



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.M.A.No.1853 of 2017

K.Subbarayan ... Appellant/Respondent 1

Vs.

1. R.Vetrivel ... Respondent 1/Petitioner

2. P.Alagusamy ... Respondent 2/Respondent 2

Prayer: Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 against the order and Decretal Order dated 18.01.2017 in A.R.O.P.No.88 of 2011 on the file of the Principal District Judge, Namakkal.

For Appellant : Mr. P.Rajendran

JUDGMENT

Civil Miscellaneous Appeal has been filed questioning the order in A.R.O.P.No.88 of 2011 passed by the Principal District Court, Namakkal.

2. The aforementioned A.R.O.P.No.88 of 2011 had been filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the ex-parte arbitral award passed against the petitioner by the Arbitrator on 11.01.2010.

3. The appellant herein/first respondent before the Principal District Court, Namakkal and the first respondent herein, who was the petitioner in Principal District Court, Namakkal are relatives. They have exchanged monies, loan was borrowed and there was also a guarantor for the said loan. It was agreed that, if at all, disputes, arose owing to such borrowings, then the parties should examine the same under the provisions of the Arbitration and Conciliation Act, 1996.

4. Claiming that there was frustration of payment towards the borrowing, the appellant herein had sought reference to arbitration petition and the second respondent had been appointed as a Sole Arbitrator. He entered reference and proceeded to pass an award dated 11.01.2010. Questioning that award, an arbitration petition under Section 34 of the Arbitration and Conciliation Act, 1996 was filed before the



Principal District Court, Namakkal.

5. One of the main issues raised before the Principal District Court, Namakkal, was that, there was no arbitration agreement between the two parties and therefore reference could not have been made and the award, therefore, was unlawful and should be interfered with.

6. The learned Principal District Judge, while examining the said fact, namely, whether there was an arbitration agreement between the two parties, examined the agreement produced, which according to the respondent, was an Arbitration Agreement.

7. The said document had been forwarded to this Court along with the records of the Trial Court. It is dated 15.11.2006. It is a xerox copy. It is not the original. It had been stated that there had been borrowings of Rs.1,50,000/- owing to business purpose and it had also been stated that if any dispute arises owing to the said borrowales, then the parties would appoint Mr.P.Alagusamy, B.A, as the Arbitrator to adjudicate the issues. The document has not been signed by both the parties. One of the two parties also had signed the purported arbitration agreement. It had been signed only by K.Subbarayan and the other party R.Vetrivel had not signed the arbitration agreement.

8. Prima facie, this Court cannot term the document as an agreement. An agreement is entered with consensus an idem on the aspects in the agreement and the terms are written down in a document and is signed by both the parties. One of the two parties can never consent, that disputes can be referred to arbitration.

9. In the instant case, only one party has signed the document termed arbitration agreement and the other party had not signed the said document.

10. I hold that the learned Principal District Court, Namakkal was correct in holding that the arbitration agreement has to be signed by both the parties and in allowing the petition under Section 34 of the Arbitration and Conciliation Act, 1996.

11. With the above observations, this Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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To

WEB COPY

1. The Principal District Judge,
Namakkal.
2. The Section Officer,
VR Section,
Madras High Court.

+1cc to Mr.P.Rajendran, Advocate SR. No.16612

CMA.No.1853 of 2017

SKM (CO)
PR (28/03/2022)