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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. 450 of 2020

&

A.No.2457 of 2020

In the matter of Arbitral Award
dated 19.06.2020 in Arbitration
Case No. PG/SF/1/2020 passed in
disputes and differences between
M/s.Sundaram Finance Limited &
M/s. Lata Shrikant Lakare & 2
others in respect of Loan
Agreement dated 27.06.2017
bearing Contract No. M016600083

and

In the matter of Arbitration &
Conciliation Act, 1996.

Mr.Prashant Bapurao Vilankar,
S/o.Mr.Bapurao Vilankar,
3273, Sai Sadan, Lower Lane,
Ratnagiri – 415 612,
Maharashtra.

. . . Petitioner / Applicant

Versus

1. M/s.Sundaram Finance Limited.,
Rep. by Mr.G.Srinivasan, Manager [legal],
No.21, Patullous Road,
Chennai – 600 002.

2. Mr.P.Ganesan,
Sole Arbitrator,



Retired District Judge,
No.778, 4th Street, Judge Colony,
Kagithapuram, S.Kolathur,
Chennai – 600 117.

3. Ms.Lata Srikant Lakare
D/o.Mr.Shrikant Shankar Lakare,
R/o. 635, Shakti Building,
Behind Swami Samarth Mangal Karyalay,
Salvi Stop, Nachane Road,
Ratnagiri – 415 639,
Maharashtra

Also at
A/S – 2058a, Nachane, Samarth Nagar,
Supalwadi, Mirjole, MIDC,
Ratnagiri – 415 639.
Maharashtra.

4. Mr.Vijay Shrikant Lakare
S/o.Mr.Shrikant Shankar Lakare,
R/o. 635, Shakti Building,
Behind Swami Samarth Mangal Karyalay,
Salvi Stop, Nachane Road,
Ratnagiri – 415 639,
Maharashtra

Also at
A/S – 2058a, Nachane, Samarth Nagar,
Supalwadi, Mirjole, MIDC,
Ratnagiri – 415 639.
Maharashtra.

. . . Respondents / Respondents

Original Petition praying that this Hon'ble Court be pleased to set
aside the Award dated 19.06.2020 passed by the 2nd respondent in

Arbitration Case No.PG/SF/1/2020.



A.No.2457 of 2020

Application praying that this Hon'ble Court be pleased to grant an order of stay against the operation of the Award passed by the 2nd Respondent in Arbitration Case No.PG/SF/1/2020 dated 19.06.2020 until disposal of the present original petition.

This Original Petition along with the application coming on this day before this Court for hearing in the presence of Mr.K.T.Sankar Subramanian, Advocate for the petitioner in O.P.No.450 of 2020 and for the applicant in A.No.2457 of 2020 and Mr. R.Umashankar for M/s.Sri and Shankar Associates, advocates for the 1st respondent in O.P.No.450 of 2020 and in A.No.2457 of 2020 and upon reading the petition and the award dated 19/06/2020 filed in O.P.No.450 of 2020 and the Judge's Summons and the affidavit of Prashant Bapurao Vilankar filed in A.No.2457 of 2020 and this Court having observed that notice in the present case was sent to the petitioner for the hearing date on 20.03.2020, the petitioner appears to have received the above notice and in fact, he had sent defence statement and expressed his inability to appear personally on 20.03.2020, the learned arbitrator having received the above defence statement, has returned the above on the ground the



petitioner has to appear in person or through his advocate, thereafter, the learned arbitrator has not issued any notice intimating further date of hearing and proceeded to pass an award on the ground that despite notice served on the respondent he has not appeared for the hearing on 20.03.2021 and passed the above award, such a finding recorded, by the learned arbitrator is contrary to the facts, infact, defence statement sent by the petitioner has been returned by the arbitrator, despite the above fact, the arbitrator has proceeded as clearly if the respondent has not appeared despite service of notice, the above facts clearly indicate that the arbitrator has not applied his mind and simply proceeded, without any notice, further, no notice has been issued indicating further date of hearing, when the petitioner has already submitted his defence, the learned arbitrator ought to have considered the same while passing the award, therefore, the award is certainly void not only on the ground of non service of notice but also incapacity of the parties, no opportunity has been given and hence, the award is liable to be set aside and, it is ordered as follows:-

That the award passed by the arbitrator dated 19.06.2020 be and is hereby set aside.



open for the respondent to seek appointment of an arbitrator under section 11 of the Arbitration and Conciliation Act.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
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.)

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19/08/2021

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O.P. No. 450 of 2020
&
A.No.2457 of 2020

ORDER

DATED : 24.06.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 23/08/2021

APPROVED ON: 24/08/2021

**THE HIGH COURT OF JUDICATURE AT MADRAS**

Date 24.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.450 of 2020 & A.No.2457 of 2020

Mr.Prashant Bapurao Vilankar,
S/o.Mr.Bapurao Vilankar,
3273, Sai Sadan, Lower Lane,
Ratnagiri – 415 612,
Maharashtra.
Petitioner

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Versus

1. Mr.Sundaram Finance Limited.,
Rep. by Mr.G.Srinivasan, Manager [legal],
No.21, Patullous Road,
Chennai – 600 002.

2. Mr.P.Ganesan,
Sole Arbitrator,
Retired District Judge,
No.778, 4th Street, Judge Colony,
Kagithapuram, S.Kolathur,
Chennai – 600 117.

3. Ms.Lata Srikant Lakare

4. Mr.Vijay Shrikant Lakare
Respondents

...

PRAYER : Petition filed under Section 34 [2] [iii] of Arbitration and Conciliation Act, 1996 to set aside the Award dated 19.06.2020 passed by the second respondent in Arbitration Case No.PG/SF/1/2020.



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For petitioner : Mr.K.T.Sankar Subramanian
For respondents : Mr.R.Uma Shankar
for Sri and Sankar Associates – R1

ORDER

Challenge has been made against the arbitral award passed by the sole arbitrator. Dated 19.06.2020.

2. A loan agreement has been entered between the second respondent and the first respondent and the first respondent on 27.06.2017 and the petitioner and the third respondent stood as guarantors in the above agreement. As dispute arose between the parties in respect of the loan agreement, the dispute was referred to the sole arbitrator. The sole arbitrator passed an exparte award on the ground that despite service of notice for appearance on 20.03.2020, none appeared for the petitioner and hence, the award came to be passed.

3. It is the contention of the learned counsel for the petitioner that immediately after receipt of notice, the petitioner had sent a communication along with the defence statement and the same has been



ground that none present in person or through their advocate. Further on the date of hearing, it has been recorded as if the respondent purposely did not appear for the hearing on 20.03.2020. It is his further contention that in the year 2019, a similar notice for arbitration was sent by the learned arbitrator and the fate of same is not known. In the year 2020, similar notice has been sent. Hence, submitted that the arbitral award suffers incapacity of the party and also notice of the proceedings has not been sent.

4. The learned counsel for the respondent submitted that the first application filed in the year 2019 has been withdrawn. However, the second application has been filed and notice has also been sent. Having receiving the said notice, petitioner has not appeared before the arbitrator.

5. It is not in dispute that the award is an *ex parte* award and the petitioner is a guarantor. The documents available on record reveals that in the year 2019, a similar notice was issued by the same arbitrator in Arbitration Case No.74 of 2019 for the same loan amount. This Court is unable to understand how, when a claim petition is numbered and



the above Original Petition is not made known to the petitioner.

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6. When the matter stood thus, notice in the present case was sent to the petitioner for the hearing date on 20.03.2020. The petitioner appears to have received the above notice and in fact, he had sent defence statement and expressed his inability to appear personally on 20.03.2020. The learned arbitrator having received the above defence statement, has returned the above on the ground the petitioner has to appear in person or through his advocate. Thereafter, the learned arbitrator has not issued any notice intimating further date of hearing and proceeded to pass an award on the ground that despite notice served on the respondent he has not appeared for the hearing on 20.03.2021 and passed the above award. Such a finding recorded by the learned arbitrator is contrary to the facts. Infact, defence statement sent by the petitioner has been returned by the arbitrator. Despite the above fact, the arbitrator has proceeded as if the respondent has not appeared despite service of notice. The above facts clearly indicate that the arbitrator has not applied his mind and simply proceeded, without any notice. Further, no notice has been issued indicating further date of hearing. When the petitioner has already submitted his defence, the learned arbitrator ought

to have considered the same while passing the award. Therefore, the



award is certainly void not only on the ground of non service of notice but also incapacity of the parties. No opportunity has been given and hence, the award is liable to be set aside.

7. Accordingly, the award passed by the arbitrator dated 19.06.2020 is set aside. If the parties are unable to arrive at a consensus, it is well open for the respondent to seek appointment of an arbitrator under section 11 of the Arbitration and Conciliation Act.

Sd./-N.S.K.J.
24.06.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
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