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A.No.2861 of 2022
in Arb.O.P.D.No.22196 of 2022

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M.SUNDAR, J.,

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been filed assailing an arbitral award.

2. Captioned Arb OP was listed before this Court under the cause list caption 'FOR MAINTAINABILITY' and this Court made proceedings on 05.07.2022 which reads as follows:

'Captioned Arb.OP has been presented in this Court on 03.03.2022 under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996), which shall hereinafter be referred to as 'A and C Act' for the sake of brevity assailing an 'arbitral award dated 10.10.2013 bearing reference Loan Account No.RLLPCHE000092003' (hereinafter 'impugned award' for the sake of convenience).

2. Registry has entertained doubts about limitation in the light of sub-section (3) of Section 34 of A and C Act and the proviso thereof. In other words, Registry is in doubt as to whether the captioned Arb.OP has been presented within 3 months and 30 days time frame beyond which a Section 34 petition cannot be entertained even with a delay condonation



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3. Before proceeding further, this Court deems it appropriate to refer to the 'Maintainability Note' placed before this Court by the Registry. The Maintainability Note proceeds on the basis that the impugned award is dated 10.10.2013 and therefore, 3 months and 30 days time frame elapsed on 09.02.2014. This is plainly incorrect. The reason is, the language in which sub-section (3) of Section 34 is couched makes it clear that the reckoning dates are either (a) the date on which the impugned award is received by the party making the Section 34 application or (b) the date on which a request under Section 33 (if there is one) is acceded to. Therefore, it is clear that the reckoning date is not the date of the impugned award. This Court deems it appropriate to make it clear that the Registry taking the date of the impugned award as the reckoning date is plainly incorrect and inappropriate.

4. Be that as it may, proceeding further with the facts of the case on hand, it is unique in certain aspects, more particularly with regard to the limitation aspect.

5. Learned counsel Ms.P.Uma, who is before this Court, submits that the petitioners in the captioned Arb.OP moved the jurisdictional Civil Court by way of a suit in O.S.No.4307 of 2015 and an ex parte decree was passed in that suit on 30.09.2015. The respondent moved an application under



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Order IX Rule 13 of 'The Code of Civil Procedure, 1908 (Central Act V of 1908)' [hereinafter 'CPC' for the sake of convenience and clarity] with delay. Delay was condoned and Order IX Rule 13 CPC application was entertained and Order IX Rule 13 prayer was acceded to. Thereafter, the respondent before this Section 34 Court took out an application in I.A.No.13412 of 2018 in the Civil Court under Section 8 of A and C Act. This Section 8 application was subjected to full contest and after full contest, the trial Court in and by an order dated 29.11.2018 allowed the Section 8 prayer made by the respondent before this Court. To be noted, the Civil Court is I Assistant Judge's Court, City Civil Court, Chennai.

6. The petitioner before this Court carried the matter in revision by filing C.R.P.No.45 of 2019 along with a Civil Miscellaneous Petition thereat. Notice was issued. There was full contest in the CRP and after full contest, a Hon'ble single Judge of this Court in and by order dated 11.01.2022 dismissed the CRP sustaining the Section 8 order dated 29.11.2018 made by the trial Court. While doing so, the Hon'ble single Judge in Paragraph 6 has observed as follows:

'6. Accordingly, this Civil Revision Petition is dismissed as devoid of any merits. No costs. Consequently, connected miscellaneous petition is closed. However, it open to the



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WEB COPY *petitioners to challenge the award of Arbitrator before Court by filing an application under Section 34 of the Arbitration and Conciliation Act. The period during which the petitioners were prosecuting the above Civil Revision Petition shall be excluded. However, it is for the petitioners to prove their case that on notice was served on the them by the Arbitrator before passing the final award.'*

7. *In the aforementioned circumstances, more particularly in the aforementioned chronicle of events, learned counsel for petitioners submits that the reckoning date should necessarily be 11.01.2022 being the date on which CRP order was made by a Hon'ble single Judge of this Court and it cannot be 10.10.2013 being the date of the award.*

8. *The unique trajectory this matter has taken makes it clear that the submissions are prima facie acceptable at this maintainability stage subject to the rights of the respondent. This Court also takes note of the aforementioned paragraph 6 wherein another Hon'ble single Judge has clearly preserved the rights of the petitioners to move this Section 34 Court after dismissal of the CRP. In sum and substance, the sequitur is the petitioner would be entitled to the benefit of Section 14 of the Limitation Act as they had approached a wrong forum.*

9. *In the light of the narrative thus far, Registry is directed to process the captioned matter, assign a number and*



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10. It is made clear (as already alluded to supra) that this is a prima facie view at this maintainability stage and the rights of the respondent would stand preserved to raise the limitation plea if so advised, if so desired and if that be so. Registry to do the needful.'

3. Aforementioned proceedings *inter alia* captures the trajectory the matter has taken and therefore, it is tell tale.

4. Today, Ms.P.Uma, learned counsel who is before this Court advertent to support affidavit more particularly paragraph No.15 submits that only during CRP proceedings i.e., C.R.P.No.45 of 2019, the respondent served a copy of the impugned award and that is also a incomplete copy of the impugned award. To be noted, paragraph No.15 of support affidavit reads as follows:

'15. It is respectfully submitted that the petition to condone the delay filed by the respondent before City Civil Court was dismissed and hence the 1st respondent filed CRP.No.767 of 2017 before Hon'ble High Court. Said CRP allowed. Subsequently



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Exparte decree set aside and allowed the petition filed under Section 8 of Arbitration and Conciliation Act, 1956, City Civil Court. Against said order the petitioners filed CRP.No.45 of 2019. During the pending of CRP the respondent informed about the Arbitration Award passed by the respondent and this Hon'ble Court passed an order dated 11.01.2022 and allowed the petitioners to challenge the arbitration award. During CRP proceedings, the respondent also served an incomplete award copy to the petitioners. '

(underlining made by this Court to supply emphasis and highlight and for ease of reference)

5. The question as to whether a signed copy of the impugned award was served on the petitioner is left open to be decided in the main Section 34 Arb OP if it is put in issue. With this caveat, captioned application is ordered as prayed for. There shall be no order as to costs.

20.07.2022

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