

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.09.2020

CORAM:

THE HONOURABLE Mr. JUSTICE M.SUNDAR

O.P.No.244 of 2015

- 1.M/s.CSM Enterprises
Plot No.3033/B 5th Cross Street,
Ram Nagar South, Madipakkam,
Chennai – 600 091.
- 2.M/s.Chockalingam Kailasam
Meenakshi Kailasam
Plot No.3033/B 5th Cross Street,
Ram Nagar South, Madipakkam
Chennai – 600 091. ... Petitioners
- Vs.
- 1.M/s.Fullerton India Credit Company Ltd.,
No.307, Venkat Towers,
Poonamallee High Road,
Maduravoyil
Chennai – 600 095.
- 2.K.Pandurangan ... Respondents

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Exparte award dated 24.09.2014 passed by the Sole Arbitrator Shri.K.Pandurangan in Arbitration Proceedings No.FICCL/ARB/064/2014 dated 24.09.2014 in favour of the Respondent.

For Petitioners : No appearance
For respondents : Mr.Anand Johnson

ORDER

Read this in conjunction with and in continuation of earlier four proceedings dated 14.07.2020, 28.07.2020, 25.08.2020 and 31.08.2020 which read as follows:

'Proceedings dated 14.07.2020:

Read this in conjunction with and in continuation of earlier proceedings in the physical Court on 16.03.2020, which reads as follows: 'It is submitted by the learned counsel for the petitioner that he is taking out an implead petition and he seeks time to process the same and bring it on board. This OP being more than half a decade old is clearly a vintage OP, petitioner will do well to bring the implead petition at the earliest. List on 24/03/2020.' 2. Today, the matter is listed before me in a Virtual Court. Though Mr.Anand Johnson, learned counsel representing Mr.S.Namasivayam, counsel on record for contesting first respondent is before me, there is no representation for the petitioners. 3. In the light of earlier proceedings, with the intention of giving one more opportunity to the parties, this matter is adjourned by a fortnight. List on 28.07.2020.

'Proceedings dated 28.07.2020:

Read this in conjunction with and in continuation of earlier proceedings dated 14.07.2020. The position so different today. Ms.Divya Dharshini, representing

Mr.S.Namasivayam, counsel for contesting first respondent, but there is no representation for petitioners.

With the intention of giving further opportunity to the petitioners, this matter is adjourned by four weeks.

List on 25.08.2020.

Proceedings dated 25.08.2020:

Read this in conjunction with and in continuation of earlier proceedings dated 28.07.2020, the position is no different today. In other words, Ms.Diveyadharsini, learned counsel representing Mr.S.Namasivayam, counsel for contesting first respondent is before me in this web-hearing on a videoconferencing platform, but there is no representation for the petitioners. However with the intention of giving further opportunity to the petitioners, list this matter on Monday i.e., 31.08.2020.

Proceedings dated 31.08.2020

Read this in conjunction with and in continuation of earlier proceedings dated 25.08.2020, the position is no different today. In other words, Ms.Diveyadharsini, learned counsel representing Mr.S.Namasivayam, counsel on record for contesting first respondent is before me in this web-hearing on a videoconferencing platform, but there is no representation for the petitioners. List this matter under the caption 'FOR DISMISSAL' dayafter-tomorrow i.e., 02.09.2020.'

2.A perusal of the aforementioned four preceding listings and the proceedings made thereunder brings to light that this is the fifth consecutive listing in which the counsel for petitioners has not joined the meeting and come before this Court in the virtual hearings, though each of the listing have been duly notified in the cause list with all necessary particulars. In all the five listings counsel for contesting first respondent has been before this Court.

3.To be noted, today this matter is listed under the caption 'FOR DISMISSAL' (pursuant to earlier proceedings dated 31.08.2020) and that has also not altered the position. Under the normal circumstances, this Court would have proceeded to dispose of captioned OP on merits as this is not an appeal and the principle underlying Order XLI Rule 17 sub-rule (1) of the Code of Civil Procedure, 1908 will not apply, but there is one reason why this Court is not adopting such a course in this matter. The reason is proceedings dated 28.01.2020 made by Hon'ble Predecessor Judge which reads as follows:

'It is informed by the learned counsel for the first respondent that there has been an assignment in favour of the Kotak Mahindra Bank Limited.

The learned counsel for the petitioner seeks time to

implead M/s.Kotak Mahindra Bank Limited.

Post the matter on 25.02.2020.'

4.Today Mr.Anand Johnson, learned counsel representing the counsel on record for contesting first respondent, adverting to aforementioned 28.01.2020 proceedings submits that captioned OP was presented in this Court on 31.10.2014 and assignment was made on 14.10.2019. Pending captioned OP, petitioners have not taken steps in this regard and petitioners' counsel has also not chosen to come before this Court. Therefore, this Court deems it appropriate to dismiss the matter for non-prosecution/default.

5.To be noted, even today when the matter is listed under the caption 'FOR DISMISSAL', matter was passed over in the first call. In the second call also, there was no representation for the petitioners.

In the light of narrative thus far, captioned OP stands dismissed for default/non-prosecution. There shall be no order as to costs.

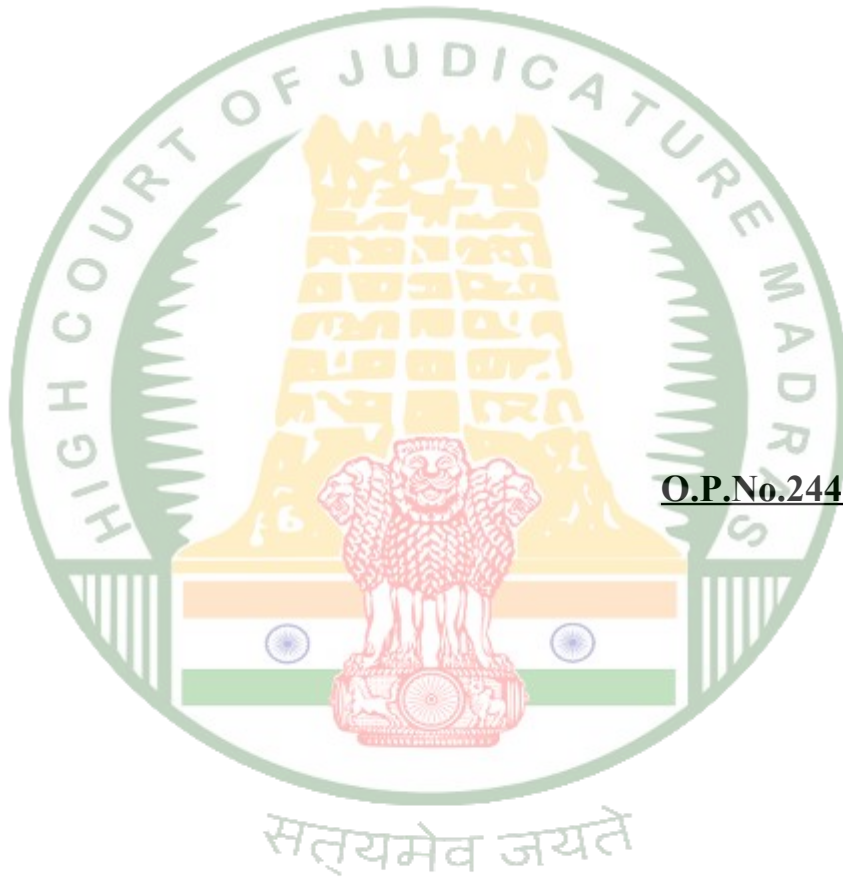
02.09.2020

sgl

Order in O.P.No.244 of 2015 dated 02.09.2020
[M/s.CSM Enterprises Vs. M/s.Fullerton India
Credit Company Ltd.,]

M.SUNDAR, J.

sgl



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