



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

O.S.A.Nos.112 & 113 of 2019

J.Vidyanathan ... Appellant in both OSAs
Vs.

1.I.Jitesh Kumar
Financier
Having Office at No.22,
Kennet Lane, Egmore,
Chennai - 600 008.

2.Kumari Chelvan Bosco
Arbitrator
Having Office at No.22,
Kennet Lane, Egmore,
Chennai - 600 008. ... Respondent in both OSAs

PRAYER : Appeals filed under Order XXXVI Rule 9 of A.S. Rules r/w Clause 15 of Letters Patent Act against the order dated 14.03.2019 made in A.No. 1995 of 2019 in Appl.No.2757 of 2015 in Apln.No.7117 of 2014 and A.No.1994 of 2019 in Apln. No.7117 of 2014 in E.P.No.101 of 2013.

For Appellant : Mr.J.Nandagopal
(in both OSAs)

For Respondents : Mr.P.L.Narayanan for R1
(in both OSAs) : R2 - Arbitrator

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH, J)

These appeals are preferred by the appellant aggrieved over the order passed by the learned Single Judge in Application Nos.1994 and 1995 of 2019, by which, the appellant sought for invocation of Section 47 of the Code of Civil Procedure, inter



2. The learned Single Judge held that the issue raised by the appellant purportedly under Section 47 of the CPC relating to service of notice prior to the award cannot be gone into under Section 47 CPC and, accordingly, dismissed the applications with the observation that it is open to the appellant to challenge the award both on the ground of non-service of notice and also fraud by instituting a civil suit.

4. Per contra, the learned counsel appearing for the first respondent submitted that the disputed question is not to be adjudicated upon in the application filed seeking to invoke Section 47 of the Code of Civil Procedure. In the case on hand, the appellant has committed fraud which is inclusive of the very transaction itself. He has in fact paid some money to the respondents and even declined to receive the notice sent while initiating the arbitration proceedings. In support of his contentions, the learned counsel has relied on the following decisions (i) Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others reported in (1970) 1 SCC 670 and (ii) Haryana Vidyut Prasaran Nigam Limited and another v. Gulshan Lal and others reported in (2009) 13 SCC 354.

6. In such view of the matter, we are in agreement with the ultimate conclusion arrived at by the learned Single Judge. In



the case on hand, admittedly, the appellant has received the certified copy of the award after the notice has been served on him during the execution proceedings. Therefore, he ought to have filed the application invoking Section 34 of the Arbitration and Conciliation Act instead of invoking Section 47 of the Code of Civil Procedure.

7. The Original Side Appeals stand dismissed. However, liberty is given to the appellant to work out the remedy in the light of the discussion made above. No Costs. Consequently, connected C.M.P.No.10295 of 2019 is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

ssm

To

1.The Sub Assistant Registrar
Original Side
High Court, Madras.

2.Mr.Kumari Chelvan Bosco
Arbitrator
Having Office at No.22,
Kennet Lane, Egmore,
Chennai - 600 008.

+2cc to Mr.J.Nandagopal, Advocate SR.No.11671

O.S.A.Nos. 112 & 113 of 2019

CSR(CO)
GMY(14/07/2020)