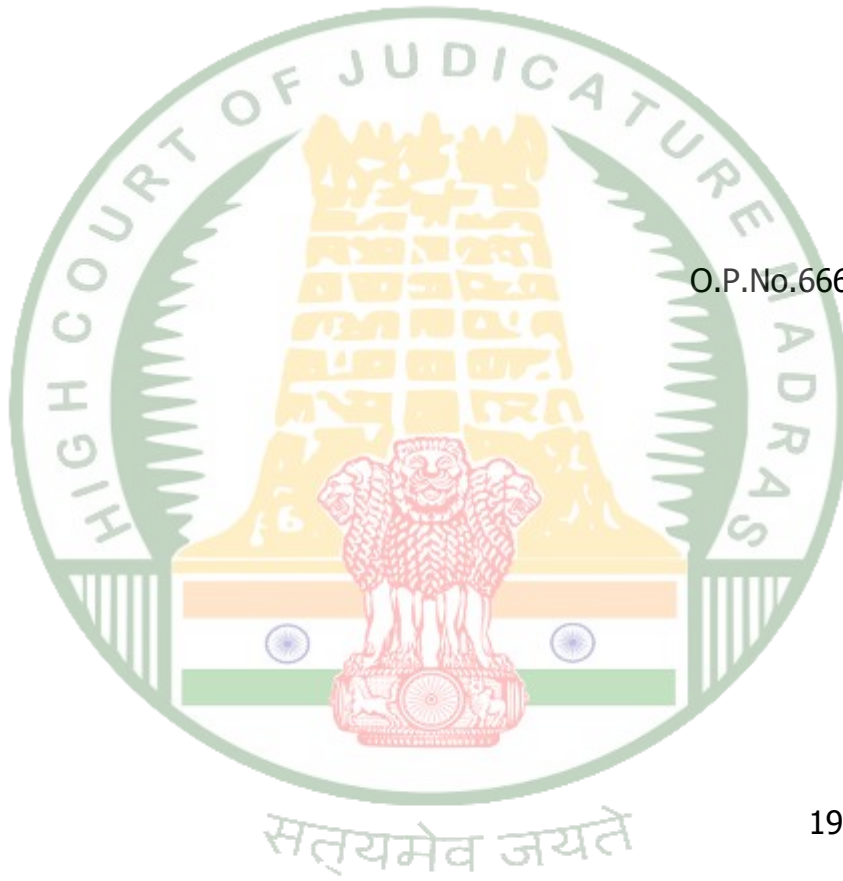
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M.SUNDAR, J.

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