



Arb.O.P.No.41 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.11.2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Arb.O.P.No.41 of 2022

Mr.M.Mani

.. Petitioner

vs.

Mr.R.J.Anandmul

.. Respondent

This Arbitration Original Petition has been filed under section 34 [2] [iii] & [iv] of Arbitration and Conciliation Act, 1996 read with Order 14 Rule 8 of the O.S. Rules to set aside the arbitral award dated 19.06.2022 bearing No.ARC.No.157 of 2022 passed by the Sole arbitrator namely Thiru K.A.Mariappan in its entirety or to the extent to which it is challenged and for costs.

For petitioner : Mr.R.Sundaravadivelu

For respondent : Mr.S.Rameshkumar



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ORDER

WEB COPY Challenging the Arbitral Award dated 09.06.2022 passed in ARC No.157 of 2022 by the Sole Arbitrator, the petitioner has filed the present petition.

2. The main contention of the learned counsel appearing for the petitioner is that there is no arbitration agreement between the parties to refer the dispute to the Arbitrator and no notice was served on the petitioner and no opportunity was given to the petitioner by the Sole Arbitrator. Hence, primarily on these grounds, the petitioner has filed this petition seeking to set aside the arbitral Award.

3. The dispute between the parties is with regard to the Sale Agreement dated 01.12.2011 wherein the petitioner has agreed to sell his property for a total sale consideration of Rs.35,34,000/- and on the date of agreement viz., 01.12.2011, he has received a sum of Rs.21,00,000/- as part of the sale consideration. Thereafter, he has received a sum of Rs.10,00,000/-. Since there was some dispute between the parties, the petitioner has agreed to refer the matter for arbitration. Subsequently, arbitration proceedings have been initiated after sending legal notice to the petitioner herein. Even the notice sent by the Sole Arbitrator has been



refused and returned by the petitioner. Therefore, the learned Sole Arbitrator passed an award directing the petitioner herein to receive the remaining sale consideration of Rs.2,84,000/- from the respondent and execute the sale deed. Challenging the Award passed by the learned Sole Arbitrator, the present petition has been filed.

4. The main ground urged by the learned counsel appearing for the petitioner is that no agreement is in existence between the parties and that opportunities were not given to him to defend his case and that no notice was served on him.

5. I have perused the entire materials available on record.

6. When there is no agreement between the parties, certainly the dispute cannot be referred for arbitration. On a perusal of the sale agreement entered between the parties, which was the subject matter of the dispute, it is seen that though it is a sale agreement, there was no terms agreed by the parties to refer the dispute for arbitration but while making subsequent payments and endorsements,



the petitioner has agreed to refer the dispute to the Sole Arbitrator namely one K.A.Mariappan, Advocate. This fact also has been considered by the learned Sole Arbitrator and prior to arbitration, notice was also issued to the address of the petitioner which has been refused. Thereafter, even during the arbitration proceedings, notices were issued however the same has been refused by the petitioner.

7. It is relevant to note that a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it. The communication is deemed to have been received on the day it is so delivered as as per Section 3 of the Arbitration and Conciliation Act, 1996.

8. The award passed by the learned arbitrator indicate that the notice sent to the respondent on 18.03.2022 and 22.04.2022 in the arbitral proceedings were refused to be received by the respondent. Therefore, the learned arbitrator has infact set the respondent exparte on 14.05.2022 and proceeded further by



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recording evidence on 30.05.22. After considering the evidence adduced on the side of the claimant, and marking documents Ex.A.1 to A12, the learned arbitrator has recorded a factual finding.

9. The learned Sole Arbitrator, in fact, has considered all the documents and also considered the fact that only a small amount has to be paid by the respondent, passed an Award directing the petitioner to execute the sale deed. The said finding is based on the evidence and there is no violation found in the findings of the Arbitrator and this Court cannot interfere with the award for the sake of submissions made by the parties challenging the award. Hence, I find no merits in this petition.

10. Accordingly, this Arbitration Original Petition is dismissed.

21.11.2023

VRC



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N.SATHISH KUMAR, J.

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