



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(PD) (MD) No.1806 of 2021

and

C.M.P.(MD) No.9699 of 2021

WEB COPY

Tmt.S.Mariyammal

.. Petitioner/Petitioner/
1st Respondent

-vs-

1.M/s.Shriram City Union Finance Ltd.,
Rep., by its Authorised Signatory,
No.123, Angappa Naicken Street,
Chennai-1.
Having its Zonal Office at 353/1, 353/2,
AC Complex, 1st Floor,
Near Periyar Statue,
Sekkalai Road, Karaikudi-630 001,
Sivakangai District.

.. 1st Respondent/1st Respondent/
Claimant

2.Mr.P.Perumal

..2nd Respondent/2nd Respondent/
2nd Respondent

Prayer :- Petition filed under Article 227 of the Constitution of India to call for the records related to the impugned docketal return orders passed by the Principal District Judge, Ramanathapuram dated 17.04.2021 and 28.07.2021 passed in Ar.O.P.Diary Number 1799 of 2021 assigned with CNR No.TNRM010012392021 and set aside the same and direct the Principal District Judge, Ramanathapuram to number the said arbitration original petition.

For Petitioner : Mr.N.Dilip Kumar

ORDER

The petitioner, in a Section 34 petition filed under the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act" for brevity), is the revision petitioner before this Court.

2.The petitioner seeks a direction from this Court to the Principal District Judge, Ramanathapuram to number the Arbitration



Original Petition filed by her under Section 34 to set aside the ex-parte award passed by the Sole Arbitrator.

3.The facts in brief, which are necessary for understanding the issue on hand, are narrated hereinbelow:-

3.1.The 1st respondent-Finance Company advanced a loan to the petitioner herein and a Loan Agreement dated 31.01.2015 was entered into between the petitioner and the 1st respondent. The 2nd respondent executed this agreement as a guarantor.

4.It is the case of the 1st respondent that though the petitioner had received a sum of Rs.5,00,000/- as loan, she had only repaid a sum of Rs.2,65,675/- leaving a balance of Rs.2,11,075/- as on 20.12.2016. The petitioner had not cared to repay the above outstanding, despite several demands made in person and ultimately, a notice dated 18.07.2016 was issued by the 1st respondent to the petitioner to the address given in the loan agreement. Notice was also sent to the 2nd respondent. However, the said notices were not returned either served or unserved. Therefore, the 1st respondent invoking the Arbitration Clause had initiated proceedings by appointing a Sole Arbitrator. The Sole Arbitrator, on entering appearance, had issued notice to the petitioner as well as the 2nd respondent. However, there was no response to the same and ultimately, an ex-parte award was passed on 30.07.2019 in and by which, the petitioner and the 2nd respondent were directed to pay a sum of Rs.5,24,501/- together with interest at 18% per annum on Rs.4,64,353/-. The 1st respondent had, thereafter, filed execution proceedings in E.P.No.54 of 2020 for executing the said award. Meanwhile, a petition to set aside the ex-parte award came to be filed by the petitioner herein on 15.04.2021. In the said petition, the petitioner would submit that she had received no notice either about the initiation of the arbitration proceedings, or about the award. In fact, she had become aware about the award and the arbitral proceedings only when she had received notice in the execution proceedings. This petition was returned on 17.04.2021 by the Principal District Judge, Ramanathapuram stating that the arbitral award had been passed on 30.07.2019 and as per the provisions of Section 34(3) of the Act, the time limit for filing the appeal was three months with a further period of 30 days and the petition filed was much beyond the time granted under the said provision. The petitioner has re-presented the said petition once again giving a very detailed explanation and also submitting judgment in support of her argument on 17.04.2021. Once again the Principal District Judge had returned the petition on 30.04.2021 with an endorsement that the previous return dated 17.04.2021 still holds good. Thereafter, the return was re-presented on



16.07.2021. However, the learned Principal District Judge, once again on 28.07.2021 returned the petition stating as follows:-

"Xerox copy of the award produced along with the Appeal shows that certified copy of the award is dispatched to the party. Moreover the Appellant itself filed the award copy along with petition. That it will reveals that the copy of award is despatched to the party. Therefore, the citation referred in petition is not apply to the facts off the case. The earlier return dated 17.04.2021 still holds good."

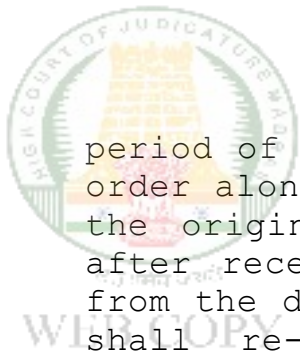
Challenging the same, the petitioner is before this Court.

5.The learned Principal District Judge, has apparently not considered the re-presentation made by the learned counsel for the petitioner on 16.07.2021. It is no doubt correct that the time limit provided under Section 34 of the Act is three months with a further window of 30 days. However, the Act clearly provides that the time would start ticking from the date on which a signed copy of the arbitral award is delivered to each party as provided under Section 31(5) of the Act where such an award has been delivered to the petitioner in time is a matter that has to be considered at the time of enquiry in the petition.

6.This Court is of the opinion that the Principal District Judge has totally ignored the contents of the petition wherein, the petitioner has clearly stated that to date, she has not received a signed copy of the arbitral award from the Arbitrator. Such a statement is made in para 9 of the petition to set aside the *ex-parte* award. The learned Judge has ignored the dicta laid down in ***State of Maharashtra and others vs. ARK Builders Private Limited [(2011) 4 SCC 616]***, wherein the Hon'ble Supreme Court has clearly held as follows:-

"17.In the light of the discussions made above we find the impugned order of the Bombay High Court unsustainable. The High Court was clearly in error not correctly following the decision of this Court in Tecco Trichy Engineers & Contractors and in taking a contrary view. The High Court overlooked that what Section 31(5) contemplates is not merely the delivery of any kind of a copy of the award but a copy of the award that is duly signed by the members of the Arbitral Tribunal."

7.In the light of the above, the learned Principal District Judge, Ramanathapuram is directed to number the petition within a



period of two weeks from the date of production of a copy of this order along with the return petition. Registry is directed return the original papers to the learned counsel for the petitioner, after receiving due acknowledgement within a period of one week from the date of receipt of a copy of this order. The petitioner shall re-present the papers within a period of one week thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Principal District Court,
Ramanathapuram.

COPY TO

The Section Officer,
E.R.Section,
Madurai Bench of Madras High Court,
Maduari.

+1 CC to M/s.N. DILIP KUMAR, Advocate (SR-35745[F] dated 24/11/2021)

C.R.P.(PD) (MD) No.1806 of 2021

Dated: 23.11.2021

RK(10/12/2021) 4P 4C