

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.692 of 2018
and A.No.9393 of 2018

J.Samuel Rajkumar

.. Petitioner

Vs

1.M/s.NeoGrowth Credit Pvt Ltd.,
Registered Office at
NeoGrowth Credit Pvt Ltd.,
503,Tower-2B, One Indiabulls Centre,
841, S.B.Marg, Mumbai – 400 013.

2.M/s.Saraswathi Swetha Export and Imports,
No-115,Nelson Chamber,
D-Block,D-6,Nelson Manickam Road,
Aminjikarai, Chennai – 600 029.

3.Ravi Shankar Babu

..Respondents

Prayer : Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (a) to set aside the award dated 31.03.2018 of the learned Arbitrator made in Arbitration Petition No.NEO/VSA/ARB/17/3/15 and be pleased to dismiss the claim petition filed by the 1st respondent, (b) direct the first respondent to pay the cost of the petitioner and (c) pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.K.Lavan

For Respondents : Ms.Anupriya

ORDER

A challenge has been made to the ex-parte award passed by the Sole Arbitrator. The dispute arose out of a loan transaction between the partnership firm as well as the respondents herein.

2. It is the case of the respondents that the petitioner herein availed loan facility and committed default. Hence, as per the contract, the matter was referred to arbitration. The learned Arbitrator issued notices to respondents 2 and 3 on two occasions, viz., 06.12.2017 and 29.12.2017 respectively. As they have not appeared before the arbitrator, an ex-parte award was passed.

3. The main challenge made by the learned counsel appearing for the petitioner herein is that even before reference, the one of the partner of the partnership firm died and the partnership itself has been dissolved. Suppressing the above facts, notice has been sent to one of the partners, who already died on 11.07.2017. To substantiate the death of one of the partners viz., B.Ravishankar Babu, death certificate has also been filed before this Court whereas, the reference has taken place subsequently and a claim petition has also been filed on 29.12.2017 after the death of one of the partners. When the partnership itself is not in existence,

on the date of notice, the notice said to have been sent to the dead person is highly improbable and doubtful, and the nature of the death is also suppressed and the matter has been referred. Therefore, merely because, notice has been sent to the last known address of the other partner, it cannot be said that there is a valid service and the entire award is also passed not only against the other partner but also against the dead person, which is a nullity in the eye of law.

4. Hence, this Court is of the considered view that the award passed by the Arbitrator has to be set aside and, accordingly, the same is hereby set aside giving liberty to the respondents to go for a fresh arbitration as per law.

5. This petition is allowed accordingly. Consequently, connected application is closed. No costs.

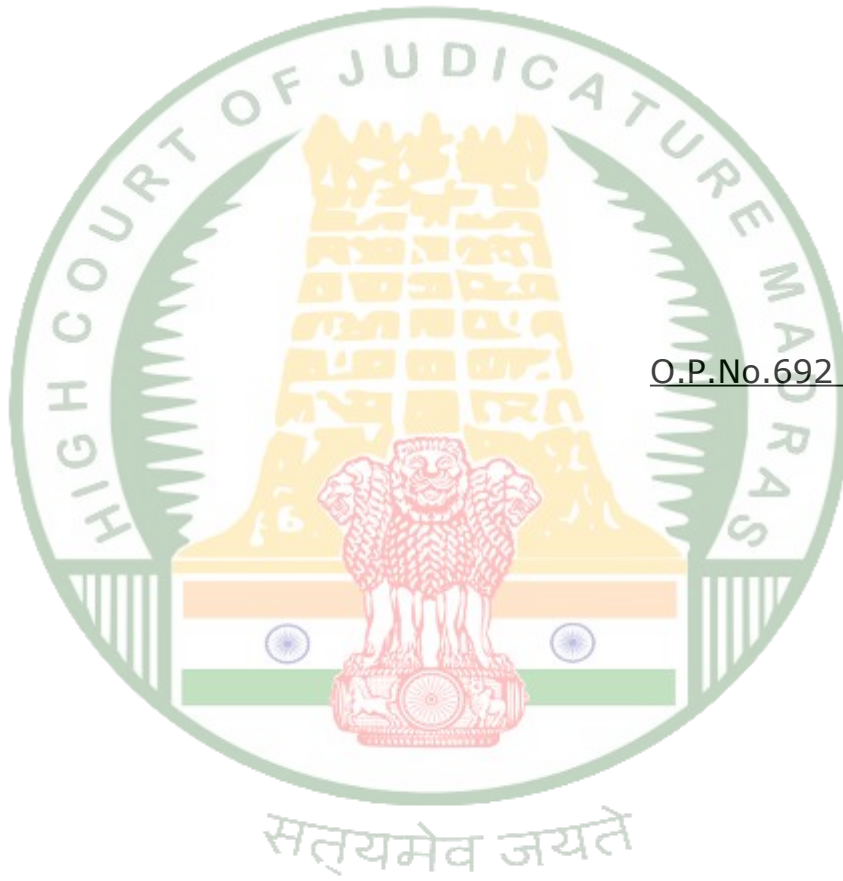
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Index: Yes/No
ssm

N. SATHISH KUMAR, J.

(ssm)



O.P.No.692 of 2018

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04.10.2021