



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Twenty Fifth day of March Two Thousand Nineteen

WEB COPY

PRESENT

The Hon`ble Mrs.Justice S.RAMATHILAGAM

CMP(MD) No.2132 of 2019
IN
CMA(MD) No.SR53413 of 2018

1 A.PALANISAMY
2 P.SANTHI

... PETITIONERS/APPELLANTS/RESPONDENTS

Vs

THE BRANCH MANAGER
SHRIRAM CITY UNION BANK, THIRUVARAMPOOR
BRANCH, TRICHY DISTRICT. ... RESPONDENT/PETITIONER/PETITIONER

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condon the delay of 1274 days in filing the CMA

PRAYER IN CMA(MD) No.SR53413 of 2018

set aside of the award of the sole arbitrator in ACP.No.115 of 2015 dated 26.03.2015 on the file of the Sole Arbitrator, Trichirappalli and pass such further or other orders.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.M.SANKAR, Advocate for the petitioners, the court made the following order:-

This Civil Miscellaneous Petition has been filed to condone the delay of 1274 days in filing the above said Civil Miscellaneous Appeal.

2.The said CMA has been preferred to set aside the award passed in ACP.No.115 of 2015 dated 26.03.2015 by the Sole Arbitrator, Tiruchirappalli.

3.From the records, it is observed that an Execution Petition has been filed and on the same, the petitioners have also filed their counter. In the counter, the petitioners herein contended that they have not been served with proper notice and after passing the award and only at the time of receiving the notice in the said Execution Petition, the petitioners came to know about the award passed against them. The said Execution Petition was filed for



recovery of a sum of Rs.5,56,700/- and in the counter, the petitioners herein have questioned the statement of accounts and also the claim made by the respondent in the arbitration proceedings.

4.The grievance of the petitioners herein is that there is a huge variation in the arbitration award and the amount claimed in the Execution Petition filed on 24.02.2018. The claim made by the respondent and the claim made in the Execution Petition are entirely different and the other grievance of the petitioners is that on various grounds, the calculation was made, for which, the receipt was executed by the Executive concerned. Hence, the petitioners contended that there is a variation in the award passed by the sole Arbitrator and in the claim made in the said Execution Petition, there are some accounts, for which, no receipts were furnished by the Executive concerned.

5.The reason to condone the delay of 1274 days is that the petitioners were not properly served with the notice and only after receiving the notice on the said Execution Petition, they came to know about the award passed by the sole Arbitrator and now the petitioners questioned the claim made in the Execution Petition.

6.The award of the Arbitrator is Rs.3,68,680/-. Further, the petitioners contended that they obtained a loan to the tune of Rs.4,00,000/- and they also repaid the entire loan amount with interest to the tune of Rs.5,56,700/-. Now, the grievance of the petitioners is that over due is being charged by the Shriram City Union Finance Limited to the tune of rupees more than 2 lakhs and the petitioners are not liable to pay the said amount and further, the award was also passed for the disputing amount. Since the petitioners paid the entire amount, the award passed by the Tribunal is unlawful and moreover, they have not served with proper notice and hence, they could not participate in the said proceedings.

7.On perusal of the award, it is observed that the petitioners have to pay the installments for the claimant company in 36 monthly installments commencing from 10.12.2013, ending with 10.11.2016 and as per the statement of accounts, it is seen that the petitioners have paid only Rs.1,84,860/- out of Rs.2,32,680/- with default in installments. The first default has been committed on 10.01.2014 and the last default has been committed on 10.01.2015 and the last installment of repayment was made on 25.01.2015 as agreed. Therefore, on scrutinizing of the documents filed by the claimant and on the basis of the statement of accounts and also other documents relied on by the claimant, the case of the claimant is proved and the claimants are entitled for an award of Rs.3,68,682/-.

8.The petitioners further contended that they have repaid the loan amount to the tune of more than rupees 5 lakhs and the petitioners have also filed the statement of accounts that was issued on 11.03.2013. Only after perusal of the documents and the



payment made by the petitioners, the award was calculated and hence, the award that was determined by the respondent bank is based on the repayment made by the petitioners and also as per the documents of the statement of accounts.

9. In view of the above, the grievance of the petitioners is not a genuine one and the reasons for not participating in the said proceedings were stated by the petitioner that they were not served with a proper notice. Hence, in order to provide an opportunity to the petitioners to establish their case regarding payment, this Civil Miscellaneous Petition to condone the delay of 1274 days in filing the said CMA is admitted on condition that the petitioners shall deposit a sum of Rs.2,50,000/- to the credit of ACP.No.115 of 2015 on the file of the Sole Arbitrator, Tiruchirappalli, within a period of three weeks from the date of receipt of a copy of this order, failing which, the delay condoned by this Court shall stand vacated automatically and the CMA (MD) No.SR53413 of 2018 shall be rejected at the SR stage itself.

sd/-
25/03/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE SOLE ARBITRATOR,
TIRUCHIRAPPALLI.

+1. C.C. to Mr.M.SANKAR Advocate SR.No.5492

PS/JC/SAR-3/04.04.2019/3P/3C

ORDER
IN
CMP(MD) No.2132 of 2019
IN
CMA(MD) No.SR53413 of 2018
Date :25/03/2019