



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 24TH DAY OF JUNE, 2021

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

O.P. No.664 of 2019

In the matter of Arbitration
and Conciliation Act 1996

And

In the matter of Arbitration
Between Kamlesh Rathnam,
2 others

Vs

Kotak Mahindra Prime Ltd.,
(Award dated 31-08-2018 in
Claim Petition LDG 623/2017)

1. Kamlesh Rathnam,
S/o. S. Rathinam,
41, Padayachiyur,
Kalyanagiri Post,
Attur, Salem - 636 117.

2. Mrs. R. Sujatha (Deceased)
W/o. S. Rathinam,
41, Padayachiyur, Kalyanagiri Post,
Attur, Salem - 636 117.

3. Pamusa,
Rep. by its Proprietor Kamlesh Rathnam,
4/503, 1st Floor,
4th South Main Road,
Sri Kapaleeswarar Nagar,
Neelankarai, Chennai - 600 115.

..Petitioners

Vs.

1. Kotak Mahindra Prime Ltd.,
Represented by its Authorised Signatory



Mr. Gaurav Chodia,
2nd Floor, Ceebros Centre,
No. 45, Montieth Road,
Egmore, Chennai - 600 008.

2. Mr. L. Dinakaran
Sole Arbitrator,
Swamy Associates, Sai Nivas, Flat 3 C, 173,
R.A. Complex Thendral,
Arcot Road Palaniappa Nagar,
Valasaravakkam, Chennai - 600 087.

..Respondents

Original Petition praying that this Hon'ble Court be pleased to:

(a) Set Aside the Award dated 31/08/2018 in Claim Petition No. LDG 623 of 2017 and served on the petitioner on 11/09/2018, made by the 2nd Respondent in the dispute between the petitioner and 1st respondent as illegal, without jurisdiction and not a proper disposal of the case.

(b) Directing the 1st respondent to pay the cost of this petition.

This Original Petition coming on this day before this court for hearing in the presence of Mr. K.M. Ramesh, Advocate for the Petitioner herein and Ms. K. Arun Pradeesh for M/s. AAV Partners, Advocates for the respondents herein and upon reading the petition and the award dated 31/08/2018 filed herein and this court having observed that conditional order passed by this court to deposit the amount while granting interim order also not complied with, in such a view of the matter, this court does



That the Original Petition No. 644 of 2019, be and is hereby
dismissed.

WITNESS THE HON'BLE JUSTICE MR. SANJIB BANERJEE, THE
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 24th
DAY OF JUNE, 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies
of the Orders/Judgments/Decrees in this format.



VF-13.07.2021

WEB COPY

O.P. No.664 of 2019

ORDER :-

DATED: 24.06.2021

THE HON'BLE MR. JUSTICE
N. SATHISH KUMAR

FOR APPROVAL: 23/07/2021

APPROVED ON: 23/07/2021



WEB COPY

5

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24/6/2021

C O R A M

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

O.P.No.664 of 2019

1. Kamlesh Rathnam

2. R.Sujatha (Deceased)

3. Pamusa

rep. By its Proprietor
Kamlesh Rathnam Rathnam
4/503 I Floor
4th South Main Road
Sri Kapaleeswarar Nagar
Neelankarai
Chennai 600 115.

...

Petitioners

Vs

1. Kotak Mahindra Prime Ltd

rep. By its Authorised Signatory
Mr.Gaurav Chodia
II Floor, Ceebros Centre
No.45 Montieth Road
Egmore
Chennai 600 008.

2. L. Dinakaran

Sole Arbitrator
Swamy Associates
Sai Nivas, Flar 3 C, 173
R.A.Complex Thendral
Arcot Road, Palaniappa Nagar
Valasaravakkam
Chennai 600 087.

...

Respondents



Original Petition has been filed 34 (3) of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 31/8/2018 in Claim Petition No.LDG 623 of 2017 and served on the petitioner on 11/9/2018 made by the second respondent in the dispute between the petitioner and first respondent as illegal, without jurisdiction.

For petitioner	...	Mr.K.M.Ramesh
For respondents	...	Mr.K.Arun Pradeesh for M/s. AAV Partners

ORDER

This Original Petition has been filed to set aside the Award, dated 31/8/2018, in Claim Petition No.LDG 623 of 2017.

2. Heard Mr.K.M.Ramesh, learned counsel for the petitioner and Mr.K.Arun Pradeesh for M/s. AAV Partners for the respondents.

3. Though several grounds have been raised, learned counsel appearing for the petitioner challenged the award only on the ground that the Arbitrator appointed by the first respondent cannot be permitted by law, which gave rise to the justifiable doubts as to his independence or impartiality. Therefore, as per the dictum laid down by the Hon'ble Apex



HSCC (INDIA) LTD (2019 SCC ONLINE SC 1517), award has to be set aside. As far as the other facts are concerned, learned counsel fairly submitted that he has no case.

4. Impugned Award has been passed on 31/8/2018 by the sole arbitrator. On a perusal of the award, passed by the learned Arbitrator, notice has been duly served on the petitioner and has been set ex parte, despite several adjournments. Even though the petitioner had filed an application to set aside the ex parte order, the same has not been prosecuted. Therefore, learned Arbitrator proceeded to pass an award, on the basis of materials available on record.

5. The main grievance of the applicant is that Statement of Accounts is not properly maintained and some of the amount paid by them has not been given credit to. The fact remains that impartiality or disqualification of the Arbitrator has not been challenged nor objected by the first respondent at any point of time. As per Section 13 of the Act, having appeared before the Arbitrator and took several adjournments, he has not challenged the appointment of Arbitrator, within fifteen days, after becoming aware of the constitution of the arbitral tribunal and no whisper

was also made in this regard by the first respondent and he took several



adjournments in this matter and the first respondent was set ex parte.

Therefore, this Court is of the view that when there were ample opportunities to the petitioner to challenge the very appointment of an Arbitrator, having slept over all these days, and having admitted the liability except claiming certain credit, now the award cannot be set aside, merely on the ground raised on the basis of judgment of the Hon'ble Apex Court, cited supra.

6. In fact, the Arbitrator has considered the document which has not been disputed seriously by the petitioner herein. In fact, even before the settlement, some payments have been made by him to the tune of Rs.6 lakhs which has been given credit to. Conditional order passed by this Court to deposit the amount while granting interim order also not complied with. In such a view of the matter, this Court do not find any merit in this Original Petition.

7. Accordingly this Original Petition is dismissed.

Sd./- N.S.K.J.,
24/6/2021

// Certified to be true copy//

Dated at Madras this day of 2021.

Court Officer(O.S.)

From 25th day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.