

Issue No:7

Dear All,

Greetings to you all,

CASE STUDY

COURT : IN THE HIGH COURT AT MADRAS

**Parties to the Case : Nagasrinivasulu & Others Vs Galada finance Limited,
represented by Mr. Om Prakash Sandu, Field Officer, Chennai &
Another**

Case No. : Original Petition No. 725 of 2006

Judgment dated : 10.11.2008

Judge : HON'BLE MRS. JUSTICE CHITRA VENKATARAMAN

The Hon'ble Court had discussed the issue relating to the authorised representative, production of documents and communication of ex parte order passed by an arbitrator.

Held

“ the fact that the signature at the end of the Claim Petition did not carry the seal of the Company does not defeat this claim.. the power of attorney was filed before the learned Arbitrator and satisfied of the claim made on behalf of the first respondent, the learned Arbitrator permitted the first respondent to proceed with the claim. In the face of the evidence thus available and the learned Arbitrator thus satisfied of the authority of the signatory in the Claim Petition, I do not find merit in the petitioners' contention that the claim should have been dismissed as there was no authority and that the signature did not carry the seal of the Company.”

“.....strict Rule of evidence in C.P.C. do not apply to the proceedings before this Court and that the Arbitrator is required to follow the principles of fairness and the well established principles of evidence sustained and the technical objection based on Section 34 of the Indian Evidence Act need not be considered by the Arbitrator.”

“.....When the learned Arbitrator decided to set anyone ex parte, it is but fair that the parties must be informed about the said decision. Learned Arbitrator should have given information of the said decision to the first respondent before passing the award as against the petitioners.....”

“When there had been consistent defaults, the contention of the petitioners that failure to give a second notice to proceed ex parte would vitiate the award cannot be accepted and it is not open to a person who is absent for the second time to contend legal infirmity in the passing of the ex parte award. The fact that the learned Arbitrator did not give a second

notice of his intention to proceed ex parte, hence, cannot amount to a legal misconduct.”

“While it is not denied that the Arbitrator should not proceed hastily, at the same time, being a forum chosen by the parties themselves, it is incumbent on the parties to the proceedings to cooperate to resolve the disputes at the earliest point of time. Considering the conduct of the petitioners herein for his consistent absence, it cannot be said that the learned Arbitrator committed a misconduct in the matter of passing the award without intimating about the petitioners being set ex parte.”

Humor in Court

Q. How old is your son-the one living with you.

A. Thirty-eight or thirty-five, I can't remember which.

Q How long has he lived with you?

A. Forty-five years.

Up Coming Events:

The Inauguration of the CNICA and CNICA Mediation Center at Kanyakumari District on 7th March 2009 has been postponed. We shall duly keep you posted of the same.

We appreciate your inputs, suggestions and contributions in this regard. We welcome all to send their articles and we shall publish the same. We shall also appreciate if you could furnish us the email address of persons who would be interested in receiving our email.

Regards

**G.Ashokapathy
Secretary,
CNICA.**