

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 09.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.395 of 2020 and
A.No.2071 of 2020

M/s.GunaDev Foundation,
rep. by its Director Mrs.Rajalakshmi
W/o/Sathis Babu,
791, T.H.Road, Thiruvottiyur, Chennai – 19. ... Petitioner

.Vs.

M/s.MansiChhogImpex Chennai Pvt. Ltd.,
Rep. by its Authorised person Mr.A.Ramesh,
22B, Mulla Sahib Street, Sowarpet, Chennai – 79. ... Respondent

Prayer: Petition filed under Section 34 (2) (a) (iii) of the Arbitration and Conciliation Act praying to set aside the Exparte Arbitral Award made in A.C.P.No.1 of 2018 dated 11.02.2019 by the Sole Arbitrator.

For Petitioner : Ms. Selvi George

For Respondent : Mr.S.Parthasarathy, Sr. Counsel,
for Mr.M.V.Seshadhri

ORDER

This Petition has been filed challenging the exparte Arbitral Award passed by the learned Sole Arbitrator in A.C.P.No.1 of 2018 dated 11.02.2019.

2. The main ground of challenge of the award is non service of notice and non invocation of arbitration.

3. The respondent is the owner of the premises bearing Door No.665/B, Soundara Pandian Nagar, Thiruvottiyur, comprised in survey No.16/1 and 16/2 measuring to an extent of 15820 sq.ft. The respondent leased out the property in favour of the petitioner herein on a monthly rent of Rs.one lakh. The lease commenced on 01.08.2018 and the lease is for a period of 29 years. As the dispute arose between the parties, the matter has been referred to the sole arbitrator by the respondent.

4. The learned arbitrator after serving notice of hearing, passed an exparte award on 11.02.2019. Challenging the same, the present Original Petition has been filed.

5. The learned counsel appearing for the applicant mainly contended that the notice was never issued to the applicant in the arbitral proceedings. Though the arbitrator referred the notices on various dates, such notices have never been issued. All the returned covers clearly indicate that the covers have been returned as no such addressee. Similarly one of the notice is also received by one Thilakavathi. But no such person is working in the premises. It is further contended that the petitioner is also willing to go before the same arbitrator and canvass their case on merits. As the notice itself is not served, the entire award has to be set aside as per Section 34 of the Arbitration and Conciliation Act.

6. The learned counsel for the respondent vehemently contended that the notice has been sent to the last known address of the petitioner herein and once notice has been sent to the last known address, it is deemed to have been received as per Section 3 of the Arbitration and Conciliation Act. Besides Section 27 of the General Clauses Act also deals with deemed service of notice. Hence, it is his contention that the notice has been served to the petitioner as per the Arbitration and Conciliation Act. Even in the lease agreement, there is a specific

clause for service of notice to the address given in the lease agreement. Once, the registered notice has been sent to the last known address, the notice is deemed to be received under section 3 of the Arbitration and Conciliation Act and under section 27 of the General Clauses Act. Hence, submitted that the award cannot be interfered on the ground alleged by the petitioner.

7. Though other grounds have also been raised in the petition to set aside the award, the only ground canvassed is non service of notice. As there is no dispute with regard to the factual aspect, now it has to be seen whether the award has to be interfered on the ground of non service of notice.

8. One of the ground on which the award can be interfered under section 34 of the Arbitration and Conciliation Act is non service of notice. A sole arbitrator was nominated by the respondent by a letter dated 06.04.2019. The contention of the respondent is that notice of invocation was sent to the petitioner on 14.11.2018. The above notice is also not served on the petitioner and the same has been returned as no such addressee. It is well settled that if any notice is sent to the correct address or last known address, there will be deemed service under

section 3 of the Arbitration and Conciliation Act. Besides Section 27 of the General Clauses Act also deals with the deemed service of notice. The learned arbitrator has also discussed the nature of notices sent to the respondent dated 29.10.2018, 14.11.2018 and 17.12.2018. One of the notice was sent to the address given in the lease deed and the other notice was sent to the last known address. One of the notice was served on one Thilagavathi and the other notice has been returned as no such addressee and the other notice sent to last known address returned as no such addressee. Though the contention of the respondent that the service has not been effected is legally not sustainable, as far as the address is concerned, it is the last known address given by the petitioner's concern.

9. The notice of invocation dated 14.11.2018, when carefully seen except indicating that the respondent is intended to proceed legally, there is no whisper whatsoever for referring the matter for arbitration. Therefore, the legal notice sent generally on 14.11.2018 cannot be considered as notice of invocation unless it clearly express the intention of the parties for invocation of arbitration, which is admittedly found missing in the legal notice dated 14.11.2018. Section 21 of the Arbitration and Conciliation Act deals with commencement of the arbitral

proceedings. The same makes it very clear that the arbitration proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent. Only when such request of reference to the arbitration has been received by the respondent, the same will give a cause of action for commencement of arbitration. No such request for reference has been made under section 21 of the Arbitration and Conciliation Act in the letter dated 14.11.2018. Merely on the basis of the general legal notice dated 14.11.2018, it cannot be said that the arbitration proceedings commenced from the date of notice on 14.11.2018. As the very notice invoking arbitration is lacking, there is no proper commencement. Further the appointment of an arbitrator is also not made known to the applicant. Though the arbitrator has also sent legal notice to the correct address of the applicant and such service of notice be taken as deemed service, the fact remains that the invocation of arbitration itself has not been properly sent to the respondent. The learned counsel appearing for the respondent submitted that they are prepared to go before the same arbitrator. In such view of the matter, the impugned award is set aside.

10. In view of undertaking made by the applicant before this Court, the same arbitrator may enter reference. Accordingly, the respondent is at liberty to file fresh claim application before the same arbitrator within one month from the date of receipt of a copy of this Order. On such fresh claim petition being filed by the respondent, the petitioner shall file reply statement within one month thereafter and the learned arbitrator shall conclude the proceedings within a period of two months from the date of completion of pleadings. It is also made clear that no fresh notice shall be issued to the applicant, since they are also aware of the proceedings and submitted to go before the same arbitrator and the arbitrator shall communicate the date of hearing to the parties. The amount deposited to the credit of this Original Petition is Ordered to be returned to the petitioner and on such return, the petitioner shall deposit the same in interest bearing deposit in any of the nationalised banks and the entitlement of the amount shall be decided after the award. A Copy of such deposit shall be submitted before the learned arbitrator.

11. With the above direction, this Original Petition is allowed.
Consequently, connected application is closed.

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Index : Yes / No
Internet: Yes
Speaking/Non-speaking order
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N. SATHISH KUMAR, J.
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