

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.910 of 2021

P. Madheswaran

...Appellant/1st respondent

-Vs-

1.M.Jayammal

2.Reena

3.Nalinadevi

...Respondents/Petitioners

4.A. Karthikeyan,
Arbitrator,
No.9, CHB Colony,
Street No.1, Vellore Road,
Tiruchengode Taluk,
Namakkal District.

...Arbitrator/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 37 (1) (C) of the Arbitration and Conciliation Act, 1996 praying to set aside the order of the learned Principal District Judge, Namakkal passed in Arb.O.P.No.72 of 2019 dated 04.02.2020 and confirming the Arbitral Award passed by the sole Arbitrator in Ar.Pettion No.2 of 2017 on 04.02.2019.

For Appellant : Mr.N.K.R.Kumares

For Respondents : Mr.S.R. Sundar for R1 to 3

JUDGMENT

This petition is filed to set aside the order of the learned Principal District Judge, Namakkal passed in Arb.O.P.No.72 of 2019 dated 04.02.2020 setting aside the Arbitral Award passed by the sole Arbitrator in Ar.Pettion No.2 of 2017 on 04.02.2019.

2.It is the case of the claimant that one Muthusamy borrowed a sum of Rs.5,00,000/- on 22.05.2016 under a Pro-Note. It is also the case of the claimant that Muthusamy had undertaken to repay the said amount together with interest @18% per annum on demand and had agreed to pay the interest every month. It is also the case of the claimant that the said Muthusamy has executed an arbitration Agreement on 22.05.2016 i.e., on the

date of borrowal. The claimant would further contend that Muthusamy had paid the interest till 22.01.2017.

3. Thereafter, the payment of interest had stopped. Meanwhile, the said Muthusamy died. Since the respondents as the legal representatives of the deceased Muthusamy were liable to repay the said sum the claimant had issued legal notice to the respondents calling upon the respondents to repay the said sum together with interest. However, the respondents had sent a reply dated 09.05.2017 setting forth false allegations. Since they did not come forward to clear the said loan the claimant had appointed one Mr.C.Paraneedharan, as the Arbitrator on 24.05.2017 and sent a notice to the respondents. The respondents had sent a reply dated 31.05.2017 objecting to the appointment of the Arbitrator. The Arbitrator had thereafter recused from the proceedings and the 4th respondent herein was appointed as the Arbitrator. A communication to this effect was sent on 26.07.2017. The respondents had immediately sent a reply dated 01.08.2017 questioning the appointment since the arbitration agreement was a fraudulent one and the appellants were not parties to the same. Further, the procedure contemplated under the Act had not been followed. The respondents had in very clear terms mentioned that the 4th respondent herein cannot act as the Arbitrator.

4. However, the 4th respondent without responding to the notice issued by the 1st respondent proceeded with the arbitration and had passed an Award. He had thereafter forwarded the Award to the appellants. A reading of this would show that on 24.10.2017, the appellant/claimant had filed an arbitration claim and despite affording several opportunities the respondents 1 to 3 have failed to file their reply and therefore, they were set ex parte and therefore, the impugned order was passed against him.

5. The respondents 1 to 3 had challenged the said Award by filing Arb.No.72 of 2019 on the file of the learned Principal District Judge, Namakkal. The learned Principal District Judge on consideration of the entire facts and the documents proceeded to set aside the Award. The learned District Judge has gone to the extent of deprecating the conduct of the second respondent and observed that the second respondent had acted like a Kangaroo court. It is challenging the said order, the appeal has been filed.

6. The grounds on which the Appeal has been filed is that the order of the District Judge is a non speaking one and the finding of the learned Judge that no notice had been served on respondents 2 and 3 was totally incorrect. The appellant would further contend that the observation of the Principal District

Judge that the appellant had not followed the provisions of Section 11 of the Act was totally misconceived.

7. When the matter was listed today for admission the learned counsel for the respondents was also present and the Appeal itself is taken up for hearing. The learned counsel for the appellant reiterated the contentions raised in the grounds of appeal.

8. The learned counsel for the respondents would submit that the entire arbitration proceedings smacks of fraud and violation of all provisions of the Act. The claimant despite the objections of the respondents 1 to 3 has proceeded unilaterally to appoint the arbitrator. They have not sought to appoint the Arbitrator by following the procedure contemplated under Section 11 of the Act. This is per se illegal and the constitution of the Arbitral Tribunal is totally in violation of the provisions of the Act. No notice has been given to the respondents 1 to 3 before the commencement of the arbitration proceedings. They have not been able to put forward their case more particularly when they disputed the very borrowing and the Arbitration Agreement.

9. The records would reveal that the respondents 1 to 3 have not only denied the borrowing but have also not given their consent for referring the disputes to the 4th respondent. Once there is a refusal from the other party to the constitution of the Arbitral Tribunal, the claimant/appellant has to only revert to the procedure for appointing an Arbitrator as contemplated under Section 11 of the Arbitration and Conciliation Act, 1996.

10. It is further seen that the Arbitrator has directed notice to the respondent returnable by 16.12.2017. There is no evidence to show that notice has been served on the respondents 1 to 3 by the Arbitrator and that they have been given an opportunity to put forth his case.

Be that as it may, since the claimant has not followed the procedure for appointing an Arbitrator despite objection to the appointment of the 4th respondent as Arbitrator by following the procedure contemplated under Section 11 of the Act, there is no merits in the Civil Miscellaneous Appeal and the same is accordingly dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

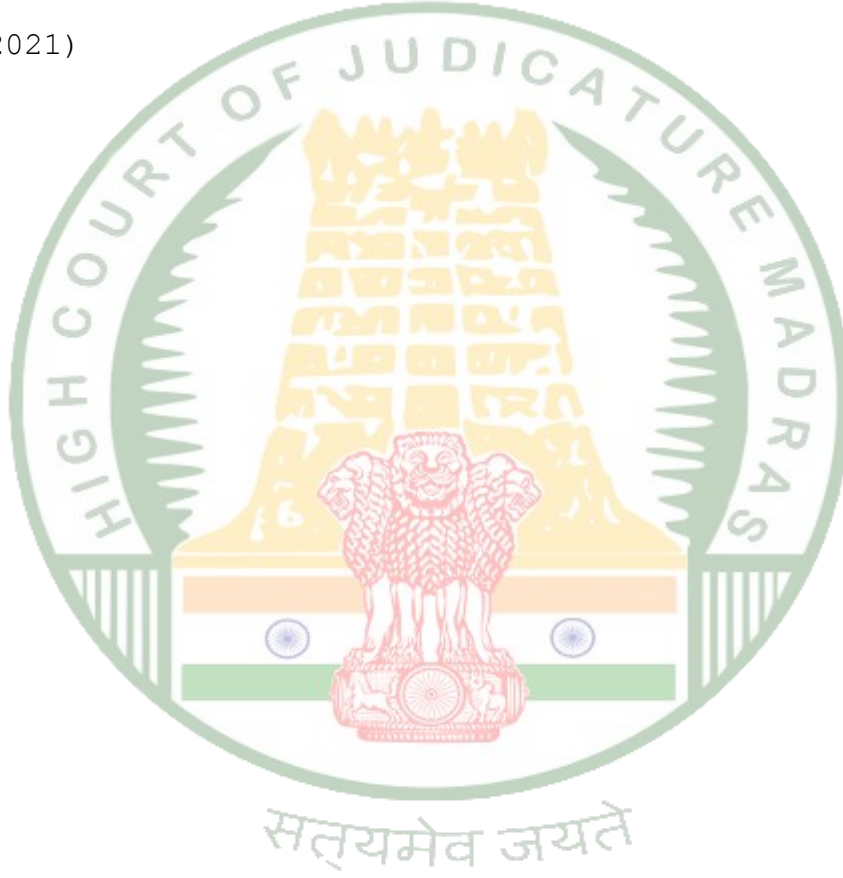
To

The Principal District Judge,
Namakkal District.

+1cc to Mr.T.S.Arthanareeswaran, Advocate, S.R.No.21648
+1cc to Mr.K.Moorthy, Advocate, S.R.No.20713

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NR(CO)
CB(07/07/2021)



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