



CRP No. 1827 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

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THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No. 1827 of 2021

and

CMP.No.14158 of 2021

1. G.Krishnan

2. G.Anumandhan

3. G.Madhaiyan

.. Petitioners

Versus

J.Jacob

.. Respondent

Civil Revision Petition filed under Article 227 of Constitution of India, against the Order and decreetal Order in I.A.No.13 of 2018 in Ar.O.P.No. Unnumbered/2018 on the file of the learned Principal District Judge, Dharmapuri dated 17.09.2020.

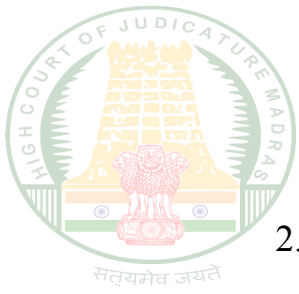
For Petitioners	:	Mr. M. Muruganantham
For Respondent	:	No Appearance

ORDER

This Civil Revision Petition has been filed to set aside the decreetal order passed by the learned Principal District Judge, Dharmapuri in I.A.No.13 of 2018 in Ar.O.P.No. Unnumbered/2018, dated 17.09.2020.

2. The facts of the case, which are necessary for the disposal of this

Civil Revision Petition, are as follows:-



2.1. A loan agreement dated 05.11.2011 came to be entered into between the Petitioners and the Respondent, by which the Revision Petitioners had borrowed a sum of Rs.4,00,000/- (Rupees Four Lakhs) and agreed to pay interest at the rate of Rs.1.50 paise per Rs.100/- every month. It was also agreed that the entire loan amount will be repaid within a period of 18 months. The parties also agreed that in case of any dispute, such dispute shall be referred to an Arbitrator. According to the Respondent, the Petitioners breached the terms of the agreement dated 05.11.2011 and they did not pay either the principal or interest. Therefore, the Respondent herein appointed Mr. J. Jagannivasan as the Sole Arbitrator, to adjudicate the dispute.

2.2. The sole Arbitrator entered into a reference and issued notice to Revision Petitioners. However, Revision Petitioners did not appear and contest the arbitration proceeding, therefore, an *ex parte* award dated 05.03.2015 was passed against them. To execute the *ex parte* award, an Execution Petition was filed by the Respondent under Section 36 of The Arbitration and Conciliation Act read with Order 21, Rule 11-A of CPC in R.E.P. No. 5 of 2016 in Ar.O.P. No. 149 of 2015 for a total sum of Rs.6,44,200/- (Rupees Six Lakhs Forty Four Thousand and Two Hundred only) which include the principal sum of Rs.4,00,000/- (Rupees Four Lakhs) with interest.

2.3. On notice in the Execution Petition, the Revision Petitioners herein filed Ar.O.P. Unnumbered of 2018 before the learned Principal District



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Judge, Dharmapuri seeking to set aside the *ex parte* Award No.33 of 2014

dated 05.03.2015 passed by the sole Arbitrator. In the application, the Revision Petitioners denied having received the loan amount of Rs.4,00,000/- (Rupees Four Lakhs) or entered into any agreement with the Respondent. Pending Ar.O.P. Unnumbered of 2018, the Revision Petitioners also filed an application to condone the delay of 659 days in filing the arbitration application.

2.4. According to the Revision Petitioners, the Respondent herein was the School Teacher of the first Revision Petitioner. The Petitioners 2 and 3 are the brothers of the first Revision Petitioner. According to the Petitioners, the Petitioners 1 and 2 discontinued their School study and went for driving job under private owners. At this stage, the Respondent approached the Petitioners 1 and 2 and incited them to take up a job suggested by him. Accordingly, the Respondent purchased a lorry bearing Registration No. TN- 38-Z-3018 in which the first Revision Petitioner was engaged as a driver. It is stated that the Respondent asked the Petitioners 1 and 2 to sign certain blank papers by stating that the vehicle worth several lakhs is being entrusted to them and sought their signature for security purpose. Believing the representation of the Respondent to be true, the Petitioners signed the blank documents. The Petitioners also used the lorry and earned hire charges. The Petitioners were also under the impression that after sometime, the Respondent would sell the lorry to them for a reasonable amount. However, the Respondent suddenly sold the lorry to the



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third party and asked the Petitioners to leave even without paying a single penny. The Petitioners were in fact paid only daily wages for having driven the lorry. When the Petitioners demanded to return the blank signed papers, fearing that the Respondent might misuse it, it was stated by the Respondent that he had thrown those papers. While so, a legal notice dated 12.03.2012 was received by the Petitioners in which it was claimed as if the Revision Petitioners borrowed Rs.4,00,000/- (Rupees Four Lakhs) from the Respondent but failed to repay the amount. Subsequently, on 23.02.2016, the Petitioners received notice in the Execution Petition to execute the Arbitration Award in Award No.33 of 2014 dated 05.03.2015. According to the Revision Petitioners, they were not aware of the Arbitration proceedings. Immediately after receipt of the notice in the Execution Petition, the Revision Petitioners engaged a Counsel and filed the petition for setting aside the Arbitration Award with a petition for condonation of delay. The delay, according to the Revision Petitioners, is neither wilful nor wanton and that they were not aware of the Arbitration proceedings initiated by the Respondent or the Award dated 05.03.2015 passed by the Arbitrator. Therefore, the Revision Petitioners prayed for condoning the delay by allowing the Petition.

2.5. The application for condonation of delay was opposed by the Respondent by contending that the Award dated 05.03.2015 passed by the learned Arbitrator is a consent award. On the basis of such consent award, the

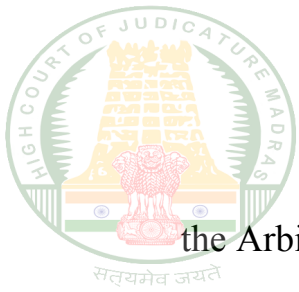


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Respondent has filed an Execution Petition. While so, the contention of the Revision Petitioners that they were not aware of the Arbitration proceeding is too big a pill to be swallowed by them. It is also stated that the reasons assigned for condoning delay is not proper but it is vague. It is further stated that the Court has no power to condone the delay of more than 120 days and therefore, prayed for dismissal of the application for condonation of delay.

2.6. After hearing the submission of the learned Counsel for the Petitioners and the learned Counsel for the Respondent before the trial Court, the trial Judge/learned Principal District Judge, Dharmapuri, dismissed the application in I.A.No.13 of 2018 in Ar.O.P.No.Unnumbered/2018 for condonation of delay of 659 days in filing the Ar.O.P. and refused to condone the delay observing that when the Petitioners have received a legal notice from the Respondent, they ought to have been prudent about the proceedings that may be initiated by the Respondent and also observing that the provisions of Limitation Act does not apply to the proceeding under Section 34 of the Act and accordingly,

3. The learned Counsel for the Revision Petitioners submitted that the Petitioners have received the legal notice claiming the alleged borrowal of amount from the Respondent. However, the Petitioners never received any notice intimating the initiation of the Arbitration proceedings or appointment of



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the Arbitrator. There was no notice issued to the Petitioners intimating the *ex parte* Arbitral Award. Till the copy of the award was received from the Executing Court, the Petitioners were not aware of the Arbitration proceedings. Therefore, after receipt of the copy of the Arbitration Award from the Executing Court, the Petitioners filed the Petition to set aside the Arbitration proceedings. When the entire proceedings have been initiated and concluded behind the back of the Petitioners, the Court is certainly empowered to condone the delay so that interest of justice will be secured. He further submitted that a perusal of the Award dated 24.10.2015 would indicate that it is not a consent award, as has been alleged by the Counsel for the Respondent before the trial Court. Rather, the award dated 24.10.2015 is an *ex parte* award. The learned Arbitrator had not made any reference about the service of notice to the Revision Petitioners in the Arbitration proceedings. Therefore, the learned Counsel for the Revision Petitioners prayed this Court to afford an opportunity to them to contest the Arbitration proceedings on merits by setting aside the order dated 17.09.2020 passed in I.A. No. 13 of 2018 in Arb.OP Nil of 2018.

Point for Consideration:

Whether the order passed by the learned Principal District Judge, Dharmapuri in I.A.No.13 of 2018 in Ar.O.P.No. unnumbered/2018 dated 17.09.2020 is to be set aside as perverse?



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4. Heard the learned Counsel for the Revision Petitioners. Inspite of notice to the Respondent in this Civil Revision Petitioner and the name of the Respondent was also printed in the cause list, none appeared for the Respondent.

5. Perused the typed sets of papers, the award passed by the Arbitrator and the Judgment passed by the learned Principal District Judge, Dharmapuri.

6. On consideration of the submissions of the Counsel for the Revision Petitioners, it is seen that under Section 31 (5) of Arbitration and Conciliation Act, 1996 , the Arbitration Tribunal has to deliver signed copy of the Award to each of the parties in the Arbitration proceedings. This was the ratio laid down by this Court in ***Sukanya Priya vs. Reliance Capital Limited and two others*** reported in ***2018 SCC Online Mad 1830 : 2018 (4) CTC 747***. Here in this case, the Revision Petitioners are the Respondent in the arbitration proceedings. Even in the award passed by the Arbitrator, there is no reference made as to whether notice was served to the Revision Petitioners or not. According to the Revision Petitioners, only on receipt of notice in the Execution Petition, they came to know about the passing of the *ex parte* award.

Therefore, seeking to set aside the *ex parte* award the Revision Petitioners



approached the learned Principal District Judge, Dharmapuri with an application in I.A. No. 13 of 2018 to condone the delay 659 days in filing the application to set aside the Arbitration award. The learned Principal District Judge, Dharmapuri observed that when the Petitioners have received a legal notice from the Respondent, they ought to have been prudent about the proceedings that may be initiated by the Respondent. The learned Principal District Judge, Dharmapuri also concluded that the provisions of Limitation Act does not apply to the proceeding under Section 34 of the Act and accordingly, dismissed the application and refused to condone the delay.

7. It is well settled that the length of the delay is not a criteria for consideration of an application for condonation of delay, but the reasons will weigh the same. In the present case, the Petitioners were not served with any summons or notice by the Arbitrator and an *ex parte* Arbitration Award was passed. When an Execution Petition was filed to execute the *ex parte* award, the Petitioners came to know about the Arbitration proceedings and immediately engaged a Counsel and filed the instant application for condonation of delay. The Petitioners received the copy of the Execution Petition as well as the *ex parte* award from Executing Court on 23.02.2016. Immediately the Petitioners engaged a Counsel and appeared through him.

After collecting documents, they filed the Petition to condone the delay of 659



days in setting aside the *ex parte* award passed by the Arbitrator.

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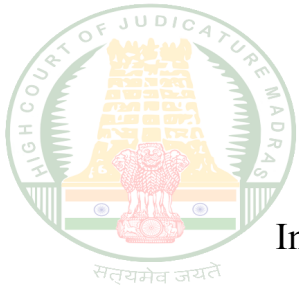
8. The provision of Limitation Act had been expressly excluded by the Arbitration and Conciliation Act. The Petition is filed belatedly beyond 120 days within which time, if an application is filed, the learned Principal District Judge, Dharmapuri, is empowered to condone the delay. In the present case, the delay is 659 days. As far as the delay is concerned, it was well explained by the Petitioners by stating that they were not aware of the Arbitration proceedings at all. Even on perusal of the Arbitration award, there was no mention about the service of notice to the Revision Petitioners. In such circumstances, the delay will commence only from the date on which the Revision Petitioners had knowledge of the Arbitration proceedings. If that be so, the delay is well within the Limitation Act. Furthermore, given the nature of plea raised by the Revision Petitioners that certain blank papers were made to be signed by them, which were utilised by the Respondent to purchase a lorry and selling it to the third party, this Court is of the view that an opportunity has to be given to the Revision Petitioners to contest the Execution Petition, which was filed based on the *ex parte* Arbitration Award. It is well settled that an Arbitration Award can be given effect to only when it is made in writing and signed by the Arbitrator. In the present case, when it was shown that the Revision Petitioners were not in receipt of the Arbitration award at all,



they must be given an opportunity to contest the Execution Proceedings as well as the Arbitration proceedings on merits so that interest of justice will be secured.

9. Even from the order dated 17.09.2020 passed by the learned Principal District Judge, Dharmapuri, it is evident that the copy of the award was not served by the Arbitrator on the Revision Petitioners. When that be the case, the *ex parte* award has to be set aside, as the Revision Petitioners have received the award copy only from the Executing Court and not before that. Therefore, as per the ruling relied by the learned Counsel for the Petitioners in **2018 SCC Online Mad 1830** in the case of ***Sukanya Priya Vs. Reliance Capital Ltd., 'H' Block, 1st Floor, Dhirubhai Ambani Knowledge City, Koperkhairwane, Navi, Mumbai and others***, the order passed by the learned Principal District Judge, Dharmapuri in I.A. No. 13 of 2018 in Ar.O.P.No. Unnumbered/2018 dated 17.09.2020 is to be set aside. The delay in filing the application to set aside the *ex parte* award of the Arbitrator is condoned.

10. In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioners and against the Respondent. The order passed by the learned Principal District Judge, Dharmapuri in I.A.No.13 of 2018 in Ar.O.P.No. Unnumbered/2018, dated 17.09.2020 is found perverse.



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In the result, this ***Civil Revision Petition is allowed.*** The order dated 17.09.2020 passed in I.A.No.13 of 2018 in Ar.O.P.No.Unnumbered/2018 by the learned Principal District Judge, Dharmapuri, is set aside. Consequently, connected Miscellaneous Petition is closed. No costs.

29.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-speaking Order
dh

SATHI KUMAR SUKUMARA KURUP, J.

dh

To

1.The Principal District Judge,
Dharmapuri.

2.The Section Officer,
V.R. Section,
High Court, Madras.



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Order made in
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