

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:13.08.2020

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

O.P No.586 of 2015

Mr.G.Mohan

... Petitioner

Vs.

1. M/s.Shriram City Union Finance Ltd.,
Rep. By its Authorized Signatory
at No.90, 1st Floor, Peters Road
New College Complex
Royapettah, Chennai – 600 014

2. Shri V.Senthil Kumar
Sole Arbitrator
At No.90, 1st Floor, Peters Road
New College Complex
Royapettah, Chennai – 600 014

3.Mr.Syed Ibrahim

4. Mr.A.Kumar

5. Mr.Backiyaraj

... Respondents

Original Petition filed under Section 34 of Arbitration and Conciliation Act, 1996 praying to set aside the ex parte award dated 06.04.2015 passed in A.C.P(VS/EF) No.34 of 2014 against the petitioner herein with cost.

For Petitioner : No appearance

For Respondent : Mr.Amalaraj S Penikilapatti

ORDER

Read this in conjunction with and in continuation of earlier proceedings dated 14.07.2020, 17.07.2020, 23.07.2020, 30.07.2020 and 05.08.2020 which read as follows:

'Proceedings dated 14.07.2020

Read this in conjunction with and in continuation of earlier proceedings dated 02.03.2020, 17.03.2020 and 18.03.2020.

2.Proceedings dated 17.03.2020 and 18.03.2020 read as follows:

Dated 17.03.2020

Mr.Amalraj S.Penikilapatti, learned counsel for first respondent is before this Court and learned counsel is ready, but there is no representation for petitioner.

List under the caption 'For Dismissal' on 18.03.2020.'

Dated 18.03.2020

Re-notified. List on 16.04.2020.'

3. Today, in this Virtual Court, the position is the same as on 17.03.2020. In other words, Mr.Amalaraj S.Penikilapatti, learned counsel for first respondent is before me and learned

counsel is ready, but there is representation for the sole petitioner. Learned counsel for contesting first respondent submits that he has informed the counsel for petitioner about the listing today.

4.Be that as it may, this matter has been listed after being duly shown in the cause list with all necessary particulars such as 'Meeting Number and Password'.

5.However, with an intention of giving further opportunity to the petitioner, list this matter on Friday i.e., 17.07.2020.'

'Proceedings dated 17.07.2020

Read this in conjunction with and in continuation of earlier proceedings dated 14.07.2020. The position is no different today.

2. Mr..Amalaraj S.Penikilapatti, learned counsel for contesting first respondent submits that he has duly informed the learned counsel on the other side about the previous listings and scheduled listing today.

3.Notwithstanding this position, there is no representation for the respondents today. To be noted, second respondent is the sole Arbitrator, who made the impugned award.

4. Be that as it may, with the intention of giving further opportunity to petitioner, list this matter on 23.07.2020.'

'Proceedings dated 23.07.2020

Read this in conjunction with and in continuation of earlier proceedings dated 17.07.2020.

2.The situation is the same today also. In other words, while Mr.Amalaraj S.Penikilapatti, learned counsel for petitioner is before me in this web-hearing on a videoconferencing

platform, there is no representation for the respondent. This is the third consecutive hearing, in which counsel for respondent is not before this Court. However, with the intention of giving further opportunity, list this matter under the same caption on 27.07.2020.'

'Proceedings dated 27.07.2020

Read this in conjunction with and in continuation of earlier proceedings of this Court dated 23.07.2020.

2.The situation is the same today also. To be noted, learned counsel for contesting first respondent submits that he informed Mr.R.Iyappan, counsel on record for petitioner about today's listing this morning also.

3.It is rather unfortunate that learned counsel for petitioner has not joined the hearing for the fourth consecutive hearing though the names have been duly shown in the cause list and though all essential particulars such as Meeting Number, Password etc., have been duly notified in the cause list.

However, with the intention of giving further opportunity to the petitioner, list this matter on Thursday i.e., 30.07.2020.

'Proceedings dated 30.07.2020

Mr.Amalaraj S.Penikilapatti, learned counsel for contesting first respondent is before me, but there is no representation for petitioner today also.

2.Read this in conjunction with and in continuation of earlier proceedings of this Court dated 27.07.2020.

3. This Court is informed by learned counsel for contesting first respondent that counsel for petitioner has been informed about previous proceedings and today's listing also.

4. Today's listing has been duly notified in the cause list with all particulars, such as Meeting Number, Password etc., but there is no representation for the petitioner.

5. Learned counsel for contesting first respondent is permitted to communicate by any electronic mode of transmission to the counsel for petitioner about today's hearing and the next date of listing. This is with intention of giving further opportunity to the petitioner.

List under the same caption on 05.08.2020.'

'Proceedings dated 05.08.2020

Read this in conjunction with and in continuation of earlier proceedings dated 14.07.2020, 17.07.2020, 23.07.2020, 27.07.2020 and 30.07.2020.

2. In all the aforementioned five earlier listings, Mr.Amalaraj S.Penikilapatti, learned counsel for contesting first respondent was before this Court in the virtual hearing, but there was no representation for the petitioner. Today also, the position is no different. In other words, while Mr.Amalaraj S.Penikilapatti, learned counsel for contesting first respondent is before me in this web-hearing, there is no representation for the petitioner.

3. Pursuant to permission granted in the previous listing on 30.07.2020 (Paragraph 5 of previous proceedings), learned counsel for contesting first respondent submits that he has duly communicated to the counsel on record for the petitioner through electronic modes of communication (SMS and whatsapp) about previous listings and scheduled listing today.

4. In the listing today, with the intention of giving

adequate opportunity, matter was passed over in the first call and called again. There was no representation for the petitioner in the second call also.

5. This is the 6th consecutive hearing in which the petitioner has not chosen to join the web-hearing though the matter has been shown in the cause list with all necessary particulars such as Meeting Number and Password etc., besides intimation as mentioned above.

6. Registry to list this matter under the caption 'FOR DISMISSAL' on 13.08.2020.'

2. The aforementioned proceedings and the trajectory, which this matter has taken speak for themselves.

3. This Court reminds itself about the observation made by Hon'ble Supreme Court in paragraph 26 of ***Bhumi Vikas Bank*** case being ***State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti*** reported in ***(2018) 9 SCC 472***, which reads as follows:

'26. We are of the opinion that the view propounded by the High Courts of Bombay and Calcutta represents the correct state of the law. However, we may add that it shall be the endeavour of every court in which a Section 34 application is filed, to stick to the time-limit of one year from the date of service of notice to the opposite party by the applicant, or by the Court, as the case may be. In case the Court issues notice after the period mentioned in Section 34(3) has elapsed, every court shall endeavour to dispose of the Section 34 application within a period of one year from the

date of filing of the said application, similar to what has been provided in Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This will give effect to the object sought to be achieved by adding Section 13(6) by the 2015 Amendment Act.'

4. In the light of the aforementioned obtaining position, applications under Section 34 of Arbitration and Conciliation Act, 1996 cannot be kept pending for unduly long period of time particularly when the petitioner is indifferent in prosecuting/pursuing the matter.

5. To be noted, instant matter was listed under the caption 'FOR DISMISSAL', the same has been duly notified in the cause list with Meeting Number and Password, notwithstanding which the position is no different today in the 7th consecutive hearing though counsel on record for petitioner has been duly intimated earlier vide e-mail as captured in earlier proceedings reproduced supra..

6. Today, learned counsel for contesting first respondent Mr.Amalaraj. S.Penikilapatti draws my attention to proceedings dated 02.03.2020 which reads as follows:

'Ms.D. Anitha, learned counsel representing the

counsel on record for petitioner is before this Court. Mr.Chandrasekar, learned counsel representing the counsel on record for the first respondent is also before this Court.

2. Instant OP has been presented in this Court on 06.07.2015 nearly half a decade ago.

3. This Court is constrained to remind itself about Sub Section (6) of Section 34 of 'The Arbitration and Conciliation Act, 1996' which prescribes one year time frame for disposal of Section 34 petitions. This timeline has been highlighted by Hon'ble Supreme Court in the case of State of Bihar vs. Bihar Rajya Bhumi Vikas Bank Samiti reported in (2018) 9 SCC 472.

4. Notwithstanding above position, the learned counsel for petitioner seeks a short adjournment.

5. Be that as it may, with regard to service on respondents, this Court notices from the case file that notice to respondents was ordered on 05.08.2015 and private notice was also permitted. Learned counsel for the petitioner is unable to say whether private notice was taken out, but in respect of Court notice, a perusal of case file reveals that the second respondent / arbitrator has been duly served. With regard to third respondent, the notice has been returned with an endorsement 'Refused'. Hence, it is held that 3rd respondent has been duly served. Registry to show the name of the counsel, if any one has entered

appearance, otherwise show the name of third respondent together with full / complete address as in the short and long cause titles in the next listing. Respondent No.4 has been duly served and therefore what applies to respondent No.3 will apply to respondent No.4 also. Registry to do the needful in the next listing. With regard to respondent No.5, court notice has been returned with the endorsement 'Left'.

6. Petitioner to effect paper publication in Tamil Daily viz., 'Malai Malar', Chennai Edition and English Daily viz., 'News Today', Chennai Edition. Returnable date is 17.03.2020. If the publication is not effected and the proof of publication is not filed before the next listing, instant OP will stand dismissed as against the 5th respondent.

List on 17.03.2020.'

7. A perusal of paragraph 6 of the previous proceedings is also of relevance.

8. Be that as it may, today Mr.Amalaraj S.Penikilapatti, learned counsel for contesting first respondent alone is before me in this web-hearing on a video-conferencing platform.

9. In the light of the trajectory of this matter, left with no other option or in other words, left with no choice, I inevitably dismiss this Original Petition for default/non-prosecution.

10. Original Petition dismissed for default/non-prosecution. There shall be no order as to costs.

13.08.2020

sgl

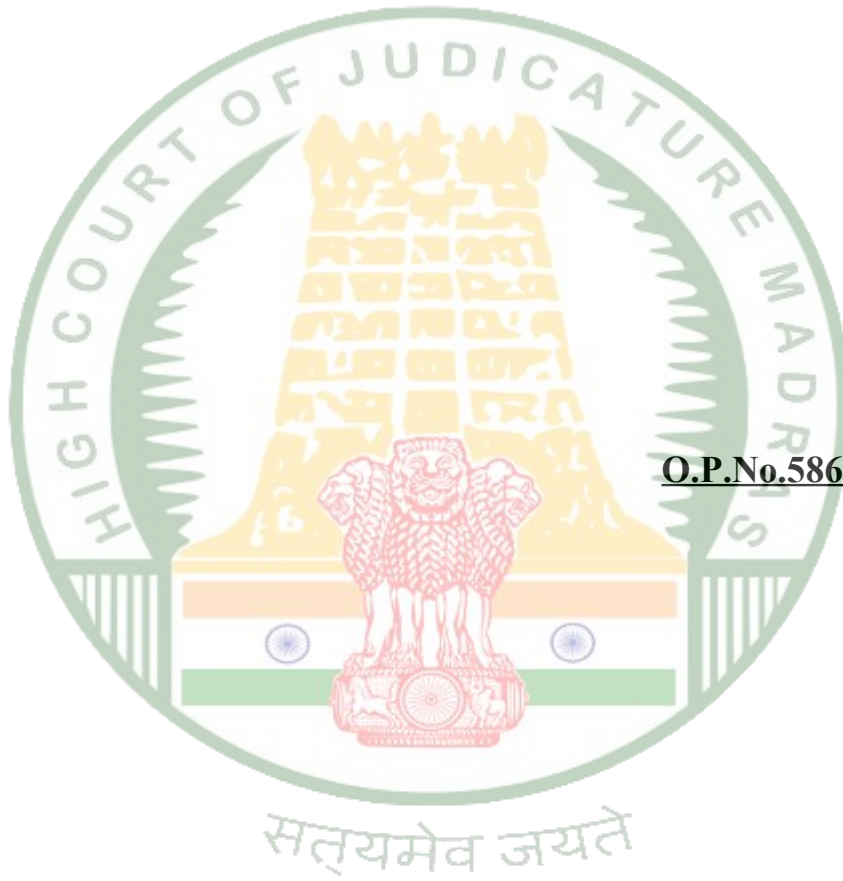


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M.SUNDAR, J.

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