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ARB.O.P.NO.49 OF 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

ARB.O.P.NO.49 OF 2022

AND

A.NO.5369 OF 2022

1.Vedavalli

2.Krishnaprasanth

3.Ramesh

... Petitioners

VS.

R.G.Thangaraj

... Respondent

PRAYER: Petition filed under Section 34(2)(a)(ii)(iii) of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 28.04.2021 bearing No.ARB/05 of 2015 passed by the Arbitral Tribunal in its entirety (or) to the extent to which it is challenged and to direct the respondent to pay the costs.

For Petitioners : Mr.V.Manisekaran

For Respondent : Mr.G.Ilangovan



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ORDER

This Arbitration Original Petition has been filed challenging the Award dated 28.04.2021 passed in Arbitration Case No.ARB/05 of 2015 by the learned Arbitrator.

2.The Award has been passed directing the respondents / petitioners herein to pay a sum of Rs.29,19,753/- (Rupees Twenty Nine Lakhs Nineteen Thousand Seven Hundred and Fifty Three Only) to the claimant with future interest at 18% per annum on Rs.19,00,000/- from the date of claim petition, failing which, the petitioner / respondent herein is entitled to execute the Arbitral Award through Court process as per the provisions of Order XXI of Civil Procedure Code to sell the 1/3rd UDS right of the respondents / petitioners in the schedule property in public auction for realization of the Award amount.

3.The claim petition has been filed based on the loan borrowed by the first petitioner and her husband on the Promissory Note and Loan Agreement. Despite opportunities have been given to the petitioners by the Arbitrator, they



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remained *exparte* and therefore, they were set *exparte* on 04.01.2021. Though the petitioners have filed an application to reject the claim petition as against the respondents 2 and 3, it has been dismissed by the learned Arbitrator. The first petitioner was appointed as Guardian for the petitioners 2 and 3 who are minors. Therefore, the petitioners have filed this petition seeking to set aside the Award passed by the learned Arbitrator.

4.The proceedings of the learned Arbitrator makes it clear that the petitioners herein have been given several opportunities from the year 2016. The Award has been challenged mainly on the ground that the proceedings has been commenced in the year 2015 and the Award has been passed only in the year 2021. Therefore, as per Section 29A of The Arbitration and Conciliation Act, 1996 [26 of 1996] (hereinafter referred to as “the Act”) as amended by The Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) (hereinafter referred to as “the Amended Act”) the Award has to be set aside. It is the further contention of the petitioners that the Award copy has not been served on them in proper time and therefore, on both the grounds, they assailed the Arbitral Award.



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5.I have heard the learned counsel for the petitioners and the learned counsel for the respondent.

6.The main contention of the petitioners is that as Arbitral Award has been passed belatedly in the year 2021 which is in violation of Section 29A of the Act and therefore, it is liable to be set aside. Further, Guardian also has not been appointed for the minors, petitioners 2 and 3 herein, and therefore, the Arbitral Award has to be set aside.

7.It is well settled that the Arbitral Award can be interfered only if the grounds set out under Section 34 of the Act is made out. On perusal of the Arbitral Award, it is seen that opportunities were given to the petitioners and in fact, an application has been taken out by the petitioners to reject the claim, which has been dismissed by the Arbitrator and the first petitioner was appointed as Guardian for the minors / petitioners 2 and 3. Thereafter, based on the evidence, namely, Loan Agreement and Promissory Note, the Award has been passed.



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8. On perusal of the Arbitral Award, it is seen that there is no illegality which goes to the root of the matter. Further, there is no other violation found to bring the petitioners case in any of the grounds set out in Section 34 of the Arbitration and Conciliation Act, 1996. The contention that there is violation of Section 29A of the Act is not acceptable. It is relevant to note that Section 29A of the Act is amended and brought to the statute on 23.10.2015 whereas, the proceedings in this case has been commenced much prior to the amendment. If such is being the position, the reference is much prior to the Amended Act and Section 87 of the Act is very clear that the Amended Act will not apply to the proceedings commenced prior to the amendment at this stage. The petitioners cannot rely upon Section 29A of the Act to assail the well reasoned Arbitral Award. I do not find any merits in this Arbitration Original Petition and accordingly, this Arbitration Original Petition is dismissed confirming the Arbitral Award dated 28.04.2021 passed in Arbitration Case No.ARB/05 of 2015 by the learned Arbitrator. No costs. Consequently, connected application is closed.

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Index : Yes / No

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Neutral Citation: Yes/No

TK

N.SATHISH KUMAR, J.

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