

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.08.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

O.P.No.918 of 2015

1.A.M.Komalavalli
2.A.Marimuthu ... Petitioners

Vs.

1.M/s.Kotak Mahindra Bank Ltd.,
rep. By its Authority Signatory
2nd Floor, 3 Doss India Tower,
2nd Line Beach, Parrys
Chennai – 600 001.

2.K.R.Mani

3.D.Saravanan ... Respondents

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Award made in Arbitration Claim Petition No.A.C.P.(KOTAK) No.303 of 2010 dated 11.02.2015 on the file of the 3rd respondent.

For Petitioners : No appearance

For respondents : No appearance

ORDER

Captioned 'Original Petition' ('OP' for the sake of brevity) is an application under Section 34 of 'The Arbitration and Conciliation Act, 1996' (Act 26 of 1996) and this Act shall hereinafter be referred to as 'A and C Act' for the sake of brevity and convenience.

Read this in conjunction with and in continuation of earlier six proceedings dated 02.03.2020, 17.03.2020, 20.07.2020, 22.07.2020, 19.08.2020 and 25.08.2020 which read as follows:

'Proceedings dated 02.03.2020:

'Mr.K.Premkumar, learned counsel for both petitioners is before this Court.

2. Respondent No.3 is the sole Arbitrator, who constituted the Arbitral Tribunal, which made the arbitral award dated 11.02.2015, which is under challenge in instant O.P. No allegations of malafides against the third respondent and there is no other compelling reason for third respondent to be in the array of respondents. Therefore, third respondent is deleted from the array of parties.

3. With regard to respondents 1 and 2, proceedings of learned Master dated 03.07.2017 is of relevance and the same reads as follows :

"No representation. Already sufficient opportunities given for petitioners. No steps have been taken. Hence, post before Court further orders".

4. Learned counsel for petitioners submits that publication has not been effected and seeks one last opportunity to effect publication. This request is acceded to albeit with a caveat that next listing shall be peremptory in the light of sub section (6) of Section 34 of 'The Arbitration and Conciliation Act, 1996' which prescribes one year time frame for disposal of section 34 applications and in the light of the observation of the Hon'ble Supreme Court in the case of State of Bihar versus Bihar Rajya Bhumi Vikas Bank Samiti reported in (2018) 9 SCC 472, in this regard.

5. Petitioners permitted to effect Publication in Tamil Daily 'Malai Malar', Chennai Edition and 'English Daily' viz., 'News Today', Chennai Edition with regard to respondents 1 and 2 . Returnable date is 17.03.2020. O.P. No.918 of 2015

6. On proof of publication being filed in advance, Registry to show the names of respondents 1 and 2 together with full / complete address as in the short and long cause titles of OP in the next listing.

List on 17.03.2020.'

Proceedings dated 17.03.2020:

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

2.It is pointed out that second respondent is in Namakkal and therefore, publication in English and Tamil dailies shall be in a edition, which has circulation in Namakkal.

3. To be noted, paragraph 5 of previous order dated 02.03.2020 reads as follows:

'5. Petitioners permitted to effect Publication in Tamil Daily 'Malai Malar', Chennai Edition and 'English Daily' viz., 'News Today', Chennai Edition with regard to respondents 1 and 2. Returnable date is 17.03.2020.'

In the aforesaid paragraph 5, 'Chennai edition' will stand changed to 'edition having circulation in Namakkal' and returnable date will now be 08.04.2020.'

Proceedings dated 20.07.2020:

'Read this in conjunction with and in continuation of earlier proceedings of this Court dated 17.03.2020.

2.There is no representation for the petitioners though this matter has been duly shown in the cause list with all necessary/requisite particulars such as Meeting Number, Password etc., for this web-hearing on a video conferencing platform.

3.Read this in conjunction with and in continuation

of earlier proceedings dated 17.03.2020 wherein there is some detailing regarding paper publication (substituted service). As there is no representation for the petitioners today, whether paper publication was done is not clear. To be noted, going by the case file placed before me, no proof of publication is before me. 4.Be that as it may, with the intention of giving further opportunity to the petitioners, list this matter day-after-tomorrow i.e., 22.07.2020.'

Proceedings dated 22.07.2020:

'Read this in conjunction with and in continuation of earlier proceedings of this Court dated 20.07.2020.

2. There is no difference today and the position is the same. In other words there is no representation for the petitioners.

3. With the intention of giving further opportunity to the petitioners, this matter is adjourned by four weeks. List on 19.08.2020.'

Proceedings dated 19.08.2020:

'Read this in conjunction with and in continuation of earlier proceedings dated 20.07.2020 and 22.07.2020. In both these listings, there was no representation for the petitioners. Today also there is no representation for the petitioners. List this matter under the caption 'FOR

DISMISSAL' ON 25.08.2020.'

Proceedings dated 25.08.2020:

'Read this in conjunction with and in continuation of earlier proceedings dated 19.08.2020, with the intention of giving one more opportunity to the petitioners, list this matter under the same caption on Monday i.e., 31.08.2020.'

3.Proceedings dated 02.03.2020 read with subsequent proceedings dated 17.03.2020 (both extracted and reproduced supra) are significant.

4.The petitioners have neither taken steps to serve respondents 1 and 2 nor come before this Virtual Court and sought extension of time or made any other plea. To be noted, this is the fourth consecutive hearing in which there is no representation for the petitioners though in each of the hearings the matter has been duly notified in the cause list. Today also there is no representation for the petitioners though the matter is listed under the caption 'FOR DISMISSAL'. As the petitioners have not chosen to take any effort to serve on respondents 1 and 2 / demonstrate service on respondents 1 and 2 in spite of several opportunities being given, this Court comes to the conclusion that the petitioners are

indifferent and recalcitrant in prosecuting/pursuing captioned OP.

5. Case file placed before me shows that captioned OP has been presented in this Court on 01.06.2015 more than five years ago. In the light of statutorily prescribed time lines for Arbitration as an Alternate Dispute Resolution mechanism, captioned OP cannot be kept pending endlessly when the petitioners recalcitrant in prosecuting/pursuing the same. Though captioned OP is a pre 23.10.2015 regime OP, this Court reminds of itself of sub-section (6) of Section 34 of A and C Act and one year time line statutorily prescribed therein.

6. To be noted, sole Arbitrator, who constituted the Arbitral Tribunal and made impugned award has been arrayed as third respondent and his name is shown in the cause list today.

In the light of narrative thus far and in the light of trajectory this matter is taken, captioned OP stand dismissed for default/non-prosecution. There shall be no order as to costs.

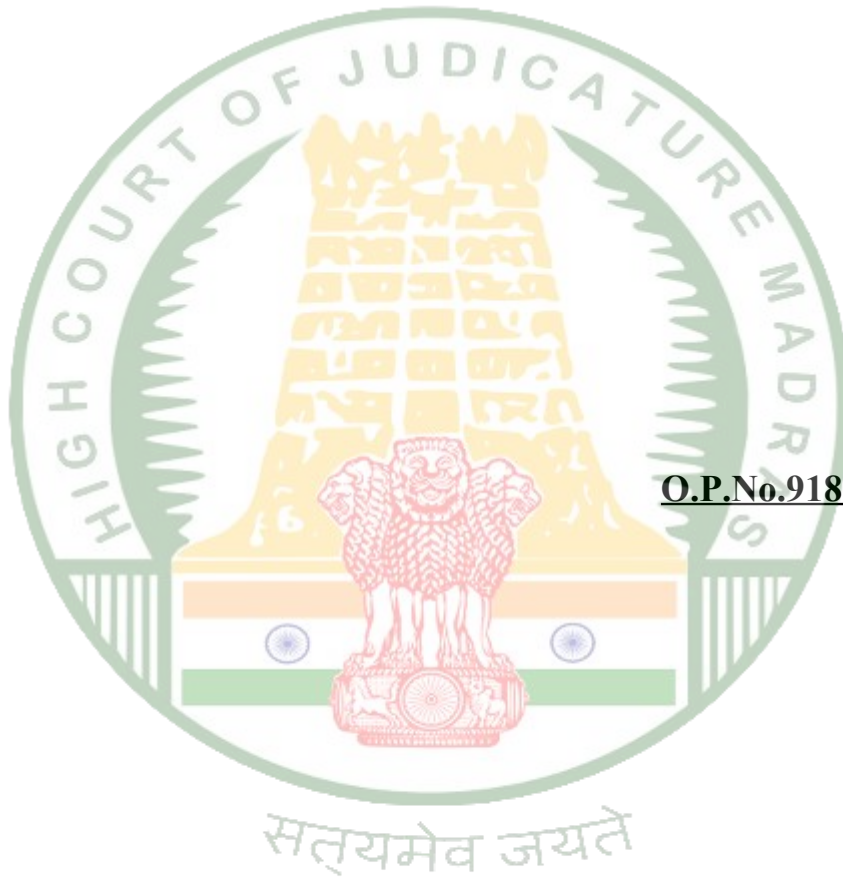
31.08.2020

sgl

Order in O.P.No.918 of 2015 dated 31.08.2020
[A.M.Komalavalli Vs.
M/s.Kotak Mahindra Bank Ltd.]

M.SUNDAR, J.

sgl



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