

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM

The Honourable Ms.JUSTICE P.T.ASHA

O.P.No.113 of 2018

and

A.No.No.1055 of 2018

Manoj Yada (Borrower)

...Petitioner

Vs.

1. M/s Damler Financial Services India (Pvt) Ltd.
RMZ Millannia Business Park,
Campus 3B, Unit 202,
143, Dr. M.G.R. road,
Perungudi,
Chennai- 96.

2. M.R. Automobiles (Co- borrower)
VPO Rampura NH8,
Delhi Jaipur road,
Near Ortam Hospital,
Gurgaon, Haryana - 122002.

. . Respondent

Prayer : Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Arbitral Award dated 30.05.2017 passed in Arbitration Case No.205/2016 by the sole Arbitrator.

For petitioner : Mr. R. Varadharaj

For Respondents : Mr. H. Mohamed Ismail

ORDER

A legal issue has been raised in the above Petition, viz; whether an Arbitral Award passed beyond the period of 12 months from the date on which the Arbitral Tribunal has entered on reference, is a valid one.

2. Considering the fact that the petition is being disposed of on a legal issue, this Court is not extracting the details of the case on hand. Suffice it to state that the first respondent claimant had initiated the arbitral proceedings for recovery of the amounts due from the petitioner by appointing the sole arbitrator vide their notice dated 15.04.2016. The Arbitrator on receipt of this notice has issued a notice dated 30.05.2016 in which he informed the parties that the first date hearing of the matter was posted on 25.06.2016. In the said notice there is also reference that the claim statement has been filed on 07.05.2016. Section 29 A (1) of the Arbitration and Conciliation

Act, 1996 with its explanation would read as follows:

"29A. Time limit for arbitral award.—(1)

The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment."

3. A mere reading of the above provision would indicate that the Arbitral Tribunal is deemed to have entered upon the reference as soon as it receives the notice of its appointment/nomination in writing. Admittedly the notice appointing the sole Arbitrator has been issued as early as on 15.04.2016. Neither the Award nor the letter dated 30.05.2016 would indicate the date on which the Arbitral Tribunal had received the notice, therefore the Arbitrator is deemed to have received the notice on 16.04.2017. The Award has been passed only

on 30.05.2017 which is beyond the period of 12 months as per the provisions of Section 29(A)(1) of the Act and therefore clearly null and void.

4. The matter had been listed on several occasions and the matter was also posted before the mediation and conciliation center where the petitioner herein had offered to settle the issue with the respondent, however the respondents were not willing to accept the proposal. In fact after the mediation centre submitted a failure report, once again when the matter was listed before this Court, the learned counsel for the petitioner had attempted to settle the dispute by making payment to the respondent and proposal to this effect had been submitted to the respondent claimant on 05.12.2019. The respondents argued to the proposal. Mr. H.Mohammed Ismail, learned Advocate who has entered appearance on behalf of the respondent would also submit that there is no possibility to settle the matter.

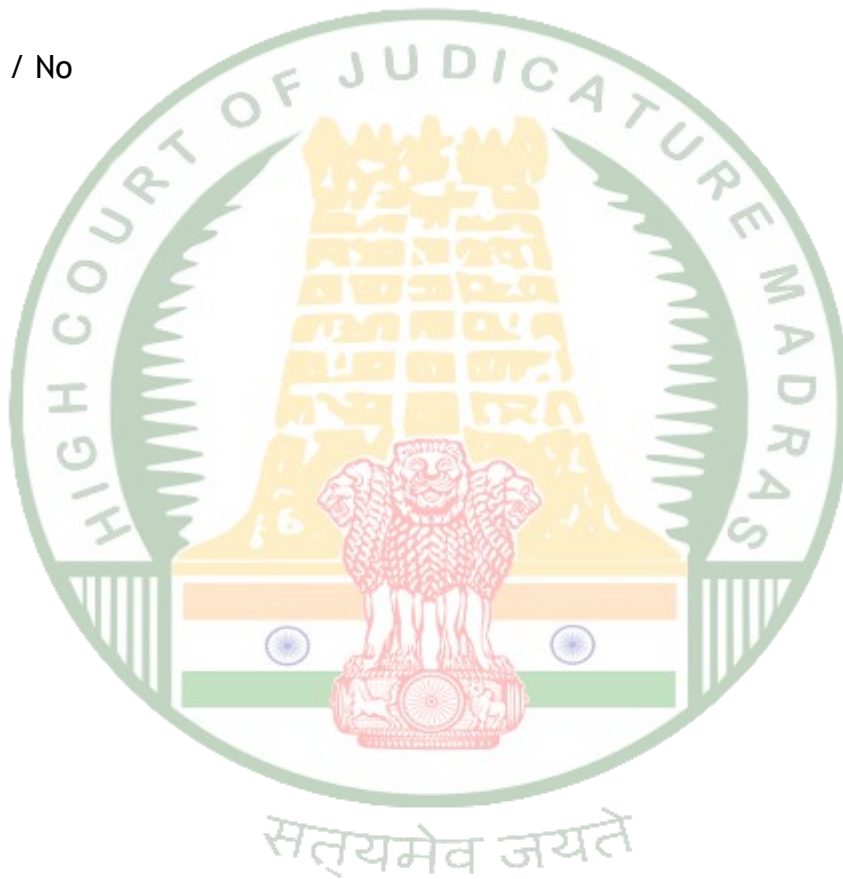
5. Considering the fact that the Arbitral Tribunal has proceeded to pass the Award after 12 months from the date it entered upon reference, the Arbitral Award is null and void and therefore deserves to be set aside. It is needless to state that it is well open to the

respondent claimant to initiate fresh arbitral proceedings if so advised.
Accordingly, the O.P. is allowed and the impugned Award is set aside.
No costs. Consequently connected Miscellaneous Petition is closed.

03.01.2020

Index:Yes / No

mrn



WEB COPY

OP.No.113 of 2018

P.T.ASHA, J.

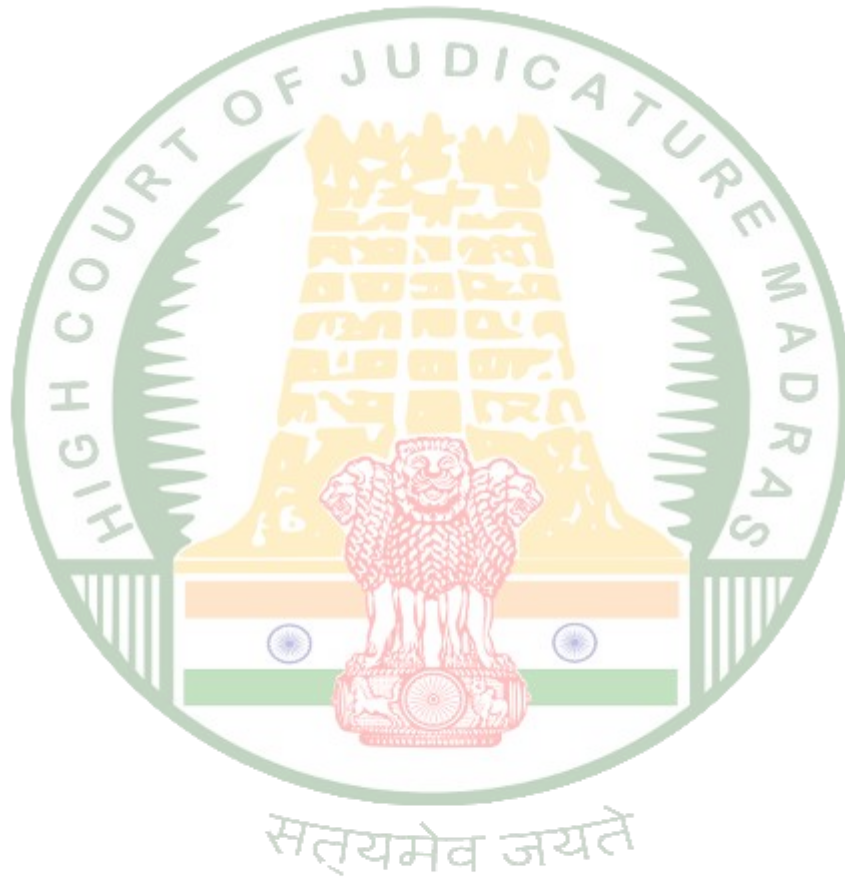
mrn



O.P.No.113 of 2018
and
A.No.No.1055 of 2018

WEB COPY

03.01.2020



WEB COPY