

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

O.S.A. No. 485 of 2018

Strong Engineering Contractors,
Through its Managing Partner,
Er.Y.Abdul Hameed,
No.6,Red Star Building,
Thillai Nagar Main Road,
Tiruchirapalli - 620 018. ...Appellant/Respondent

vs

- 1.The Deputy General Manager/
General Southern Railway,
Park Town,
Chennai - 600 003.
- 2.The Chief Administrative Officer,
(Construction), Southern Railway,
Egmore, Chennai - 600 003 ...Respondents/Petitioners

Prayer: Appeals under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent to set aside the order and decreetal order dated 29.06.2018 in Original Petition No.397 of 2018.

For Appellant : Mr.C.Umashankar

For Respondents : Mr.P.T.Ramkumar

JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

The appellant herein was the respondent before the learned single Judge in O.P.No.397 of 2018. The said original petition was filed challenging the award dated 28.09.2017. The core issue that was decided by the learned single Judge under Section 34 of the Arbitration and Conciliation Act, 1996 was with respect to the interest component liable to be paid under the new Act with respect to the security deposit and unsettled bills.

2. On perusal of the records, we find that before the learned single Judge, the appellant did not appear. Now, the present appeal has been filed, assailing the order passed under Section 34 of the Arbitration and Conciliation Act both on merit and on the ground that the appellant has not been served.

3. Learned counsel appearing for the appellant would submit that in view of the pronouncement of the Apex Court, the order passed by the learned single Judge deserves to be set aside and consequently, the award will have to be restored. It is further submitted that the appellant has not been served. Per contra, learned counsel appearing for the respondents submitted that the learned single Judge given a factual finding that the appellant has been served and thereafter proceeded to deal with the matter. There are records available to show that the appellant has been served.

4. Even on merits, the appellant does not have a case. We have two options. One is to go into the merits of the case and decide it and the second is to decide the issue as to whether the appellant has been served or not. After perusing the materials placed before us, we are of the view that without going into the factual adjudication both on merit and on the said issue as to whether the appellant has been served or not, the appellant will have to be given an opportunity to put forth its case. After all, it is the appellant who raised the dispute and got an award in its favour. Therefore, whatever may be the reason, we are inclined to give one more opportunity to the appellant to put forth its case. Once we decide to do so, it would not be proper on our part to go into the merits of the matter.

5. In such view of the matter, we are inclined to interfere with the order passed by the learned single Judge dated 29.06.2018. Accordingly, the order dated 29.06.2018 stands set aside and the matter stands remitted to the learned single Judge to deal with the petition filed under Section 34 of the Arbitration and Conciliation Act. We request the learned single Judge to dispose of O.P.No.397 of 2018 within a period of eight weeks.

6. With the above observation, the Original Side Appeal stands allowed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

mmi

To

The Sub Assistant Registrar
Original Side
High Court, Madras.

+1cc to Mr.C.Umashankar, Advocate SR.No.102389

+1cc to Mr.P.T.Ramkumar, Advocate SR.No.102650

O.S.A. No. 485 of 2018

MP(CO)
GMY(03/03/2020)



WEB COPY