

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. (NPD) No.3246 of 2015

**and
M.P.No.1 of 2015**

Mr.J.K.Govindarajulu

... Petitioner

Vs.

1. M/s.Sriram City Finance Ltd.,
Rep. by its Authorised Signatory,
T.Gnanasekaran

2. Mrs.Anitha

3. Mr.C.R.Venkateswara

... Respondents

Prayer :- This Civil revision has been filed under section 115 of Code of Civil Procedure against the fair and final Order dated 24.04.2015 made in E.A.No.187 of 2011 in E.P.No.3 of 2011 in SCUF.No.1991 of 2009 on the file of the Principal District Court, Coimatore.

For petitioner

: Mr.S.Thangavel

For respondents

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ORDER

This revision has been filed against the Order of dismissal of the

<http://www.judis.nic.in> petitioner's application filed under section 47 of Code of Civil Procedure.

2. Brief facts leading to filing of this revision is as follows :

The petitioner is the judgment debtor. The petitioner borrowed a sum of Rs.3 lakhs from the respondent. According to the petitioner, he has repaid a sum of Rs.2,63,358/- and since the interest charged by the respondent is exorbitant, he is not in a position to pay the remaining amount. Thereafter, the respondent initiated arbitration proceedings and an award also came to be passed against the petitioner. Thereafter, the respondent filed an Execution Petition for recovery of a sum Rs.2,69,054/- and in the above Execution Petition, the petitioner filed an application under section 47 of Code of Civil Procedure on the ground that as per Section 31(5) of the Arbitration and Conciliation Act, the respondent ought to have furnished a copy of the Award and without furnishing a copy of the Award, the respondent cannot maintain the Execution Petition. That apart, the Arbitration proceedings itself has not been conducted properly and no notice was served on the petitioner, which is mandatory, as the Arbitration proceedings itself has not been conducted in accordance with law and the same is liable to be set aside. In order to deny an opportunity to the petitioner to challenge the Award, the respondent has not furnished a copy of the Award and thereafter, levied the Execution Petition. In the above circumstances, he has filed an application under section 47 of Code of Procedure. The Court below, though admitted that there is no proof of

service, has dismissed the application. Challenging the same, the present revision has been filed.

3. Even though notice has been served on the respondents and their names printed in the cause list, none appeared for the respondents.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record carefully.

5. The primordial contention of the petitioner is that under section 31(5) of the Arbitration and Conciliation Act, the copy of the Award has to be served on the petitioner enabling him to challenge the correctness of the Award. According to the petitioner, non furnishing of a copy of the Award is a mandatory violation of the provisions of law. It is his further contention that the Arbitration proceedings itself has not been conducted properly and no opportunity was given to the petitioner and no notice was served on the guarantors and the Award has been passed hastily. That apart, the petitioner has repaid substantial part of the loan amount and the Award came to be passed for exorbitant amount and the amount paid by the petitioner has not been taken into consideration by the Arbitrator and the petitioner has bright chance of setting aside the Award passed under section 34 of the Arbitration and Conciliation Act. Only to deprive the

respondent from challenging the Award, a copy of the Award has not been furnished to the respondent.

6. A perusal of Section 31(5) of the Arbitration and Conciliation Act reveals that after passing of the Award the copy of the Award has to be furnished to the petitioner. The Court below has also held that no proof has been filed by the respondent to prove that the award was furnished to the petitioner. However, the Execution Court dismissed the application on the ground that the above issue cannot be decided in the Execution Petition. Since, the petitioner has disputed the quantum of liability and also contended that the Arbitration proceedings has been conducted without giving him an opportunity, and the copy of the Award has also not been furnished to the petitioner enabling him to challenge the same and the petitioner can object the execution of the award being nullity and non est under section 47 of Code of Civil Procedure. The Execution Court without considering the same, mechanically dismissed the application only on the ground that the issues cannot be decided in the execution proceedings. Considering the above circumstances, I am inclined to set aside the Order of the Court below and this Civil Revision Petition is liable to be allowed.

7. Accordingly, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No cost. The respondents are

at liberty to initiate fresh execution proceedings after furnishing a copy of the Award to the petitioner.

10.02.2020

vrc

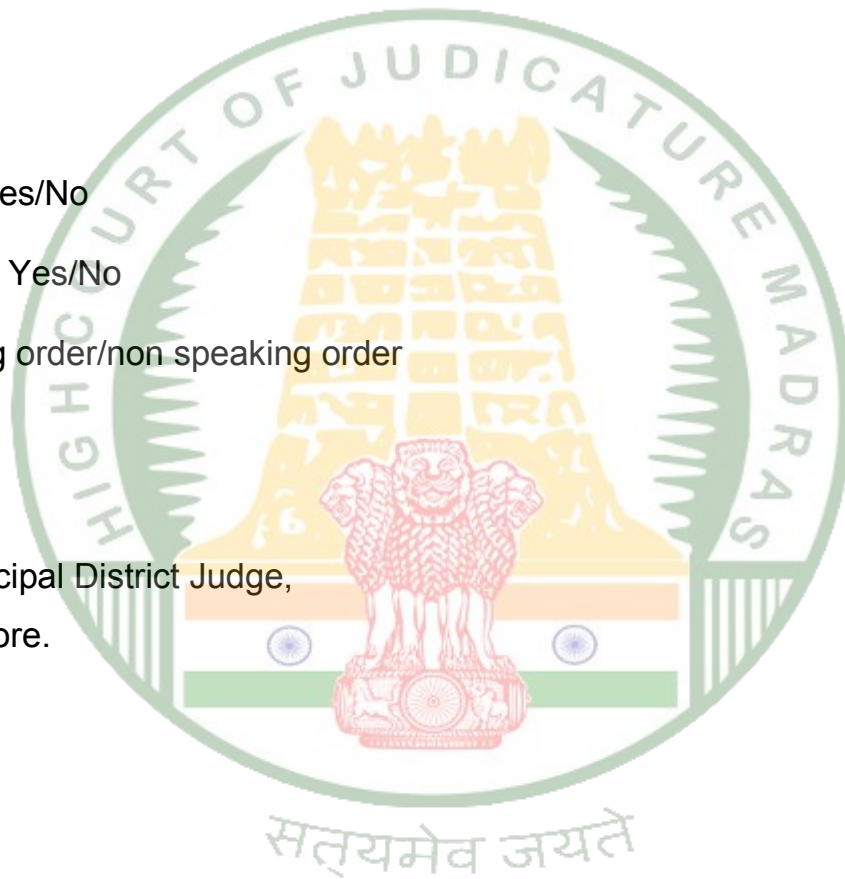
Index : Yes/No

Internet : Yes/No

Speaking order/non speaking order

To

The Principal District Judge,
Coimbatore.



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V.BHARATHIDASAN, J.

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