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Arb.O.P. (Com.Div.) No.388 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.388 of 2023

and

A.No.4316 of 2023

Hari

.. Petitioner

Vs.

1.M/s. Shriram Finance Ltd.,
(Formerly known as
M/s. SHRIRAM TRANSPORT FINANCE CO. LTD.,)
Represented by its G.P.A. Holder Mr.G.Raveendran,
No.18/6, 2nd Floor, Mount Poonamallee Road,
Kattupakkam, Chennai – 600 056.

2.M/s. Cargowings Logistics Limited,
Rep. By its Director Subramani P.V.,
No.C-54, CMDA Truck Terminal Complex,
GNT Road, Madhavaram, Thiruvallur – 600 110.

3.P.V.Subramani

.. Respondents

Prayer: Original Petition is filed under Section 34 (2) (B) (ii), Explanation 1(ii) and (iii) and 2(A) and (B) (2) of the Arbitration and Conciliation Act, 1996, as amended in 2019 praying to set aside the Arbitral Award dated 03.07.2023 made in Arbitration Case No.321 of 2021 passed by the Arbitral Tribunal and direct the respondents to pay the costs.



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For Petitioner : Ms.L.Meena
For RR 1 & 3 : Mr.Peer Mohamed
For R2 : No appearance

ORDER

This petition has been filed under Section 34 (2) (B) (ii), Explanation 1(ii) and (iii) and 2(A) and (B) (2) of the Arbitration and Conciliation Act, 1996, as amended in 2019 to set aside the Arbitral Award dated 03.07.2023 made in Arbitration Case No.321 of 2021 passed by the Arbitral Tribunal and direct the respondents to pay the costs.

2.The impugned order dated 03.07.2023 is challenged by the petitioner herein in this Original Petition.

3.The petitioner was arrayed as the 3rd respondent in Arbitration Case No.321 of 2021 by the 1st respondent in his capacity as the Guarantor of the loan advanced by the 1st respondent to the 2nd respondent.



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4.The case of the petitioner is that the petitioner was a mere employee of the 2nd respondent and had not signed any document as a guarantor of the loan extended by the 1st respondent to the 2nd respondent.

5.That apart, it is submitted that the learned Arbitrator entered reference as early as on 20.09.2021. However, the award has been passed on 03.07.2023 long after the mandate of the learned Arbitrator had expired. It is therefore submitted that the award is *exfacie* contrary to the provisions of the Arbitration and Conciliation Act, 1996.

6.On the other hand, the learned counsel for the 1st respondent would submit that not only the petitioner, but also the respondents 2 & 3 had entered appearance through their counsel before the learned Arbitrator after notice was served on the petitioner herein.

7.It is submitted that notice that was sent earlier on respondents 2 & 3 had remained unserved. However, a counsel engaged by the petitioner and respondents 2 & 3 appeared and took time to file counter.



8. During the course of the proceedings, the petitioner as also the respondents 2 & 3 had requested for Mediation and therefore the case was not taken up for hearing. Therefore, there was a delay in passing the award as the petitioner as also the respondents 2 & 3 after entering appearance before the learned Arbitrator took time for settling the dispute through Mediation.

9. It is therefore submitted that there is no merits in the challenge to the impugned award dated 03.07.2023 and it is therefore liable to be dismissed.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for respondents 2 & 3.

11. The award has been passed beyond the period prescribed for passing the award under Section 29A of the Arbitration and Conciliation Act, 1996. The period of 12 months will start running from the date of completion of the pleadings under Section 24(3) of the Arbitration and Conciliation Act, 1996.



12.It is noticed that neither the petitioner as the 3rd respondent nor the 2nd and 3rd respondents herein as respondents 1 & 2 in the Arbitral proceedings had filed their counter. They ought to have been set exparte. The learned Arbitrator ought to have passed the award within 12 months from the date of the award.

13.It is clear that the learned Arbitrator failed to adopt a proper procedure in the Arbitral proceedings and fix the parties a strict timeline for filing counter. Instead, the case was adjourned for predominantly long period and thereafter the impugned award was passed.

14.In these circumstances, the impugned award dated 03.07.2023 is set aside with liberty to initiate a fresh proceeding. The time between the date of the award and the date of communication of this order shall stand excluded for the purpose of computation of limitation. The 1st respondent (claimant) is entitled to initiate a fresh proceedings in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

15.At this stage, both the learned counsel for the petitioner and the



respondents 1 & 3 consent for appointment of an Arbitrator. Recording the request, **Hon'ble Mr.Justice T.Ravindran, Former Judge, Madras High Court, (Mobile Nos. 9941350926 & 9444399700) residing at New No.27, Old No.12, 3rd Avenue, Indira Nagar, Adyar, Chennai – 600 020** is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

16.The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

17.The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in



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accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

18. Since the Court has appointed an Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

19. The Original Petition is allowed with the above observations, leaving the parties to bear their own costs. Consequently, the connected Application stands closed.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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C.SARAVANAN, J.

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