

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 09TH DAY OF JULY 2020

THE HON'BLE MR. JUSTICE M.SUNDAR

A. No.934 of 2020
in
O.P.(D).No.24997 of 2020

In the matter of the Arbitration
and Conciliation Act, 1996
And

In the matter of the Arbitration
Award dated 20.01.2020 of
disputes and differences
between M/s.Equitas Small
Finance Bank, Limited and
VNR Auto Logistics and others
in respect of Loan Agreement
No.SLPNMLE0140755 dated
05.06.2017

1. M/S. VNR AUTO LOGISTICS,
No.4/84, 3rd Floor,
1st Cross Street, Thirumal Nagar,
Poonamallee, Chennai - 600 066

2. Nageswara Rao.V
Son of Krishnama Naidu,
No.4/84, 3rd Floor, 1st Cross Street,
Thirumal Nagar, Poonamallee,
Chennai-600 066.

3. AJAY KUMAR (Age 28 Yrs),
S/o. Nageswara Rao,
No.4/84, 3rd Floor,
1st Cross Street, Thirumal Nagar,
Poonamallee, Chennai - 600 066

..Petitioner / Appellants

-Vs-

1. M/S. EQUITAS SMALL FINANCE BANK LTD.,
(FORMERLY KNOWN AS EQUITAS FINANCE LIMITED)
Rep.by its Assistant Manager Legal,
Spencer Plaza, 4th Floor, Phase II, No.769,
Mount Road, Anna Salai,
Chennai- 600 002 ..Respondent/Claimant

A.No.934 of 2020:

Application praying that this Hon'ble Court be pleased to dispense with the production of the Original Award in Award No.mvh/vf/efsb/621 dated 20.01.2020 as may be decided by this Hon'ble Court.

This Application coming on this day before this court for hearing the court made the following order:

Main matter vide O.P(D).No.24997 of 2020 has been filed under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, with a prayer to set aside an arbitral award dated 20.01.2020 in arbitration proceedings between the applicants herein and sole respondent Bank in Case No.mvh/vf/efsb/621 (hereinafter 'impugned award' for clarity and convenience).

2.It is the case of the applicants herein that only a photocopy of the impugned award was served on them on 21.01.2020. Saying so applicants had taken out the instant application with a prayer to dispense with production of the original impugned award.

3. In the aforesaid backdrop, proceedings came to be made in instant application on four different dates, the last of which was on 02.06.2020. To be noted, 02.06.2020 proceedings captures all the earlier proceedings from the date of inception of this application and the same reads as follows:

'Read this in conjunction with and in continuation of earlier orders / proceedings made on 02.03.2020, 09.03.2020 and 01.06.2020 which read as follows :

Order dated 02.03.2020 :

'Mr.N.Nithiyanandam, learned counsel for applicants in OP.No.SR24997 of 2020 is before this Court.

2. Instant application has been filed with a prayer to dispense with production of original arbitral award. To be noted, photocopy of arbitral award has been filed.

3. Be that as it may, affidavit says that the deponent is the owner of the petitioner company. A perusal of short and long cause titles in OP reveal that 'VNR Auto Logistics' is prefixed with M/s. and it does not have the words 'Private Limited' or 'Limited' as suffix. Therefore, whether it is a Company at all is not clear. Learned counsel submits in the hearing that it is a proprietary concern and Mr.Nageswara Rao [deponent] is carrying business in the name and style VNR Auto Logistics.

4. With regard to the impugned arbitral award dated 20.01.2020, though a photocopy of envelope, in which photocopy of impugned arbitral award is said to have been received has been filed as part of typed set of papers, date/s of receipt of the photocopy of the impugned arbitral award by each of the applicant has/have not been mentioned with specificity in the affidavit. To be noted, one photocopy of one envelope alone has been filed as part of typed set of papers and name of addressee is not shown therein.

5. Faced with the above situation, learned counsel seeks time to file a better affidavit and an additional typed set of papers.

List on 09.03.2020.

Order dated 09.03.2020 :

Read this in conjunction with and in continuation of earlier proceedings of this Court dated 02.03.2020.

2. Today, a better affidavit has been filed.

3. In the light of contents of better affidavit, Registry is directed to requisition the entire records of arbitral proceedings from sole Arbitrator Mr.M.V.Hari Ram, Advocate at #4 IInd Floor, No.6, Sir Madhavan Nair Road, Mahalingapuram, Chennai-600 034 regarding Case No.mvh/vf/efsb/621 and arbitral award dated 20.01.2020.

4. Registry is to request learned Arbitrator to produce the entire arbitral records in a sealed envelope [to be submitted to the Registrar General and placed before this Court by the next listing, which shall be on 24.03.2020].

List on 24.03.2020. '

Order dated 01.06.2020 :

'After due notification to counsel and after showing the matter in the cause list, this case was listed for web hearing today on a video conference platform.

2 Though notice has not been ordered to respondent Bank, on seeing the cause list, Mr.A.Damodaran, learned counsel also joined the web hearing.

3 Read this in conjunction with and in continuation of earlier proceedings of this Court dated 02.03.2020 and 09.03.2020. Vide 09.03.2020 proceedings, Registry was directed to requisition records of Arbitral Tribunal from the sole arbitrator. However, this Court is informed today that Registry could not send notice to sole arbitrator owing to the intervening pandemic which can be described as Covid-19 situation.

4 Counsel for applicants and/or counsel for respondent Bank are directed to provide electronic mail address, mobile number with Whatsapp application and/or any other electronic mode of communication address qua sole arbitrator. To

be noted, at this stage, learned counsel for respondent bank is permitted to assist the Court only in giving such electronic addresses/numbers, as notice has not been ordered to respondent Bank (as of today) as already mentioned supra.

5 Both learned counsel sought a days time to furnish the above particulars.

6 List tomorrow, i.e., 02.06.2020.'

2 Today in the web hearing on a video conferencing ('VC' for brevity) platform, i.e., virtual court, Mr.N.Nithianandam and Mr.A.Damodaran, learned counsel for applicants and respondent bank respectively are before me.

3 Pursuant to the aforementioned earlier proceedings, aforesaid counsel have provided the email id and mobile number of sole arbitrator Mr.M.V.Hariram, which are as follows:

email id : harirammanjapra@gmail.com
mobile No.9444952608

4 This Court is informed that the aforementioned mobile number of sole arbitrator has a whatsapp application also.

5 As directed in 09.03.2020 order, more particularly paragraph 3 thereat, Registry is now directed to

requisition the entire records of arbitral proceedings regarding Case No.mvh/vf/efsb/621 and arbitral award dated 20.01.2020 by sending notice inter-alia through electronic mail and electronic communication to the aforementioned email id and mobile number (Whatsapp) of the sole arbitrator. Registry shall request the sole arbitrator to produce the entire arbitral records in a sealed envelope before the next listing.

6 Both learned counsel are directed to communicate this order / proceedings to learned Arbitrator by electronic communications to the aforesaid email address / mobile number. Both learned counsel can file proof of service through email to the Registry.

7 List under the same caption on 12.06.2020.'

4. Thereafter, pursuant to my directions, learned sole Arbitrator, who constituted the 'Arbitral Tribunal' (hereinafter 'AT' for brevity), has sent entire records of the AT in a sealed envelope to the Registry under cover of a letter dated 17.06.2020 and the same has been placed before me today.

5. In the virtual Court today Mr.N.Nithianandam, learned counsel for applicants and Ms.Priya, learned counsel representing Mr.A.Damodaran for the respondent Bank are before me. In the hearing, the sealed envelope sent by AT to the Registry and placed before me was opened.

6.I now have the benefit of perusing the records of the AT. A signed copy of the impugned award forms part of the records and post script (PS) to the same shows that impugned award was hand delivered to the respondent Bank and sent by Registered Post with acknowledgement due to the applicants herein, but there is no covering letter. In other words, there is nothing to demonstrate that the impugned award has been sent to the parties under the cover of a letter. However, postal acknowledgement cards qua applicants form part of the records and the same show delivery qua applicants on 22.01.2020 (To be noted, applicants have averred in the affidavit filed in support of instant application that photocopy of impugned award was served on them on 21.01.2020). It is the stated position and specific case of the applicants that only a photocopy of the impugned award was received by them and as mentioned in the earlier proceedings, a copy of the envelope in which a photocopy of the impugned award is said to have been received by the applicants has been filed as part of the typed-set of papers.

7.I have carefully perused the records and given my detailed consideration to instant application before me. In my considered prima facie view, (for the limited purpose of instant dispense with application) as there

is nothing to demonstrate that original impugned award was served on the applicants, I give the benefit of doubt to the applicants in the interest of justice, equity, fair play and allow this application.

8.Registry is directed to process O.P.(D).No.24997 of 2020, assign a number to the same if otherwise in order and post numbering, list the matter under the caption for admission along with the records of the AT in the sealed cover.

9.Application allowed with the above directive. No costs.

Sd/-M.S.J
09.07.2020

//Certified to be a true copy//

Dated this the day of 2020.

SU/16.07.2020

COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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