

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

REV.PET. No. 1 of 2018

in

OP.No. 179 of 2015

M.A.K. Earth Movers,
A Partnership firm rep. by
its M. Kulothungan,
Old No,17, New No.78,
Jaganathan Street,
Agaram, Chennai - 600 082.

...Petitioner

Vs

1. L & T Finance Limited
Registered Office at
L & T House, Ballard Estate,
Mumbai - 400 001,
Corporate office at
No.3-B, Laxmi Towers, C-25,
'G' Block, Bandra-kurla Complex,
Bandra (E), Mumbai - 400 051.

Also at:

L & T Finance Limited,
Represented by its Zonal Legal Manager,
Mr. C. Balasubramanian,
Montaith Place, 47, Monteith Road,
Chennai - 600 008.

2. Mr. A. Santosh Kumar
S/o. Mr. Ashok Kumar,
No.17/78, Jaganathan Street,
Agaram, Chennai- 600 082.

3. Mr. A. Sasikumar
S/o. Mr. Ashok Kumar,
No.17, New No.78, Jaganathan Street,
Agaram, Chennai- 600 082.

...Respondents

PRAYER: Review Petition is filed under ORDER XLVII RULE 1 r/w Section 114 of Code of Civil Procedure 1908 praying set aside the order dated 09.09.2016 passed in OP.No.179 of 2015 and A.No.3112 of 2016, on the file of High Court, Madras, filed by the petitioner herein and allow the Review Petition by setting aside the arbitration award No.315 of 2017 dated 13.05.2013 passed by the Sole Arbitrator.

For Petitioner : Mr. S. Jayakumar

For Respondents : Mr. T. Dhanyakumar for R1

ORDER

The above Review Petition has been filed challenging the order passed in OP.No.179 of 2015 on the following grounds:

(f) The Hon'ble Learned Judge did not consider an important aspect that whether acknowledgment card contains a seal and signature of the petitioner herein. It is the contention of the petitioner herein that the petitioner did not receive any post from the 1st respondent herein. The petitioner herein begs to pray that the dates and details of the receiving acknowledgment card by the petitioner as well as 1st respondent.

(i) The Hon'ble Learned Judge without appreciating the merits of the case and gone into limitation point and dismiss the O.P.No.179 of 2015. In fact, the Learned Judge ought to have seen that the 1st respondent herein had given a impugned order to the applicant and thereafter the same was permitted to challenge before this Hon'ble Court in accordance with law from that day. It is very much true and

correct that the arbitrator failed to serve impugned order to the applicant herein. The acknowledgment card relied upon by the 1st respondent had not serve to the applicant counsel and the Learned Hon'ble Judge had presumed that the signature affixed on the acknowledgment card absolutely belongs to applicant.

(I) The Hon'ble Learned Judge ought to have held that the 1st respondent herein has approached this Hon'ble court with an unclean hands and made a false submission stating that the equipment was already possessed and sold to the third parties. In fact, the Hon'ble Learned Judge did not go into aspect of merit case despite advanced an arguments to that effect by relying upon the relevant observation made by the Judges in the earlier hearings.

2. A reading of the order impugned particularly paragraph 7 which is extracted herein below would clearly indicate that the very same party along with his counsel then appearing on his behalf were permitted to peruse the original records. The Court on perusing the original records had clearly come to the conclusion that not only the second respondent Mr.Kulothungan but also the firm had received the said Award on 25.02.2013 and the acknowledgment card has been signed by them.

"7. As a matter of fact, the record shows, that the award impugned in the present proceedings was also served on Mr.Kulothugan. As would be evident from the cause title, the present proceedings have been initiated by the petitioner via Mr.Kulothungan. The acknowledgment due cards, show receipt by the partner i.e., respondent No.2 and guarantor of the petitioner i.e., respondent No.3, on 20.05.2013. Furthermore, the record

shows that the petitioner, i.e., the firm itself had received the award on 20.05.2013. Section 34 petition has been filed, admittedly, on 30.04.2014. Clearly, the petition is way beyond time and therefore, cannot be entertained. This Court has no power to condone the delay. [See Union of India V. Popular Construction Co., (2001 (8) SCC 470)]"

3. The main now ground advanced is that if the notice had been received by the firm then the acknowledgment card would definitely possess the seal of the firm. However it is not denied that the second respondent, the partner has received the acknowledgment card. The ground urged is not one that is available for a review.

4. The learned Judge has dismissed the O.P. on the ground of limitation as the Award had been received on 20.05.2013 and the application under Section 34 had been moved nearly 11 months later.

This Court does not find any ground for reviewing the said order.

5. The Review Petition is dismissed.

25.02.2020

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Index : Yes/No
Speaking order/non-speaking order

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