

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2019

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

O.P.No.1045 of 2019
and A.No.9695 of 2019

- 1.M/s.Shivam Collection
Rep by its Partner
M/s.Sunita Manoj Maheshwari.
2. Manoj Prakash Maheshwari
3. Sunita Manoj Maheshwari
4. Prakash Kanhaiyalal Maheshwari .. Petitioners

-Vs.-

Shriram City Union Finance Ltd.,
No.13, 3rd Floor, Meenakshi Tower,
Rajamannar Street,
T.Nagar, Chennai 600 017.
Land Mark (Opp Ramakrishna School Ground) ...Respondent

Original Petition under Section 34(2) of the Arbitration and
Conciliation Act, 1996 praying to set aside the award dated
25.09.2019 passed by the sole Arbitrator.

For petitioners

... M/s.G.Nivedita

ORDER

The respondents in the arbitral proceedings are the petitioners herein and the claimant therein is the respondent before this Court. The Section 34 petition has been filed challenging the arbitral award dated 25.09.2019 in A.C.P(SCUF) No.240 of 2019. The parties are referred to in their litigative status before the Arbitral Tribunal.

2. The brief facts preceding the filing of the above petition to set aside the award are as follows:-

The respondents had entered into a loan agreement with the claimant to the tune of sum of Rs.25 lakhs. The amounts were repayable in equated monthly installments, which has been detailed in the schedule to the loan agreement. The case of the claimant is that the amount had not been repaid and despite the repeated demands, the respondents had not come forward to clear the loan. Therefore, invoking the arbitration clause, a notice dated 21.05.2019 was issued to the respondents. On 21.05.2019, the first respondent as the principal borrower and the other respondents are the guarantors were jointly and severally liable to pay a sum of Rs.25,49,033.46. Therefore, the claim came to be filed before the learned Arbitrator.

3. From the award, it is seen that the learned Arbitrator had issued notice to the respondents and on 01.07.2019, a learned counsel had entered appearance on behalf of the respondents. The matter was adjourned to 19.08.2019 for filing of the statement of defence as a last and final chance, since the respondents 1 and 3 had been served even prior to the first hearing, namely, 01.07.2019.

4. However, on 19.08.2019, the respondents once again sought time for filing the statement of defence and the matter was adjourned to 16.09.2019 for filing of the statement of defence as a last and final chance. On 16.09.2019, when the matter was called, there was no representation on behalf of the respondents till 3.30.p.m. Thereafter, the learned Arbitrator has proceeded to call the respondents absent and set them ex-parte. The ex-parte evidence was also taken on the very same day. Exhibits were marked and the claimant's submissions were heard. The claimant had filed necessary documents to prove their claim, namely, the loan agreement as Ex-A3, the loan re-call notice -Ex.A5, letter of reference to the Arbitration-Ex.A6 and the Statement of Accounts-Ex.A7 to prove their contention. The respondents, despite having notice, had failed to submit their

statement of defence, though the respondents 1 and 3 had been given over four adjournments for filing the statement of defence.

5. Challenging the said award, the respondents are before this Court. The only ground on which the arbitral award is sought to be set aside is that the respondents were not provided with prior notice of appointing an Arbitrator and they had not been heard before the award was passed. Apart from these grounds, there are no other grounds that have been put forward by the respondents.

6. Heard the learned counsel for the petitioners.

7. From the perusal of the award, which is the only document that has been filed in the present petition for setting aside the award, it is evident that the notice has been served on the respondents and they also entered appearance through the learned counsel. However, they had not placed their statement of defence on record and despite time being granted had failed to appear before the Arbitral Tribunal. It is also to be noted that though the respondents have been set ex-parte on 16.09.2019, the award has come to be passed on 25.09.2019. Even in the interregnum, there has been no

action taken by the petitioners herein to set aside the ex-parte award. Further, no grounds as set out in Section 34 of the Arbitration and Conciliation Act have been made out by the petitioners.

8. In the result, the Original Petition is dismissed. There shall be no order as to costs. Consequently, connected application is closed.

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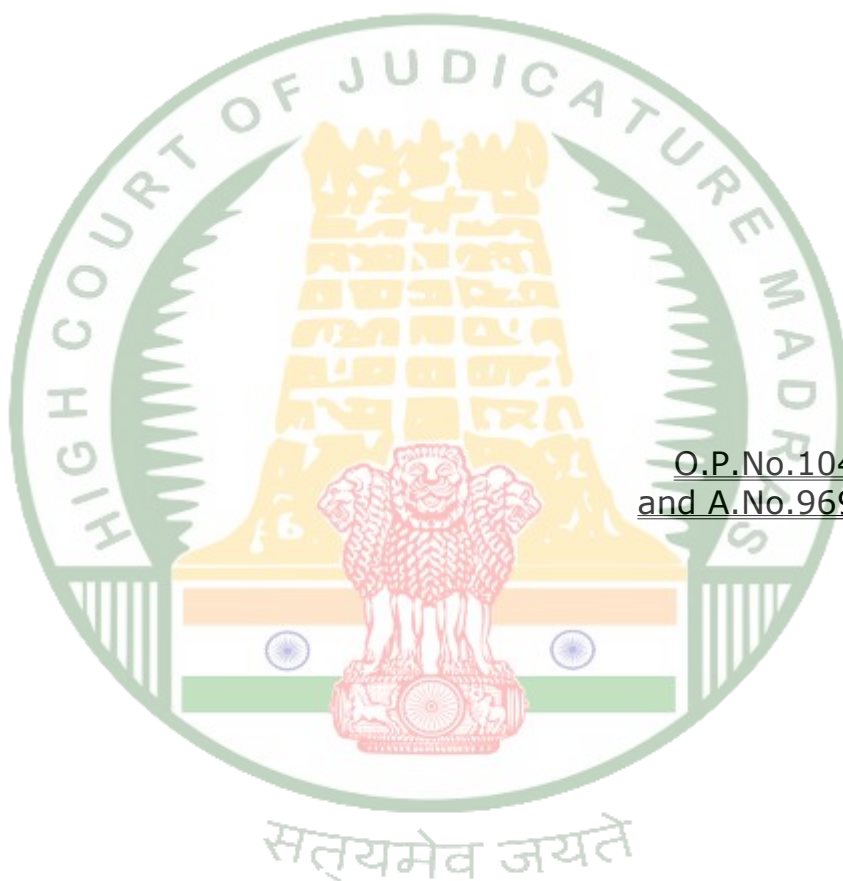


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