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O.S.A.No.270 of

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2022

CORAM:

THE HONOURABLE Mr. JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE Mr.JUSTICE SUNDER MOHAN

O.S.A.No.270 of 2017
and C.M.P.No.17525 of 2017

B.S.Chandrasekar,

Appellant...

Versus

1.M/s.Sundaram Finance Limited,
21 Patullos Road,
Chennai – 600 002.

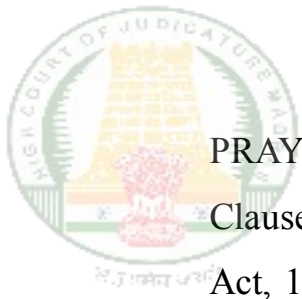
2.M/s.L.S.P.Agro Ltd.,
No.12, Ponneri High Road,
Elanthancheri, Anderkuppam Check Post,
Manali New Town,
Chennai – 600 013.

3.B.S.Arunachalam,

4.B.S.Selvakumar,

5.B.S.Krishnan,
(Respondents 2 to 5 given up as unnecessary parties)

... Respondents



O.S.A.No.270 of

PRAYER: Appeal filed under Order XXXVI, Rule 1 of the O.S.Rules and Clause 15 of the Letters Patent r/w Section 37 of Arbitration and Conciliation Act, 1996 to set aside the fair order and decretal order dated 16.02.2017 in O.P.No.389 of 2010, on the file of this Hon'ble Court confirming the award dated 18.05.2005 passed by the learned Arbitrator in Arbitration case No.M/SF/9 of 2003 and to set aside the said award insofar as the appellant herein is concerned.

For Appellant : Mr.K.Ramanraj
For R1 : Mr.R.Umashankar
For R2 to R5 : Given up
vide Order dt: 09.11.2017

J U D G E M E N T

(Judgement was delivered by **SUNDER MOHAN,J.**)

The appellant has preferred the above appeal challenging the order dated 16.02.2017 passed by the learned single Judge of this Court made in O.P.No.389 of 2010.

2.The appellant challenged the Arbitral award dated 18.05.2005 passed by the Arbitrator in the said O.P.No.389 of 2010. The appellant suffered an award passed by the Arbitrator, by which, he along with the second respondent were jointly and severally directed to pay a sum of Rs.1,34,34,137/- (Rupees One Crore, Thirty Four Lakhs, Thirty Four Thousand, One Hundred and Thirty Seven only) together with interest



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thereon at 18% from 02.04.2003 till payment and sum of Rs.27,000/- (Rupees

Twenty Seven Thousand Only) by way of cost of proceedings.

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3.The appellant challenged the award before the learned Single Judge mainly on the grounds that:-

(a) there was no Arbitral agreement between him and the first respondent and hence, the entire proceedings were flawed and the award is liable to be set aside.

(b) that he had not executed any deed of guarantee and therefore, he was not liable to make any payment.

(c) that the petitioner did not receive the notice of the Arbitral proceedings and hence, the award passed without hearing him ex-parte is unsustainable in law.

4.Though the learned counsel for the appellant/petitioner submitted before the learned single Judge that there was no Arbitration clause in the agreement, the learned single Judge held that this Submission is not tenable for the simple reason that when the petitioner executed the deed of guarantee,



he has specifically agreed that the Arbitration clause in the earlier agreement should be read as part and parcel of the Deed of Guarantee. As regards the contention that the appellant had not executed any Deed of Guarantee, the learned Single Judge held that the appellant being the Director of the second respondent herein, the Deed of Guarantee executed by him is a continuing Deed of Gurantee which would enure in favour of the first respondent till the balance is fully settled.

5. As regards, the appellant's claim that he did not receive the notice of Arbitral proceedings, the learned Single Judge found that the notice sent to the appellant was returned with an endorsement ***“intimation sent not claimed”*** and this is sufficient to hold that the notice is deemed to have been served. In addition to that paper publication was also effected in a tamil daily dated 29.07.2004, despite that the appellant/petitioner remained absent. Therefore, the learned single Judge rejected that plea with regard to non receipt of notice.

6. Aggrieved by the order of the learned single Judge, the petitioner has filed the above appeal.



7. On a careful consideration of the materials available on record, it could be seen that it is the appellant's case that he did not participate in the proceedings before the Arbitral Tribunal for the reason that he was not in the country and was staying with his son at Sweden between 23.04.2005 to 28.06.2005 and that the award was passed in the meanwhile on 18.05.2005. This submission of the appellant cannot be countenanced at all, since the Arbitral proceeding was initiated much earlier. The learned Arbitrator issued notice to the parties concerned as early as on 08.05.2003. The notice sent to the appellant was returned with an endorsement ***“intimation sent not claimed”*** and paper publication was also effected in a Tamil daily on 29.07.2004. The Arbitral proceedings took place from 08.05.2003 and culminated in May 2005. Thus, the claim of the appellant that he could not participate in the Arbitral proceedings, since he was away from the country between 23.04.2005 and 28.06.2005 cannot be accepted. Since the appellant had not participated in the Arbitral proceedings, there are no pleadings on his side. In the absence of pleadings, the appellant cannot substantiate his other submissions that there was no Arbitral agreement between the parties and that he had not executed the Deed of Guarantee. In any event, we find that the learned single Judge had considered these submissions as well and on merits found that the plea of the appellant is without any basis and contrary to the



documents available on record.

8.The learned Arbitrator, in our view, has passed a well considered order based on the oral and documentary evidences adduced by the first respondent herein. The learned Arbitrator, as stated earlier, has taken all steps to issue notice to the appellant. Hence, the award is in accordance with law. Taking into consideration all these aspects, the learned single Judge has rightly dismissed the original petition. Thus, it is clear that the appellant has not made out any case for interference in the said award. The appellant has not brought his case within the parameters of amended Section 34 of the Arbitration and Conciliation Act 1996.

9.Therefore, we find no reason to interfere with the order passed by the learned Single Judge. Hence, the Original Side Appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

[M.D.J] [S.M.J]
21.06.2022

Index : Yes
Internet : Yes
Speaking/Non-Speaking orders
dk

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