



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.9 of 2019

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1.K.Vasudeva Maniakarar
2.V.Murugesan
3.V.Parthiban
4.E.Nivethitha
5.E.Madhivadhani
6.P.Anusuya

... Appellants / Petitioners /
Judgment Debtors

Vs.

1.S.Radhakrishnan, Proprietor,
M/s.Venus Constructions
Old No.42, New No.38,
Bhimasena Garden Street,
Mylapore, Chennai - 600 004.

... 1st Respondent / Respondent /
Decree Holder

2.V.Karunakaran
3.N.Uma Maheshwari

... 2nd and 3rd Respondents /
Respondents /Judgment Debtors

PRAYER: Appeal filed under Section 96 read with Order 41 Rule 1 of the Civil Procedure Code, against the fair and decreetal order dated 05.07.2018 passed in E.A.No.29 of 2017 in E.P.No.89 of 2017 on the file of the court of the Principal District Court, Tiruchirapalli.

For Appellants : Mr.R.S.Sivaram

For R.1 : Mr.K.Govindarajan

For R.2 : Mr.Ramakrishnan,
for Mr.K.S.Vamsidhar

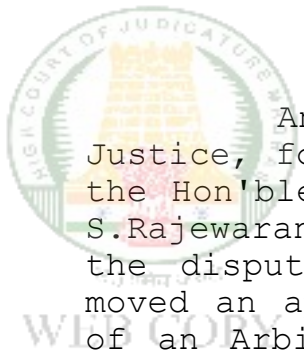
For R.3 : Mr.A.P.Moorthy

JUDGMENT

As against the dismissal order in E.A.No.29 of 2017 passed by the Executing Court, this appeal has been filed by the appellants challenging the Arbitration award on certain grounds.

2.The brief facts leading to filing of the appeal is as follows:

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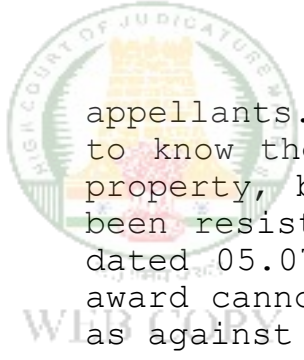


An application has been filed before the Hon'ble Chief Justice, for appointment of Arbitrator. By order dated 7.11.2014, the Hon'ble Chief Justice, Madras High Court, appointed the Justice S.Rajewaran (Retired), High Court, Madras as Arbitrator to decide the dispute between the parties. Originally, the 1st respondent moved an application before the Hon'ble High Court for appointment of an Arbitrator. In the order dated 07.11.2014, the Court has observed as follows :

"The learned Counsel for the respondent feels that settlement is possible and some time may be given for the same. Taking note of the above fact, the Court appointed the Arbitrator and commenced the proceedings only after 60 days from the date of order. At the joint request of both sides, Justice S.Rajewaran (Retired), High Court, Madras was appointed as an Arbitrator."

3. The above order makes it clear that the agreement is not in dispute. Only at the joint request of both parties, the Arbitrator was appointed. Thereafter the Arbitrator commenced the proceedings. The award makes it clear that the respondents appeared through Advocate Mr.K.Sridhar on 15.10.2015 before the Arbitrator and filed a memo on behalf of the respondents 2 to 4 on 30.11.2015 contending that the agreement is forged and fabricated one. Thereafter, till 21.04.2016, it appears that the proceedings are protracted by the respondents. Therefore, a final notice has been sent by the Arbitrator on 21.04.2016. The above communication was also served on all the respondents counsel. However, only fourth respondent appeared on 7.5.2016 and requested for further time. Again on 13.06.2016, the respondents sought for adjournment, on trivial reasons. Thereafter the matter has been adjourned to 16.07.2016 and the Tribunal also informed that if the respondents failed to co-operate with the Tribunal to proceed with the matter, they will be treated as ex-parte. Accordingly, on 16.07.2016, they were set exparte and the matter was adjourned to 03.08.2016 and the Arbitrator, communicated the exparte order to all the respondents indicating the next hearing date. The above communication, dated 19.07.2016, was also sent to all the parties, by Registered Post. Thereafter, the Arbitrator decided the issue on merits and passed an order on 06.09.2016. When the award was put into execution, the appellants filed an application, which was dismissed by the Trial Court and the same was challenged before this Court.

4.The application filed under Section 47 of Civil Procedure Code, challenging the award mainly on the ground that the Arbitration award has been obtained fraudulently and the decree holder has furnished false information and obtaining a fake order. The agreement was never signed by Venus Constructions. All the cash receipts were made in the name of the individual. The 1st respondent has filed a forged sale agreement before the Arbitrator and obtained an award. The award copy was not issued to the



appellants. Only after the notice in E.P.No.89 of 2017, they came to know the award and the award did not consist the description of property, boundaries and survey numbers. The above application has been resisted by the decree-holder. The Trial Court in its order, dated 05.07.2018, dismissed the application on the ground that the award cannot be challenged under Section 47 of Civil Procedure Code, as against which, the present appeal came to be filed.

5. The main ground canvassed before this Court by the learned Counsel for the appellants is that as per Section 29-A, the amended Act, award to be passed within 12 months, whereas the award has been passed beyond 12 months and no extension whatsoever was sought for. Therefore, the award was invalid. It is the further contention that under Section 31(5) of Arbitration and Conciliation Act, the award should have been served on the each party but it has not been served whereas, the communication of the Arbitrator clearly indicates that the award has been sent to the counsel. Therefore, there is no proper service of the Arbitration award. The signed copy has not been delivered to each party as per section 31(5) of Arbitration and Conciliation Act. Therefore, the award cannot be enforced and no description of property was mentioned in the award and the award copy has been sent only to the counsel as per the Arbitration award and no valid service of the award and hence, he could not file an appeal within 90 days. Hence, it is the contention that Section 47 of Civil Procedure Code is well maintainable to challenge the award. The Court below has not considered and the same is liable to be dismissed. In order to strengthen his contention, the learned Counsel for the appellants relied on the judgment reported in 2012(9) Supreme Court Cases 496 in the case of Benarsi Krishna Committee and Others /Vs./ Karmyogi Shelters Private Limited.

6. Whereas, the learned Counsel for the respondents submitted that even assuming that they have not received the copy of award and nothing prevented them from filing an application under Section 34 of Arbitration and Conciliation Act to challenge the award after the receipt of the award copy. The award which has been validly passed cannot be put into challenge under Section 47 of Civil Procedure Code. The only remedy available to the parties to file an application to challenge the award. Hence, prayed for dismissal.

7. In the light of the above submission, the following points arose for consideration :

1. Whether the Arbitral award legally passed put into challenge under Section 47 of Civil Procedure Code on the ground that it is obtained fraudulently ?

<https://hcservices.ecourts.gov.in/hcservices> Whether the order of the executing Court is



valid and sustainable ?

3. To what other reliefs the parties are entitled ?

8. I have perused the entire records.

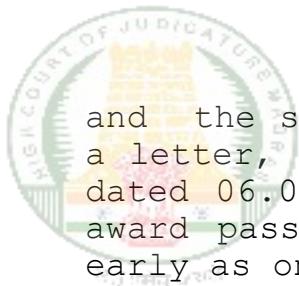
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9.As narrated the facts above, the first contention of the learned Counsel for the appellants that the agreement is forged and orders obtained for appointing the Arbitrator fraudulently has no legs to stand. Such contention is nothing but mischievous one. While appointing the Arbitrator, the agreement is not disputed. In fact, the respondents sought some time to settle the matter. Taking into consideration of the above submissions, this Court has directed the Arbitrator to commence the proceedings after 60 days from the date of order and the Arbitrator namely, Hon'ble Justice S.Rajeswaran (Retired), Madras High Court was appointed at the joint request of both the parties. Therefore, the contention that the order of appointment of Arbitrator was obtained fraudulently has no leg to stand.

10.Further on perusal of the award as narrated above makes it clear that in fact all the parties were aware of the proceedings and appeared before the Arbitrator. Despite several opportunities, till 2016 they protracted the proceedings. Thereafter only, they proceeded ex-parte and an award has been passed on merits. Therefore, it cannot be said that the award has been fraudulently obtained. It is to be noted that any award passed either exparte or on contest, the only recourse to challenge such award is to file a petition under Section 34 of the Arbitration and Conciliation Act. Section 34 of the Arbitration and Conciliation Act makes it clear that the Arbitration award may be set aside on the grounds that has been specifically set out in Section 34 of the Arbitration and Conciliation Act. The award can be challenged and set aside only on the grounds under Section 34 of the Arbitration and Conciliation Act. Section 34(2) of the Arbitration and Conciliation Act prescribe limitation to file an application. The period of limitation commences from the date on which the party received the Arbitration award. Therefore, filing an application, under Section 34 of Arbitration and Conciliation Act, the limitation starts from the date when the parties has received the Arbitration award.

11.It is the contention of the learned Counsel for the appellant that the award copy has not been served. Even assuming that the award copy was not served, that will not make the award invalid. Purpose of service of award copy is to only enable the parties to challenge the award and for computing the limitation under Section 34 of the Arbitration and Conciliation Act. Even as per the contention of the learned Counsel for the appellants that makes it clear that they also sent a communication to the Arbitrator for issuance of copy of the award. The letter addressed by the

<https://hccourtsonline.org.in/services> Also filed in the typed-set of papers at page No.15



and the same makes it clear that six parties have infact addressed a letter, dated 19.04.2017 seeking for a copy of the exparte award, dated 06.09.2016. The Learned Arbitrator informed that sooner the award passed, copy of the same was sent to both the counsels, as early as on 08.09.2015.

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12.Despite the above facts, the Learned Arbitrator again forwarded the award copies to six persons. The Honourable Supreme Court, in the case of **Benarsi Krishna Committee and others Vs. Karmyogi Shelters Private Limited**, held that Service of copy of award to Agent or Counsel does not amount to service of award on party itself. Delivery of award does not amount to service of award on party itself under Sections 31(5) and 34(3) of Arbitration and Conciliation Act, 1996.

13.The fact remains that six of the parties have received the award copy from the Arbitrator, by letter dated 04.07.2018. Such being the position, nothing prevented the parties who received the Arbitration award copy from filing an application to set aside the Arbitration award under Section 34 of Arbitration and Conciliation Act 1996. Without taking recourse of filing an application under Section 34 of the Arbitration and Conciliation Act, they cannot challenge the award under Section 47 of Civil Procedure Code.

14.Yet another contention of the learned Counsel for the appellants is that the award has not been passed within 12 months as per Section 29-A of the Arbitration and Conciliation Act. It is relevant to note that the proceedings was commenced much prior to the amended Act. Section 29-A of the Arbitration and Conciliation Act came into force on 23.10.2015, whereas the Arbitration proceedings has been commenced much prior to the amended Act. There is no evidence to show that the parties are agreed to have the Arbitration as per the New Act. Therefore, such ground also cannot be sustained in the eye of law. As far as other ground that the description of property not mentioned,as already indicated, whatever the orders passed in the Arbitration, can be challenged only by way of Section 34 of the Arbitration and Conciliation Act. When the agreement itself is not disputed by the Arbitrator, now the award cannot be challenged under Section 47 of Civil Procedure Code in an execution proceedings.

15.In the case of **Punjab State Civil Supplies Corporation Ltd., and another Vs. M/s.Atwal Rice and General Mills represented by its Partners** reported in **2017-4-L.W. - 658**, the Apex Court has held that as far as the award is concerned any objections, the same ought to have been raised before the Arbitrator under Section 34 of the Arbitration and Conciliation Act. None could be allowed to be raised in execution once the award became final and attained its finality. Such being the position, I do not find any merits in the



appeal suit and the order of the Trial Court stands confirmed. Accordingly, all the points are answered.

16. In the result, this appeal suit is dismissed. No costs.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RM

To

The Principal District Court, Tiruchirapalli.

Copy to:

The Section Officer, V.R. Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.S.Vamsidhar,Advocate, SR.No.1839

+1cc to Mr.R.S.Sivaram,Advocate, SR.No.1674

+1cc to Mr.K.Govindarajan,Advocate, SR.No.1588

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