

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 378/2010**

Date of Decision: 21.10.2010

SARITA GUPTA & ORS Appellants
Through Mr. Amit Agrawal, Adv.

versus

GE COUNTRYWIDE CONSUMER FINANCIAL SERVICES LTD
Through None Respondent

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed No
to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

MOOL CHAND GARG,J (Oral)

CM N.18751/2010 (for exemption)

Allowed subject to just exceptions.

Application stands disposed of.

FAO No.378/2010

1. This appeal has been filed by the appellant aggrieved by the dismissal of the objections filed by him under Section 34 of the Arbitration and Conciliation Act, 1996, to the award delivered by Shri Sunil Jha, the sole arbitrator published on 11.08.2006. It is not disputed by the appellant that he was aware of the appointment of the arbitrator and in fact had notice of the arbitration proceedings but it is his case that the said arbitrator should not have delivered the award inasmuch as:

- a) there was no valid arbitration agreement between the parties as the signatures of the appellant were taken on some blank documents.
- b) the arbitrator was appointed by the respondent without the consent of the appellant which is contrary to Section

21 of the Arbitration and Conciliation Act 1996 and as such the appointment of the arbitrator was defective.

- c) the arbitrator was appointed without any cause of action and no notice of his appointment was ever served upon the appellant and
- d) there was no dispute between the parties as the appellant was always ready and willing to make the payment as per the settlement.
- e) It was also pleaded that the arbitrator misconducted himself and erred in deciding the dispute beyond the reference made to him. He passed the ex-parte award without considering the facts and documents.

2. It is also the case of the appellant that on 15.06.2006 he went to the consultation room in the High Court of Delhi but he was shocked because till 2.00 PM neither officials of the respondent nor the arbitrator came there. It is submitted that in these circumstances the ex-parte award passed by the arbitrator is liable to be set aside inasmuch as no opportunity was given by Ld. Arbitrator to the appellant to revert the claim of the respondent. Such procedure adopted by the arbitrator was in contravention of Section 18 of the Arbitration & Conciliation Act, 1996. It was also submitted that the award delivered by the arbitrator was in conflict with the public policy of India as the same was induced by fraud, corruption and coalition with the respondent. It is also submitted that the ex-parte award was not based upon the terms and conditions of the agreement and the same was against law. It is submitted that in these circumstances the arbitrator erred in giving an award against the appellant holding that the appellant was liable to pay ₹ 8,97,792/- to the respondent.

3. I have heard the submissions made on behalf of the appellant and have perused the order delivered by the sole arbitrator.

4. A perusal of the award shows loan agreement was executed between the parties while taking a loan of ₹8,00,000/- which fact is not disputed by the appellant. The loan agreement contains various clauses including arbitration clause which enables the respondent to refer the dispute including the dispute regarding non-payment of the

dues. The award goes to show that after the appellant became a defaulter a legal notice was issued by the respondent's counsel upon the appellant which is exhibit CW1/A demanding a sum of ₹ 8,05,808.58 from the respondent. There is nothing in the appeal filed by the appellant to show that no such notice was received. There is also no averment that the amount as claimed was paid by the appellant. Perusal of the award also goes to show that in terms of the clause 11.1 parties had agreed to refer all claims disputes or differences in relation to the loan agreement to a sole arbitrator. The said arbitration clause reads as under:

"11. Arbitration, Jurisdiction & Governing Law

11.1 All claims, disputes or differences whatsoever which may at any time hereafter arise between the parties hereto concerning this Agreement or its construction or effect or as to the right, duties, obligations or liabilities of the parties hereto or either of them under or by virtue of or in connection with this agreement or any document executed or security created pursuant hereto or otherwise as to any other matter in any way connected with or arising out of or in relation to the subject matter of this agreement (including, without limitation, enforcement of security) shall be referred to the arbitration of a sole Arbitrator appointed by the company. The arbitration shall be conducted in accordance with and subject to the provisions of the arbitration & conciliation Act, 1996, or any statutory modification or re-enactment thereof for the time being in force. The place of arbitration shall be as mentioned in item No.16 of the Schedule."

5. It is a matter of record that the appellant was duly served with a notice about entering into reference by the arbitrator. In fact the appellant went for appearance in the High Court, where the proceedings were to be taken, but for no good reason did not participate in the proceedings before the arbitrator. Some documents have been filed by the appellant on record along with this objection which goes to show that he was fully aware about the proceedings taken by the arbitrator. He in fact made correspondence with the arbitrator who also wrote some letters to the appellant and the respondent. Those three letters which are available at page 73, 74 & 76 are incorporated hereinafter for the sake of reference:

"Sunil Jha
Advocate

Delhi High Court

SPEED POST

GE Countrywide
Consumer Financial Services Ltd.
4A, DLF Corporate Park,
Qutab Enclave Part III
Mehrauli Gurgaon Road,
Gurgaon – 122 002, Haryana

Dated 26.05.06

KIND ATTENTION MS SHALINI

Reference your letter dated May 16, 2006 for referring the dispute between your Company and Mrs. Sarita Gupta and Mr. Jai Bhagwan Gupta for adjudication.

I hereby give my concurrence to act as sole arbitrator to conduct the arbitration proceedings and decide the above disputes referred to me as per the provision of Arbitration and Conciliation Act 1996 and the rules made thereunder;

Thanking You

(Sunil Jha)

“Sunil Jha
Advocate
Delhi High Court

THROUGH SPEED POST A.D.

Dated 26.05.06

1. GE Countrywide
Consumer Financial Services Ltd.
4A, DLF Corporate Park,
Qutab Enclave Part III
Mehrauli Gurgaon Road,
Gurgaon – 122 002, Haryana
2. Mrs. Sarita Gupta
3. Mr. Jai Bhagwan Gupta

All Residents of:

H.No.995/66 Deva Ram Park,
Talab Road, Tri Nagar,
New Delhi-110 035

Sub: Arbitration Proceedings between GE Countrywide, Consumer Financial Service Ltd. AND Mrs. Sarita Gupta and Mr. Jai Bhagwan Gupta – Agreement No. nil dated 25.03.2004. Arbitration Case No.ARB/SJ/059/2006

Please take notice that in terms of the letter dated 16.05.06 of the Addressee No1, received by me on 22.05.2006, invoking the arbitration clause, I hereby enter upon arbitral reference to resolve the disputes as mentioned therein.

I hereby call upon you, the Addressee No.1, to file statement of claim stating therein the facts; the point at issue and the relief and remedy sought on the date of hearing fixed with an advance copy thereof, at least one week prior to the date fixed for hearing, to the other/opposite parties (the addressee nos. 2 & 3). Thereafter the other/opposite party shall prepare its reply/defence if any to the statement of claims and file the same on the day fixed for hearing i.e. 15.06.2006.

You are further directed to submit with your statement/reply all documents or other evidence you consider to be relevant and appear before the undersigned on **15.06.06 at 11.00 AM at Consultation Room, Delhi High Court, New Delhi 110003** for further proceedings.

(Sunil Jha)
Sole Arbitrator"

"Sunil Jha
Advocate
Delhi High Court

THROUGH SPEED POST A.D.

Dated 26.05.06

1. GE Countrywide
Consumer Financial Services Ltd.
4A, DLF Corporate Park,
Qutab Enclave Part III
Mehrauli Gurgaon Road,
Gurgaon – 122 002, Haryana
2. Mrs. Sarita Gupta
3. Mr. Jai Bhagwan Gupta

All Residents of:
H.No.995/66 Deva Ram Park,
Talab Road, Tri Nagar,
New Delhi-110 035

MEMO OF FEE

1. Towards arbitration fee including cost
to be paid by addressee No.1. ₹ 22,000/-
 2. Towards arbitration fee including cost
to be paid by addressee No.2&3 ₹ 22,000/-
- Total ₹ 44,000/-
- (Rupees Fourty Four Thousand Only)

(Sunil Jha)
Sole Arbitrator"

6. Another letter which has been written by the respondent to the

arbitrator in his own hand is also available on record at page 77 which goes to show that the appellant admits that he had gone to the High Court in terms of the notice dated 26.05.2006 for participating in the arbitration proceedings but thereafter he has not cared to cause an appearance, English translation of which is at page 79 which is also reproduced hereunder:

“To

Shri Sunil Jha, Arbitrator
Consultation Room
Lawyers Chambers
Delhi High Court
New Delhi-110003

Dear Sir,

It is submitted that in accordance with your letter dated 26.05.2006, I went to High Court on 15.06.2006 to attend my case. But despite waiting over there upto 2 PM neither you nor any person on behalf of GE countrywide came there. And there nobody knows about you or about the present case. Therefore after waiting a long time, I came back.

Kindly intimate me next date of hearing so that I be able to put my case.

I shall be highly obliged to you

Yours obediently

Jai Bhagwan Gupta
995/66, Tri Nagar
Delhi-35
Date 18.06.2006”

7. The letter written by the arbitrator on 26.06.2006 is a notice given by the arbitrator to the respondent which intimates about the fixation of the next date of hearing. It is also reproduced hereunder:

“Sunil Jha
Advocate
Delhi High Court

THROUGH SPEED POST A.D.

Dated 26.06.2006

1. Mrs. Sarita Gupta
2. Mr. Jai Bhagwan Gupta

All Residents of:
H.No.995/66 Deva Ram Park,

Talab Road, Tri Nagar,
New Delhi-110 035

**Sub: Arbitration Proceedings between GE
Countrywide, Consumer Financial Service Ltd.
AND Mrs. Sarita Gupta and Mr. Jai Bhagwan
Gupta – Agreement No. nil dated 25.03.2004.
Arbitration Case No.ARB/SJ/059/2006**

Sir/Madam

Please take notice that a hearing was held in the above matter on 15.06.2006 at 11.00 AM at the above-mentioned venue in terms of my notice of reference dated 26.05.2006 duly served upon you. Despite of service of reference notice none has appeared on behalf of you to represent your case on the said date.

Now the hearing in the above matter is fixed on **30.06.2006 at 12.00 PM at the same venue**. You are requested to appear in person or through some authorized person before me on the said date failing which you shall be proceeded ex-parte on the said date.

(Sunil Jha)
Sole Arbitrator"

8. In view of the aforesaid it cannot be said that the appellant was not aware about the arbitration proceedings. He admits that he has signed documents while availing loan from the respondents. In these circumstances he cannot avoid the liability which arises out of the signing of the agreement containing an arbitration clause.

9. His plea that he was always ready and willing to pay the balance amount which he says is around ₹ 5,00,000/- is not bona fide inasmuch as when I started hearing the matter I called upon the appellant to deposit the amount which according to him was payable along with interest in Court which he did not agree as he wanted to pay in installments. This seems to be the reason which led to the dispute between the parties.

10. The Learned Addl. District judge has taken note of all the objections taken by the appellant to the award and has dealt with each and every objection specifically. The observations made by the Addl. District Judge while dealing with the specific objections of the appellant which are self-speaking are reproduced for the sake of reference:

“1. That there is no valid arbitration agreement between the parties and the signatures of the petitioners were taken on some blank documents.

It is contended by the Objectors/petitioners that there is no valid arbitration agreement between the parties and their signatures were obtained on some blank documents. The copy of agreement filed on record is Ex.CW1/3 which includes the arbitration clause, which reads as under:

“All claims, disputes or differences whatsoever which may at any time hereafter arise between the parties hereto concerning this agreement or its construction or effect or as to the rights, duties, obligations or liabilities of the parties hereto or either of them under or by virtue of or in connection with this agreement or any document executed or security created pursuant hereto or otherwise as to any other matter in any way connected with or arising out of or in relation to the subject matter of this agreement (including, without limitation, enforcement or security) shall be referred to the arbitration of a sole arbitrator appointed by the company. The arbitration shall be conducted in accordance with an subject to the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The place of arbitration shall be as mentioned in item No.16 of the Schedule.”

Ex.CW1/3 clearly shows that there is a valid arbitration agreement between the parties duly signed by both the petitioners Smt. Sarita Gupta and Shri Jai Bhagwan Gupta and the signatures of the petitioners were not obtained on blank documents. It is evident that in view of the documentary evidence on record the plea of petitioners objectors is without any force.

2. The award in question has been assailed secondly on the ground that the arbitrator was appointed without the consent of the petitioners/objectors and without any cause of action.

The arbitration agreement Ex.CW1/3 bears the signatures of Smt. Sarita Gupta and Shri Jai Bhagwan Gupta. It is evident that the petitioners consented to the agreement as well as arbitration and appended the signatures thereafter.

3. The award in question has been assailed thirdly on the ground that there was no dispute between the parties as the petitioners were ready to make the payment as per settlement.

The objection raised by the Objectors/Petitioners is

that there was no dispute between the parties as the Objectors/Petitioners were ready to make the payment as per the settlement and thus, there was no need to refer the matter for arbitration. When they had applied for loan from the HDFC bank which was sanctioned on 09.11.06, the respondent was requested several times to accept the same. This contention is not supported from the record. There is nothing on record to suggest that payment was made and not accepted. This objection therefore fails.

4. The award in question has been assailed fourthly on the ground that as no notice for appointment was ever served to the plaintiff.

The next objection is that no notice of the appointment of the arbitrator as well as arbitration proceedings was served upon him. Perusal of the record shows that notice dated 26.05.2006 was sent by Shri Sunil Jha, Sole Arbitrator calling upon both the parties to file statement and also to appear before him on 15.06.06 at 11 AM in the consultation room of the High Court of Delhi. The notice sent through post and the receipt of the UPC are part of record.

The plea of the Objectors/petitioners that they kept waiting till 2 PM on 15.06.06 but failed to find the Ld. Arbitrator or the respondents in consultation Room of Hon'ble High Court of Delhi. On 20.06.06 another letter was sent to Smt. Sarita Gupta and Shri Jai Bhagan Gupta through UPC calling upon them to appear on 30.06.06 as they had failed to appear on 15.06.06. The letter was sent through speed post and the receipt thereof has also been filed on record. Thus the petitioners/objectors admitted that a notice was given to him by Ld. Arbitrator to appear on 15.06.06. The Ld. Arbitrator sent another notice dated 20.06.2008 to the objectors/petitioners to put in appearance. The objectors/petitioners have chosen to remain silent on the same. The objectors/petitioners were aware of the arbitration proceedings but failed to participate and was proceeded ex-parte and the objections so raised is not tenable.

5. The award is further challenged on the ground that the award passed by the Ld. Arbitrator is against the public policy as the Arbitrator had misconducted himself and erred in deciding the dispute and travelled beyond the reference made to him and passed the ex-parte award without considering the facts and documents.

Finally the petitioner challenged the award on the ground that the award of the Arbitrator is against public policy as the Arbitrator had misconducted himself and erred in deciding the dispute and travelled beyond the reference made to him and passed the ex-parte award without considering the facts and documents.

In Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd., cited as 2003 (V) SCC 705 it has been held that:

“Therefore, the phrase “public policy of India” used in Section 34 in context is required to be given a wider meaning. The concept of public policy connotes some matter which concerns public goods and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in addition to the narrower meaning given to the term “public policy” in Renuagar case, 1994 Supp (1) SCC 644 it has to be held that the award could be set aside if it is patently illegal. The result would be that an award could be set aside if it is contrary to:-

- a) fundamental policy of Indian law; or
- b) the interest of India; or
- c) justice or morality; or
- d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. Such an award is opposed to public policy and is required to be adjudged void.”

The objectors/petitioners though took up an objection that the arbitrator had misconduct himself and erred in deciding the dispute and have passed an ex-parte award without considering the fact and documents but has failed to substantiate the same. In fact the objector was afforded every opportunity by the Ld. Arbitrator to participate in the proceedings but he failed to attend the proceedings. It is well settled that the court cannot sit in appeal over the award passed by the Arbitrator. If there are grounds for arriving at a certain decision, the court will not review his reasons for doing so and interfering with the same.

A bare perusal of the impugned award reveals that the grounds raised in the present petition are baseless. The Ld. Arbitrator gave a reasoned award and there is sufficient material to arrive at the conclusion that there is no ground to interfere in the award dated 31.07.2006.”

11. I may now make a reference to Section 34 of the Arbitration and Conciliation Act, 1996, which lays down the scope of challenge to an award under the scheme of the new Act and which reads as under:

“34. Application for setting aside arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the court only if,-
(a) the party making the application furnish proof that,-
(i) a party was under some incapacity, or
(ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the law for the time being in force; or
(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

PROVIDED that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
(b) the court finds that-
(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
(ii) the arbitral award is in conflict with the public policy of India.

Explanation: Without prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

12. In this case, none of the clause which entitles a party to challenge an arbitral award as mentioned in the aforesaid Section was available to the appellant. The issue of public policy has been specifically discussed by the Additional District Judge. I also do not have any reason to differ with the observations made by the

Additional District Judge. It is an admitted fact that the appellant had taken loan from the respondent. It is also an admitted fact that at the time of taking loan, he executed various documents, including the loan agreement. The loan agreement contained an arbitration clause. The reference was made to the arbitrator in accordance with the said clause. The arbitrator gave a notice to the appellant which was duly received. It is not a case where the appellant was under incapacity or the arbitration agreement is not valid under the law or the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case or the arbitral authority deal with a dispute not contemplated by or not falling within the terms of the submission of arbitration or it contains decisions on matters beyond the scope of the submission of arbitration. It is also not in dispute that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement between the parties.

13. As regard the argument of public policy, the learned Additional District Judge has discussed all the facts of the case, including the issue of public policy. There is no need for me to add anything further on the issue.

14. Taking all these facts into consideration, I find no merit in the appeal filed by the appellant. The same is hereby dismissed with no order as to costs.

CM No.18750/2010 (for stay)

Dismissed as infructuous.

MOOL CHAND GARG, J

OCTOBER 21, 2010

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