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C.R.P.No.1025 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1025 of 2023
and C.M.P.No.7411 of 2023

M.Mohana Krishnan

... Petitioner

-Vs-

1.M/s.Kotak Mahindra Prime Ltd
rep.by its Account Manager/Executive Legal
Samson Towers, 6th Floor, 402L, Pantheon
Road, Egmore, Chennai - 600 008.

2.Ramraj G.

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order of the XXV Assistant City Civil Court, Chennai dated 13.03.2023 in EA No.1 of 2023 in EP No.3679 of 2021 in ACP(K) No.156/2017.

For Petitioner : Mr.M.Pragadeeswaran

For Respondents : Ms.Rajani Ramadass

ORDER

This Civil Revision Petition arises against the order passed in E.A.No.1 of 2023 in E.P.No.3679 of 2021 in ACP (K) No.156 of 2017.



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2. A.C.P.(K) No.156 of 2017 is an award passed by the Sole Arbitrator in terms of the Arbitration and Conciliation Act of 1996. The award was passed for a sum of Rs.4,62,842/- together with costs. In order to execute the same, E.P.No.3679 of 2021 came to be presented. This is an execution petition seeking for attachment and sale of movable properties of the judgment debtors in terms of Order XXI Rule 43 read with Order XXI Rule 64 of the Code of Civil Procedure.

3. In this proceeding, the judgment debtors were set exparte. The first judgment debtor alone took out an application in E.A.No.1 of 2023 to set aside the exparte order. According to him, being a heart patient, he could not file his counter in time and therefore he sought for setting aside the order passed in the execution petition in terms of Order XXI Rule 106 of the Code of Civil Procedure. The said application came to be dismissed by the learned trial Judge, against which the present civil revision petition has been filed.

4. Heard Mr.M.Pragadeeswaran for the civil revision petitioner and Ms.Rajani Ramadass for the respondents.

5. Mr.Pragadeeswaran would submit that it is an award passed by an arbitrator who has been unilaterally appointed by the respondent judgment creditor and therefore it falls fowl in terms of the judgment of the Supreme Court and hence the award is inexecutable. He would further state that the petitioner / first



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judgment debtor is suffering from illness and hence he was not in a position to appear before the Court on 18.11.2022 and file his counter.

6. Rejecting this argument, Ms.Rajani Ramadass would submit that the award has become final and it has not been challenged in terms of Section 34 of the Arbitration and Conciliation Act. She would further point out that, though the petition would state that the judgment debtor is proposing to file an application under Section 47, till date such an application has not been filed. She would also point out that no records had been presented before the Court for the Court to come to the conclusion that the judgment debtor is suffering from illness. She draws my attention to the order passed by the executing court and points out that no exhibits had been filed by the judgment debtors in support of the plea and therefore she seeks for confirmation of the order.

7. I have carefully considered the arguments on either side. The passing of the award by the arbitrator is not in dispute. The award came to be passed on 19.09.2017. The period of limitation for setting aside the award in terms of Section 34 is only 120 days with condonable delay of 30 days. Beyond the period of 120 days, a person who has suffered an award cannot file an application under Section 34. In other words, the award passed on 19.09.2017 has become final as no steps have been taken by the judgment debtor.



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8. Turning to the second point of Mr.Pragadeeswaran that his client is proposing to file an application under Section 47 and therefore the exparte order has to be set aside does not appeal to me. The execution petition was levied four years after the award ie., on 17.09.2021. The executing court had granted sufficient time from September 2021 till November 2022 in order to enable the judgment debtor to file his counter. Neither counter was filed nor was any application filed under Section 47 as stated by Mr.Pragadeeswaran.

9. As rightly pointed out by Ms.Rajani Ramadass, the alleged sickness of the petitioner had not been substantiated by any medical records. When the medical condition of the petitioner is denied by the respondent / decree holder, it is the duty of the judgment debtor to substantiate the same by at least giving a medical certificate or a discharge summary or like certificates in order to convince the Court that he is indeed suffering from some illness. When absolutely no records have been produced before the Court, I am not in a position to come to the rescue of the judgment debtor.

10. In the light of the above discussion, as neither a petition has been filed under Section 34 nor has the judgment debtor taken any steps to file his counter or application under Section 47 for a period of 1½ years, I am constrained to confirm the order passed by the XXV Assistant City Civil Court, Chennai dated 13.03.2023 in EA No.1 of 2023 in EP No.3679 of 2021 in ACP(K) No.156/2017, against which this



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revision has been filed. The Civil Revision Petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is also dismissed.

18.06.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The XXV Assistant Judge
City Civil Court, Chennai.



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V. LAKSHMINARAYANAN, J.

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