



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2022

CORAM :

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA(MD)No.811 of 2019

and

CMP(MD)No.10505 of 2019 and

C.M.P(MD) Nos.2824 and 2826 of 2020

1.P.Rajendran

2.Mekala

... Appellants/ Appellants/
Defendants

Vs.

K.S.M.Saravanamoorthy

... Respondent/ Respondent/
Claimant

PRAYER: Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 to set aside the order and decree dated 23.04.2019 passed in Arbitration Appeal O.P.No.12 of 2018 with I.A.No.1 of 2019 by the Principal District Judge, Tiruchirapalli, confirming the Arbitration Award dated 03.07.2018 passed in Arbitration Case No.3 of 2016 by the Arbitrator and allow the present appeal.

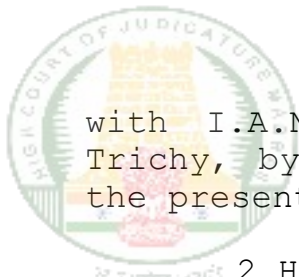
For Appellants : Mr.J.Anandhavalli

For Respondent : Mr.K.S.Vamsidhar

J U D G M E N T

The respondent has instituted Arbitration Proceedings before the appointed Arbitrator in Arbitration Case No.3 of 2016, for recovery of money due on the registered mortgage deed dated 20.03.2015. The appellant herein has not appeared before the Arbitrator in the arbitration proceedings resulted in an ex parte award has passed. Thereafter, it appears that a legal notice was issued by the respondent on 01.07.2016 and a reply was issued by the appellants on 19.07.2016 and the claim petition by way of arbitration was filed on 20.10.2016. Since the appellant herein has not appeared before the Arbitrator, an ex parte arbitration award was passed on 03.07.2018. Hence, the appellants herein have preferred an appeal in Arbitration Appeal O.P No.12 of 2018 along

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with I.A.No.1 of 2019. The learned Principal District Judge, Trichy, by an order dated 23.04.2019, dismissed the same. Hence, the present Civil Miscellaneous Appeal.

2.Heard the learned counsel appearing on either side and perused the materials placed on record.

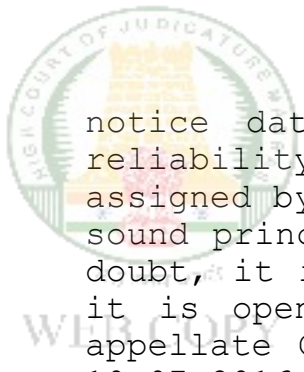
3.Admittedly, the arbitration award is an ex parte award, but that is not the reason to interfere with. Additional documents are sought to be filed by the appellants before the appellate Court. The appellate Court without assigning any reason has rejected the same. This is the main reason that has been projected by the learned counsel for the appellants.

4.The learned counsel for the respondent would contend that Arbitration Appeal OP cannot be equated with regular appeal under Order 41 of CPC and it has to be dealt with separately.

5.After hearing the rival submissions and after going through the registered mortgage deed, which was filed in the typed set of papers, it is for a sum of Rs.10,00,000/-, wherein, there is a clause referring the matter for arbitration. Pursuant to the clause, it appears that the respondent has issued a legal notice and reply notice. Thereafter, claim petition appears to have been filed before the Arbitrator and one Advocate has appointed for the respondent/money lender herein. Both the parties are not institutors, but they are individual parties. It is also brought to my notice that on 28.06.2016, the appellants herein filed a complaint to the Branch Manager of the Bank, in which he is having an account, not to permit the respondent to encash five cheques, which are said to have been given by the appellants and the legal notice initiating arbitration proceedings seems to have been emerged from 01.07.2016.

6.Be that as it may, in the reply notice, the appellants herein has taken a stand that on different date different payment has been made and to the extent that only five lakhs was paid by the respondent and not Rs.10 lakhs as mentioned in the registered mortgage deed, dated 20.03.2015. Admittedly, it is a registered document. Parties are bound by the document subject to Sections 91 and 92 of the Indian Evidence Act. Since the appellants have not appeared before the Arbitrator, which resulted in ex part decree.

7.The learned Appellate Authority has considered the merits of the case and dismissed it. In order to substantiate certain points that has been raised in the reply notice dated 19.07.2016, additional documents have been filed by the appellants before the appellate forum. The appellate forum ought to have entertained the additional documents whether the plea that was raised in the reply



notice dated 19.07.2016 is complied with or not is subject to reliability and admissibility of those documents. The reason assigned by the learned Principal District Judge is not based on the sound principles of law governing the arbitration proceedings. No doubt, it is true that the arbitration award is ex parte, but still it is open to the defeated party to make his submission in the appellate Court relying upon the reply notice, which was issued on 19.07.2016, much before filing of the claim petition.

8. At this juncture, I find that after issuance of the complaint by the appellant herein to the Branch Manager on 28.06.2016 regarding five cheques alleged to have been given by the appellants as a security to the mortgaged amount as he apprehended it may be misused. Within 3 to 4 days the legal notice for appointment of arbitration, appears to have been generated. Since I proposed to remand the matter to the Principal District Judge, Trichy, I have not elaborately dealt with the matter further, leaving it open to the appellate authority, the learned Principal District Judge, Trichy, to consider the matter in connection with the additional documents subject to admissibility and reliability. This court is not expressing any opinion on the merits of the case. Any observation made in the preceding paragraphs is for the purpose of disposal of the case, which shall not be construed as the opinion of this Court in deciding the issue on merits based upon the additional documents, if any, to be taken on file by the appellate forum.

9. With these observations the order passed in Arbitration appeal O.P.No.12 of 2018 is set aside and the matter is remitted back to the learned Principal District Judge, Trichy, for final disposal on merits after considering the Interlocutory Application in the light of the observation, as to the admissibility and reliability, after giving an opportunity to the other side to cross-examine within the scope of the Evidence Act.

10. As against C.M.P(MD) No.2824 of 2020 filed for extension of time, the learned counsel for the appellants represented that a sum of Rs.5,00,000/- is paid. However, due to inability, interest for five lakhs was not paid and the same shall be deposited to Arbitration Appeal OP No.12 of 2018 before the Principal District Judge, Trichy, within a period of four weeks from the date of receipt of a copy of this order. The Principal District Judge, Trichy, shall fix the first hearing on satisfying the deposit of the above said amount and dispose it of within a period of three weeks thereafter. It is open to the respondent to file appropriate application before the Appellate Authority to withdraw the amount and the same shall be considered by the Appellate Authority in accordance with law. Interest shall be calculated from date of the award till the date of the interim order passed by this Court.



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11. In the result, this Civil Miscellaneous Petition is partly allowed to the extent as indicated above. Consequently, C.M.P(MD) No.2824 of 2020 is ordered and C.M.P(MD) Nos.10505 of 2019 and 2826 of 2020 are closed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

To

The Principal District Judge,
Tiruchirapalli.

COPY TO:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-9526[F] dated 02/03/2022)

+1 CC to M/s.K.S.VAMSIDHAR, Advocate (SR-9828[F] dated 03/03/2022)

CMA(MD)No.811 of 2019 and
CMP(MD)Nos.10505 of 2019, 2824
and 2826 of 2020
01.03.2022

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