



CMA(MD)No.495 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE N. MALA

CMA(MD).No. 495 of 2022 and
CMP(MD).No.4331 of 2022

S.Krishnamurthy

Appellant / Petitioner

vs.

Sriram Transport Finance Co. Ltd.,
Regd. Office at Mugambika Complex,
3rd Floor, No.4, Lady Desika Road,
Mylapore, Chennai – 600 004.
Branch Office at Sri RR Complex,
1398, Raja Complex, Trichy Road,
Thanjavur.

Respondent

PRAYER:- This Civil Miscellaneous Appeal filed under Section 37(1) and (2) of the Arbitration and Conciliation Act, 1996 to call for the records pertaining to the fair and decreetal order in Arbitration Original Petition No.53 of 2019 on the file of the Principal District Judge, Thanjavur, dated 17.04.2021 confirming the Award, dated 11.02.2019 made in arbitration proceedings No.1517 of 2018.



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For Appellant : Mr. G. Karnan

For respondent : Ms.A. Charumathi

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the Award, dated 17.04.2021 made in ARBOP.No.53 of 2019 on the file of the Principal District Judge, Thanjavur, against the Award, dated 11.02.2019 made in Arbitration proceedings No. 1517 of 2018.

2. The facts of the case are that the petitioner / appellant had borrowed a loan of Rs.18,00,000/- on 11.03.2016 from the respondent, finance Company for his business purpose and agreed to repay the same in 84 EMIs at the rate of Rs.35,751/- per month. The father of the petitioner viz., Swaminathan executed a registered mortgage deed, dated 26.02.2016 in favour of the respondent finance company for repayment of the loan amount. The last EMI was paid by the petitioner on 20.06.2018 and thereafter, he defaulted in payment due to the loss in business. The petitioner expressed his willingness to pay a sum of Rs.3,00,000/- towards interest and a total sum of Rs.13,00,000/- in full quit of the loan amount



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but it was not accepted by the respondent. The respondent demanded a sum of Rs.17,00,000/- towards settlement of the loan amount, while so, the petitioner filed a complaint in C.C.No.90 of 2018 before the District Consumer Redressal Forum at Thanjavur against the respondent. The respondent on the other hand issued a notice, dated 20.11.2018 to the petitioner stating that the dispute would be referred to Arbitrator. A reply was sent by the petitioner on 26.11.2018 stating that the matter was pending consideration before the District Consumer Forum and therefore, there was no need to refer the matter for arbitration. Thereafter, the respondent referred the matter to sole arbitrator and the arbitrator passed the award, dated 11.02.2019. The Arbitration Award was received by the petitioner through his counsel on 25.02.2019. Thereafter, the petitioner filed the Arbitration OP to set aside the arbitration award, dated 11.02.2019 passed in Arbitration proceeding No. 1517 of 2018. The main contention of the petitioner in the Arbitration OP was non issuance of notice to him for the appointment of the Arbitrator which prevented him from contesting the same. According to the petitioner, the arbitration award was a nullity for failure to follow the procedure contemplated under the arbitration Act by the Arbitrator.



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3. The authorised signatory of the respondent filed a detailed counter disputing the claim of the petitioner and further stated that notice was sent to the petitioner, but he had wantonly evaded the same and that the petition was not maintainable as there was no compliance of the provisions of Section 34 of the Arbitration and Conciliation Act, 1996. It was the respondents further case that the demand notice sent by the respondent on 20.11.2018 regarding appointment of arbitrator was received by the petitioner in the same address and the petitioner had also sent a reply on 26.11.2018. As the respondent was not satisfied with the reply, the sole arbitrator was appointed. The Arbitrator sent a notice, dated 10.12.2018 to the petitioner and the same was returned as “No such Address”. According to the respondent the petitioner had purposely evaded the pre-arbitral notice sent by the arbitrator. When the notice sent by the respondent on 20.11.2018 and the arbitration award dated 11.02.2019 were received by the petitioner in the same address, there was no reason why the arbitral notice alone was returned as no such address. This clearly shows that there was wilful evasion of notice.

4. The learned Principal District Judge, Thanjavur on consideration of the entire matter dismissed the OP relying on the



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provisions of Section 3 of the Arbitration Act. Aggrieved by the order passed by the learned Principal District Judge, Thanjavur the petitioner / appellant has filed the above Civil Miscellaneous appeal.

5. The only point raised in the appeal was want of notice of appointment of arbitrator. The learned counsel appearing for the petitioner / appellant submitted that notice sent by the arbitrator was returned as no such address. The counsel submitted that as per the provisions of Section 3 of the Arbitration Act, in the absence of any proof of service of notice the presumption under Section 3 of the Act could not be invoked. According to the counsel, the learned Principal District Judge failed to note that the petitioner was deprived of the opportunity to defend the case, as the notice was not sent to him. The learned counsel therefore prayed that the fair and decreetal order, dated 17.04.2021 of the Principal District Judge be set aside.

6. The learned counsel for the respondent filed written arguments reiterating the averments made in the counter to the OP.

7. I have heard both sides counsels and perused the records.



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(b) of the Section (1) the written communication is deemed to have been received if it is sent to the addresses'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. If the written communication is sent to the last known address it is deemed to have been received. Where as Clause (1) refers to delivery of communication, Clause (b) refers to sending of written communication. It is pertinent to note that the notice, dated 20.11.2018 sent by the respondent to the petitioner communicating about the reference of the dispute to the arbitrator was received by the petitioner in the very same address and further reply notice, dated 26.11.2018 was also sent by him. Even the arbitration award, dated 11.02.2019 was received by the petitioner from the counsel for the respondent in the very same address, while so, it is unfathomable that pre-arbitral notice alone, sent by the arbitrator to the very same address was not received by the petitioner. It is pertinent to note here that in the agreement between the parties and even in the Arbitration OP the petitioner has given the same address.

9. The learned counsel for the respondent submits that when the petitioner had received earlier notices in the same address there was



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no reason why the pre arbitral notice alone sent by the arbitrator on 10.12.2018 should have been returned as no such address. According to the counsel it shows that it was deliberately evaded by the petitioner.

10. I am in agreement with the counsel for the respondent and I am of the view that Clause (1)(b) of Section 3 of the Act squarely applies to the facts and circumstances of the present case. Notice was sent to the last known address of the petitioner and he deliberately evaded the same. Therefore, the Court below was correct in invoking the presumption under Section 3 of the Arbitration Act. No other point was argued by the appellant. I find no merit in this appeal and hence, the same is dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

06.02.2023

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Internet : Yes/No
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To

The Principal District Judge, Thanjavur,



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N. MALA, J.,

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