

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2020

CORAM

THE HONOURABLE Mr.R.SURESH KUMAR

C.M.A.No.941 of 2015

and

M.P.No.1 of 2015

1.Muthusamy

2.Naveenkumar

... Appellants/Petitioners

Vs.

Sriram Transport Finance Limited
Having their Branch Office at NMS
Tower 2nd Floor No.4 Indira Nagar,
Kulathypalayam, Palladam Main Road,
Rep. By Vetrivel

... Respondent

Civil Miscellaneous Appeal is filed under Order 43 Rule (ja) of the Civil Procedure Code, against the order and fair order dated 23.02.2015 passed by the Principal District Judge, Tiruppur in E.A.No.123 of 2014 in E.P.No.113 of 2013.

For Appellants

:

Mr.R.Sankarappan

JUDGMENT

This miscellaneous appeal has been preferred against the fair and decreetal order passed by the Execution Court, namely, Principal District Judge, Tiruppur by order dated 23.02.2015 in Execution Application No.123 of 2014 in E.P.No.113 of 2013 arising out of A.P.No.62 of 2009.

2. Before the Court below, the said Execution Petition No.113 of 2013 was filed by the respondent herein in order to seek execution of the ex-parte award passed in Arbitration proceedings in A.P.No.62 of 2009.

3. The said Execution Petition was posted for hearing on 13.02.2014. On that day both the appellants and their counsel were not present, as they had been out of station and therefore instructed their respective counsel to represent the case on their behalf. Since there was no representation on their behalf on that particular date, i.e., 13.02.2014, the Court below has set them as ex-parte and the ex-parte order was passed.

4. Subsequently, after coming to know the fact that they have been set ex-parte on 13.02.2014, in order to set aside the said ex-parte order, E.A.No.123/14 was filed by the appellants in the said execution petition, which was also dismissed through the impugned order of the learned Principal District Judge, Tiruppur against which, the present appeal has been filed.

5. The learned counsel appearing for the appellants would fairly submit that at the time of filing the said Execution Application though steps had been taken to file a petition to set aside the ex-parte arbitration award, which was sequel for the execution petition itself, subsequently, such application was filed and the same was taken on file, heard and was dismissed by the Arbitral Tribunal/Arbitrator. Therefore, the award passed by the Arbitral Tribunal/Arbitrator has become final. Therefore, the other plea raised by the appellant before the Court below at the time of filing the present execution application is no more available. In that line, the appellants cannot canvas any merits of the case.

6. The said fair stand taken by the learned counsel appearing for the appellants is taken note of. Since the only reason given by the learned Judge to dismiss the present execution application, which is the order impugned herein, was because of non filing of necessary petition to set aside the ex-parte arbitration award and subsequently, though such attempts had been made by the appellants, the same was dismissed on merits and the arbitration award has become final, even the said reason, which according to the appellant is available to them also is no more available now.

7. In view of the above, I find no merits in the present appeal. Therefore, it deserves to be rejected. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

rsi

To

1.The Principal District Judge,
Tiruppur.

2.The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.941 of 2015
and
M.P.No.1 of 2015

EV (CO)
GMY (03/08/2020)



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