



CMA.No.1830 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **30.10.2023**

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE P. DHANABAL**

C.M.A.No.1830 of 2023

Periyasamy Sangali Gounder

... Appellant

Vs.

1.K.S.Mohan Raja

2.M.Aruna Devi

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed to set aside the order dated 20.04.2023 in A.O.P.No.69 of 2023 on the file of the Commercial Court(District Judge Cadre), Coimbatore.

For Appellant : Mr.R.Bharath Kumar

For Respondents : Mr.N.V.Prakash

JUDGMENT



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[Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*]

The appeal has been preferred as against the order in AOP No.69 of 2023, dated 20.04.2023 on the file of Commercial Court (District Judge Cadre), Coimbatore.

Brief facts of the case:

2.1. The appellant is the buyer and the respondents are the owners of the property. The appellant had orally agreed to purchase the property of the respondents and he had paid an advance of Rs.1,21,10,000. Since the sale transaction could not proceed with, both the parties mutually decided to cancel the sale transaction. On account of the same, the respondents are liable to return the said advance amount. The respondents has requested the appellant to grant them time to return the said advance amount, which was agreed to by the appellant. Accordingly, both parties entered into a Memorandum of Compromise (MOU) dated 09.12.2014. As per Clause 4 of the said MOU, it was agreed between the parties that all claims and disputes arising out of the MOU shall be referred to the Arbitrator. Since the respondents did not pay the amount as per the



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said MOU, the appellant had approached the Arbitrator. The Arbitrator, by Arbitral Award dated 12.03.2019, has passed an ex parte award in favour of the appellant.

2.2. Challenging the said award dated 12.03.2019, passed by the Arbitrator Tribunal, the respondents herein have filed an application before the Commercial Court (District Judge Cadre) in A.O.P. No.69 of 2023, on the ground that the said award passed by the Arbitrator was ex parte and therefore, the said award is liable to be set aside. The Commercial Court, by order dated 20.04.2023, has allowed the said petition by setting aside the award dated 12.03.2019, passed by the Arbitral Tribunal. Challenging the said order dated 20.04.2023, passed by the Commercial Court, the appellant has preferred the present civil miscellaneous appeal before this Court.

3. Learned counsel for the appellant has raised several grounds in the appeal, the chief among them being, sufficient opportunity was granted to the respondents for appearing before the Arbitral Tribunal, but the respondents failed to appear before the Arbitral Tribunal. Therefore, the award of the Aribtral



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Tribunal cannot be set aside by the Commercial Court.

4. Learned counsel for the respondents has stoutly denied the said submission made by the learned counsel for the appellant by stating that no notice has been served to the respondents, no evidence has also been placed by the appellant before the Commercial Court to prove that notice has been served on the respondents to appear before the Arbitral Tribunal. Therefore, the order passed by the Commercial Court is perfectly valid and there is no necessity to interfere with the order passed by the Commercial Court.

5. After making elaborate submissions, counsel for both the parties have agreed that a fresh arbitrator may be appointed by this Court to adjudicate the issues raised by the appellant in the claim petition and both the parties will cooperate for the disposal of arbitration proceeding before the Arbitrator, by raising all the grounds which have been raised in the claim petition before the Arbitral Tribunal. In such circumstances, both the parties have also agreed that Mr. Justice G.M.Akbar Ali, may be appointed as Arbitrator.

6. In view of the submission made by both the parties, and by consent of



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both parties, this Court appoints Justice Mr.G.M.Akbar Ali, to adjudicate the issues raised in the claim petition by the appellant.

7. In view of the above, we are not interfering with the order dated 20.04.2023 passed by the Commercial Court and thereby confirming the same. Consequently, the civil miscellaneous appeal stands dismissed. There will be no order as to costs.

8. The issues raised in the claim petition shall be decided independently by the Arbitrator without being influenced by any of the observations made in the Arbitral Tribunal or in the appeal proceedings.

(D.K.K., J.) (P.D.B., J.)
30.10.2023

Intex : Yes/No
Internet : Yes/No
mrn

D.KRISHNAKUMAR, J.
and



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P. DHANABAL, J.

(mrn)

Copy to:

Mr.Justice Akbar Ali,
Arbitrator.

JUDGMENT MADE IN
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30.10.2023