



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.139 of 2016

M/s.Shriram Transport Finance Company Ltd.,
Rep. by its authorised signatory,
Mr.S.Arunprasath,
office at A.G.Complex, 1st Floor,
No.7/10A, V.R.M. Road,
Tiruvarur - 610 002.

... Appellant

.Vs.

1. K.Elangeswaran Balaji
2. S.Veeramani

... Respondents

PRAYER:-

Civil Miscellaneous Appeal filed under Section 37(1) of Arbitration and Conciliation Act against the order and decretal order made in Arbitration O.P.No.20 of 2013 dated 10.04.2015 on the file of the Principal District Court, Tiruvarur.

For Appellant : M/s.Peer Mohammed

For Respondents : No appearance

JUDGMENT

This appeal has been filed under section 37 of the Arbitration and Conciliation Act, challenging the order dated 10.04.2015 passed by the learned Principal District Judge, Tiruvarur in A.O.P.No.20 of 2013 under section 34 of the Arbitration and Conciliation Act filed by the respondents challenging the arbitral award dated 28.05.2013 passed in favour of the Appellant against the respondents.

2. The respondents entered into loan cum hypothecation agreement dated 04.08.2008 with the Appellant under which, the first respondent has borrowed money and the second respondent stood as guarantor for the purchase of a vehicle.



3. It is the case of the Appellant that the first respondent committed default in the repayment of the loan. There arose disputes between the Appellant and respondents under the loan cum hypothecation agreement dated 04.08.2008 which contained an arbitration clause. In accordance with the arbitration clause, the Appellant referred the dispute to arbitration by appointing the sole Arbitrator namely R.Shivakumaran, the retired Principal District and Sessions Judge. The sole Arbitrator passed an arbitral Award in favour of the Appellant against the respondents on 28.05.2013, under which the respondents were jointly and severally directed to pay a sum of Rs.19,44,153/- together with interest at 18% per annum from the date of claim till the date of realisation and also directed to pay the cost to the Appellant.

4. Aggrieved by the arbitral Award dated 28.05.2013, the respondents have filed an application A.O.P.No.20 of 2013 under section 34 of the Arbitration and Conciliation Act before the learned Principal District Judge, Tiruvarur on the only ground that no notice of hearing was given by the sole Arbitrator to the respondents in the arbitration proceedings.

5. By order dated 10.04.2015, the learned Principal District Judge, Tiruvarur in A.O.P.No.20 of 2013 allowed the application filed by the respondents and set aside the arbitral award dated 28.05.2013 by giving the following reasons:

(a) since notice of hearing was not given to the respondents in the arbitration proceedings by the sole Arbitrator, the arbitral Award will have to be set aside; and

(b) Exhibits marked on the side of the respondents under section 34 of the Arbitration and Conciliation Act which have been listed out in the list of exhibits under the impugned order will reveal that the respondents have settled the dues to the Appellant and the burden is upon the Appellant to prove their claim which they have failed to discharge.

6. Aggrieved by the order dated 10.04.2015 passed by the learned Principal District Judge, Tiruvarur, in A.O.P.No.20 of 2013, this appeal has been filed by the Finance Company who is the claimant in the Arbitration under section 37 of the Arbitration and Conciliation Act.

7. Heard, Mr.Peer Mohammed learned counsel for the Appellant. There is no representation on the side of the first respondent, eventhough a counsel has entered appearance on his side. Though the second respondent has been duly served and his name is printed in the cause list today, there is no representation on his side.



8. Learned counsel for the Appellant drew the attention of this Court to the impugned order dated 10.04.2015 passed by the learned Principal District Judge, Tiruvarur under section 34 of the Arbitration and Conciliation Act and would submit that without authority under law, the learned Principal District Judge, Tiruvarur has marked exhibits on the side of the respondents which were not part of the arbitral proceedings. He drew the attention of this Court to the Arbitral Award dated 28.05.2013 passed in favour of the Appellant against the respondents and in particular, he drew the attention of this Court to Paragraphs 2 and 3 of the said award and would submit that both the respondents were duly served and the first respondent was also represented by an Advocate Mr. Velraj before the Sole Arbitrator.

9. Learned counsel for the Appellant would also submit that under the impugned order dated 10.04.2015 passed in A.O.P.No.20 of 2013, the learned Principal District Judge without authority under law and without any oral evidence has marked documents filed by the respondents as Ex.P1 to Ex. P11 which were not part of the Arbitral records.

10. Learned counsel for the Appellant also drew the attention of this Court to the documents filed by the Appellant before the Sole Arbitrator which were marked as Exhibits A1 to A8 and would submit that the documents which have been marked by the learned Principal District Judge as exhibits under Section 34 of the Arbitration and Conciliation Act were not part of the Arbitral records.

11. Before the Sole Arbitrator, the Appellants who are the claimants in the Arbitration has sought for recovery of a sum of Rs.19,44,153/- together with interest and cost from the respondents in respect of the outstanding dues payable by the respondents under the loan cum hypothecation agreement dated 04.08.2008. Under the said agreement, the first respondent had borrowed money for the purchase of vehicle and the second respondent stood as guarantor. In the Arbitral award dated 28.05.2013, the Arbitrator in paragraph 2 has categorically given a finding that both the respondents have been duly served in the Arbitration and they were directed to appear on 28.02.2013 and the venue of the Arbitration was also mentioned. On 28.02.2013, the date of the first hearing of the Arbitration as seen from the Arbitral Award, the first respondent was represented by Mr. Velraj, an Advocate and the second respondent though duly served remained absent and the Arbitrator has set him Exparte on 28.02.2013.

12. A Counter statement has been filed by the first respondent on 14.03.2013.



13. On 20.04.2013, when the hearing in the Arbitration took place, the Authorised signatory of the Appellant Company by name Arunprasath was examined as PW1 as a witness on the side of the Appellant and Ex.A1 to Ex.A8 were marked. The first respondent Mr. K. Elangeshwaran was also examined as RW1 on 04.05.2013 by filing proof affidavit and Ex.B1 to Ex.B3 were marked as exhibits on his side.

14. Only thereafter, the Arbitral Award dated 28.05.2013 came to be passed in favour of the Appellant against the respondents under which, the respondents were jointly and severally directed to pay the Appellant a sum of Rs.19,44,153/- together with interest at 18% per annum from the date of claim and were also directed to pay cost for the Arbitration. Therefore, it is very clear that both the respondents were duly served in the arbitration and the first respondent has infact participated in the arbitration and the first respondent has also filed his proof affidavit during his examination as a witness. However, by total non application of mind, the learned Principal District Judge, Tiruvarur under the impugned order dated 10.04.2015 passed in A.O.P.No.20 of 2013 has permitted the respondents to file documents which were not part of the arbitral records which were also marked as Ex.P1 to Ex.P11.

15. Under section 34 of the Arbitration and Conciliation Act, the court cannot mark documents as exhibits, when those documents were not part of the arbitral records. As seen from the impugned order dated 10.04.2015 passed by the learned Principal District Judge, Tiruvarur, Ex.P1 to Ex.P11 referred to in the said order were admittedly not part of the arbitral records. Based on those documents only and without giving any opportunity to the Appellant to question the veracity of those documents, the learned Principal District Judge, Tiruvarur has held that notice of hearing was not properly given to the respondents by the sole arbitrator in the arbitral proceedings and the Appellant has not discharged its burden of proving its claim against the respondents.

16. Unless and until, the arbitral Award shocks the conscience of the Court and is absolutely perverse, an arbitral Award cannot be set aside under section 34 of the Arbitration and conciliation Act. When the reasons given by the Arbitral Tribunal for the passing of the award in favour of the Appellant against the respondents is not perverse and is based only on the evidence available on record, the Court exercising power under section 34 of the Arbitration and Conciliation Act cannot interfere with the Arbitral Award. As seen from the arbitral Award, notice has been duly served on the respondents in the arbitral proceedings and the first respondent had also entered appearance through an Advocate who has also filed a counter



statement as well as the proof affidavit on behalf of the first respondent in the arbitral proceedings and only thereafter, based on the evidence available on record, the arbitral Award has been passed in favour of the Appellant against the respondents.

17. For the foregoing reasons, as the learned Principal District Judge, Tiruvarur, under the impugned order by non-application of mind to the settled law has erroneously set aside the arbitral award, this appeal will have to be necessarily allowed. Accordingly, the impugned order dated 10.04.2015 passed by the learned Principal District Judge, Tiruvarur in A.O.P.No.20 of 2013 is hereby set aside and the Arbitral Award dated 28.05.2013 is confirmed and the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Tiruvarur.
2. The Arbitration Tribunal,
Tiruvarur.

C.M.A.NO.139 OF 2016

GPL (CO)
PBS/01/11/2021