

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

O.P.No.691 of 2019
and A.No.6754 of 2019

- 1.M/s.Rutika Creations Pvt.Ld.,
Plot No.KI, City Ind Estate UdhnaNavsari Road,
Surat - 394 210
 2. M/s.Sanjay Bhai Durlahbhai Kanani
 3. Mrs.Kiran Saniaybhai Kanani .. Petitioners
- Vs.-
- M/s.Kotak Mahindra Bank Ltd.,
5th Floor, Samson Towers,
402L, Panthen Road,
Egmore, Chennai 600 008 .. Respondent

Original Petition under Section 34(2) of the Arbitration and Conciliation Act, 1996 praying to set aside the award dated 07.03.2019 passed in Arbitration Case No.KB(B)AQ4/2018 in Loan Agreement No.CSG 152638646 passed by the sole Arbitrator.

For petitioners ... Mr.Nanchill J.Rajkumar
 For Respondent ... Mr.M.Arunachalam

ORDER

The respondents before the arbitral Tribunal are the petitioners before this Court in the petition filed under Section 34 of the Arbitration and Conciliation Act, challenging the award passed by the sole Arbitrator dated 07.03.2019.

2. The facts in brief preceding the filing of the above petition are as follows:-

The respondents had borrowed amounts from the claimant-Bank. As per the terms of the loan agreement, the respondents were under obligation to re-pay the said amount in equated monthly instalments regularly and in default, would entitle the levy of interest on the amount. The respondents failed to adhere to this payment schedule, constraining the claimant-Bank to issue a notice and thereafter, initiated proceedings for appointment of Arbitrator and thereafter, the arbitral proceedings commenced. From the award of the sole Arbitrator, it is seen that on being appointed, the Arbitrator has sent the statutory disclosure to the parties and thereafter, the Tribunal had sent the notice dated 31.03.2018 informing the parties that the first hearing would be on 19.04.2018. The respondents were served, however, they did not appear before the Arbitrator and they had only sent a single letter to the Arbitrator. Thereafter, the arbitral proceedings were adjourned on several occasions,

nearly 13 dates, despite which, the respondents have not taken any attempt to approach the arbitral Tribunal. Thereafter, the Arbitrator had directed the claimant-Bank to adduce the evidence and mark the necessary documents. The Arbitral Tribunal, on considering the documents and the oral evidence filed in the form of proof affidavit, has proceeded to pass the award as claimed for.

3. The petitioners herein, who have been served, had not deemed it fit to appear before the Arbitral Tribunal and put across the case. The ground which has been raised in the Section 34 petition is that they had not been served as contemplated under the Act and therefore, the award was violative of the provisions of Section 34(2)(a)(iii) of the Arbitration and Conciliation Act, 1996.

4. Heard the counsels on either side and perused the materials on record.

5. A perusal of the records, particularly, the award, clearly indicates the steps that have been taken by the Arbitrator to serve the petitioners and the fact that the petitioners have been served, is evident from the sole letter that they had addressed to the Arbitral Tribunal and thereafter, there has been no communication or appearance on the side

of the petitioners. The learned Arbitrator has considered the evidence on record and passed the award. Hence, this Court does not find any reason for interference with the award passed by the learned Arbitrator. However, this Court finds that in addition to 12% interest that has been awarded, an interest of 3% per annum has been added to the award. The award is therefore modified with the consent of the respondent-Bank as follows:-

The petitioners shall pay a sum of Rs.31,97,038.92 together with interest thereon from the date of the award till the date of the payment.

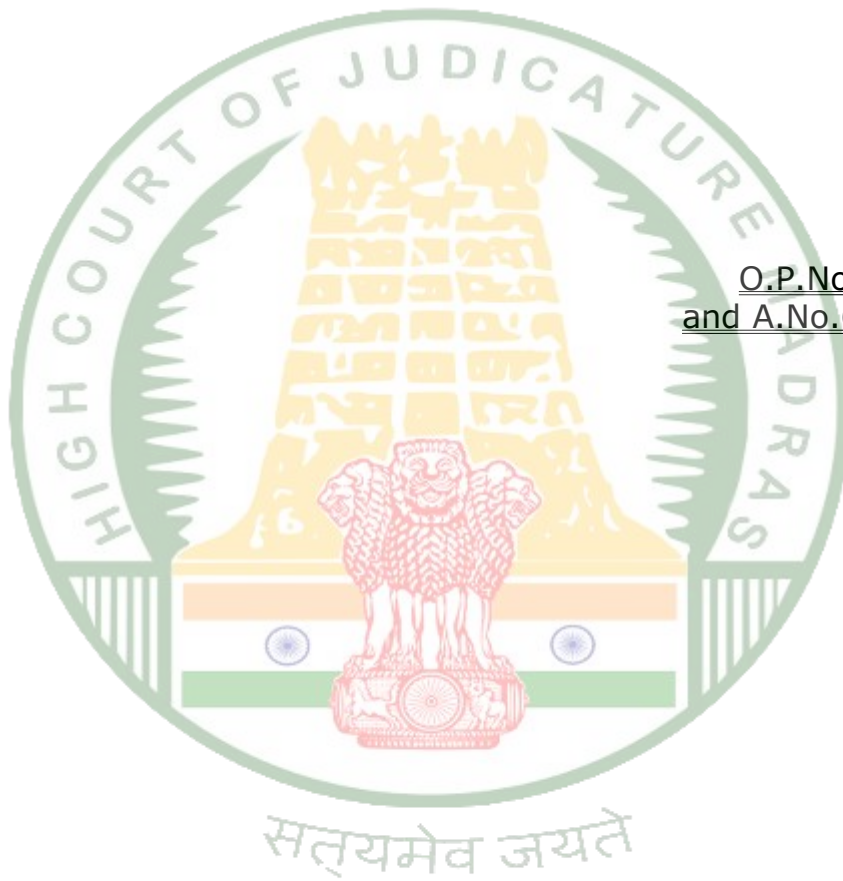
6. Except for this modification, the award shall stand as it is. Accordingly, the Original Petition is partly allowed. No costs. Consequently, connected application is closed.

28.01.2020

Internet: Yes/No
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