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O.S.A.No.60 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM

THE HONOURABLE MR. JUSTICE **R. SUBRAMANIAN**
AND
THE HONOURABLE MR. JUSTICE **R.SAKTHIVEL**

O.S.A.No.60 of 2023

M.A.K.Earth Movers
A Partnership Firm rep. By its Partner
Kulothungan

... Appellant

Vs.

1.L & T Finance Limited,
Registered Office at L & T House,
Ballard Estate, Mumbai – 400 001.

Corporate Office at
No.3-B, Lakshmi Towers,
C-25, G Block, Bandra-Kurla Complex,
Bandra (E), Mumbai – 400 051.

Also at
L & T Finance Limited
rep. By its Zonal Legal Manager
C.Balasubramanian

2.A.Santhosh Kumar
3.A.Sasikumar

4.Bharat B.Jain,
Sole Arbitrator,
Ramjishivnarayan Building,
RM No.5, 2nd Floor, Vijay Mansion,
Near Canara Bank, Kurla (W),
Mumbai – 400 070.

... Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of
Original Side Rules against the order dated 25.02.2020 passed in
Review Petition No.01 of 2018 in O.P. No.179 of 2015.



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For Appellant : Mr.M.Kulothungan,
Party – in Person

For Respondents : Mr.V.Balasubramani for R1
No appearance for R2 and R3

JUDGMENT

(Judgment of the Court was delivered by **R. SUBRAMANIAN, J.**)

The appellant seeks to challenge the order of the learned single Judge rejecting the Review Petition on the ground that it is barred by limitation.

2. The appellant borrowed monies from the first respondent for purchase of earth mover equipment. Since there was a default in payment of the instalment, the first respondent moved this Court under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeking order for re-possessing the vehicle. The said application in A.No.516 of 2013 was allowed on 01.02.2013. The Advocate Commissioner appointed by this Court to re-possess the vehicle filed a report stating that the vehicle is embedded to earth and therefore he was unable to take actual physical possession. While so, the appellant herein filed application in A.No.1538 of 2013 for redelivery of the equipment after paying instalments that were over due, the application was left to be



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as it is the practice of the so called non-banking financial institutions, the first respondent initiated arbitration at Mumbai and eventually an exparte award came to be passed on 13.05.2013. It is the said award that was sought to be set aside in the petition under Section 34 of the Act. The first respondent resisted the petition under Section 34 of the Act contending that the same is barred by limitation and having been filed after 120 days from the date of receipt of the award by the appellant, hence the Court has no power to entertain the same.

3. Learned single Judge who dealt with Section 34 petition called for the records and after perusal of the records found that the award dated 13.05.2013 has been served on the appellant firm viz., M.A.K.Earth Movers as well as its partners and guarantor viz., Mr.M.Kulothungan, Mr.A.Santosh Kumar and Mr.A.Sasikumar respectively. The learned single Judge after recording the fact that the award has been served on the above persons on 20.05.2013 directed the file to be kept in sealed cover with the Registry. We had, to satisfy ourselves, sought for the file from the Registry and perused it. We find that the award was served not only on the appellant firm but also on these three persons viz., two partners and one guarantor on 20.05.2013.



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4. The original petition under Section 34 of the Act has been filed on 16.03.2015 which is clearly beyond the period of 120 days prescribed under Section 34(3) of the Act. The power to condone delay is also confined to a period of 30 days only. Hence we are unable to fault learned single Judge for having dismissed the petition as barred by limitation. We also find that the appellant has actively prosecuted the proceedings in this Court during the relevant period and therefore denial of knowledge of the award is not bonafide. Though we have our own reservation about the conduct of these non-banking financial institutions in conducting arbitration at far off places, because of the law relating to limitation, we are forced to dismiss the appeal. The above original side appeal is accordingly dismissed. Registry is directed to preserve the documents sent by the arbitrator in a sealed cover. There shall be no order as to costs.

(R.S.M., J.) (R.S.V., J.)
29.02.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

The Sub Assistant Registrar,
Original Side, High Court, Madras.



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