

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP No.17 of 2015

Tata Motors Finance Limited,

A company incorporated under the provisions of the Companies Act, 1956 having its office at 3rd Floor, Nanavati Mahalaya, 18, Homi Mody Street, Fort, Mumbai-400 001 and inter-alia Corporate office at 1st Floor, Cybertech House, Plot No.B-63/65, Road No.21/34, J.B. Sawant Marg, Wagle Estate, Thane West, 400 604, having its branch office at No.87, HGB Road, Battala, Opp. to Madan Mohan Mandir, Agartala, P.S. West Agartala, P.O. Agartala, Tripura West, PIN-799001

..... **Petitioner**

- V e r s u s -

(1) Aftab Ali,

care of Jahur Ali, resident of Tilagao, near Tila Bazar, P.O. & P.S. Kailashahar, Kailashahar - 799277

(2) Faizun Nessa,

care of Jahur Ali, resident of Tilagao, near Tila Bazar, P.O. & P.S. Kailashahar, Kailashahar - 799277

..... **Respondents**

BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA

For the petitioner	:	Mr. D. Sarma, Advocate
For the respondents	:	Mr. S.M. Chakraborty, Sr. Advocate Ms. B. Chakraborty, Advocate
Date of hearing and delivery of judgment & order	:	29.07.2015

Whether it is fit for reporting	:	<table border="1"><tr><td>Yes</td><td>No</td></tr><tr><td>√</td><td></td></tr></table>	Yes	No	√	
Yes	No					
√						

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Sarma, learned counsel appearing for the petitioner as well as Mr. S.M. Chakraborty, learned senior counsel assisted by Ms. B. Chakraborty, learned counsel appearing for the respondents, the judgment-debtors.

[2] This is a petition filed under Section 115 of the C.P.C. against the order dated 10.12.2014 delivered in Misc. (Arbitration) 01 of 2014 by the District Judge, Unakoti Judicial District. The said Misc. (Arbitration) 01 of 2014 is a proceeding emerged out of Section 36 of the Arbitration and Conciliation Act, 1996. Section 36 of the said Act provides as under:

36. Enforcement.—Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

[3] Subject to the conditions, what have been referred in Section 36 of the said Act, the award shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908) and such proceeding for enforcement in view of Section 2(E) of the said Act shall lie before the principle civil court of the original jurisdiction in a district including the High Court, in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal civil

court, or any court of small causes. Accordingly, for purpose of enforcement of the award dated 14.12.2012 passed by the arbitrator namely, P.C. Falgunan in a reference between Tata Motors Finance Limited vs. Aftab Ali, a proceeding for execution was set in, in the court of the principal civil court, the court of the District Judge, Unakoti Judicial District, Kailashahar.

[4] After filing of the said petition for enforcement by the Tata Motors Finance Limited under Order XXI Rule 11 of the C.P.C. being Civil Misc.(Arbitration) 01 of 2014, the notice was duly served on the judgment-debtors. Having received the notice, the judgment debtors raised the objection under Section 47 of the C.P.C. on various other grounds including that the arbitrator being a private person has no authority to issue a certified copy of the arbitral award. Apart that, they raised a question that the said arbitral award was passed without sending any notice to the respondents. Neither the signed copy of the arbitral award was sent to the respondents. Hence, the said arbitral award cannot be enforced, as the valuable right as was available to the respondents under Section 34 of the said Act could not be exercised for such deficiency. By the impugned order dated 10.12.2014 the said objection has been allowed by terminating the said execution proceeding. It appears from the impugned order dated 10.12.2014 that the respondent No.1 took a loan amounting to Rs.7,20,000/- for purchasing a vehicle bearing registration No.AS-01DC-5762 and the respondent No.2

stood as the guarantor and as such, both of them were jointly and severally liable for repayment of the loan by instalments, as agreed. The respondent No.1 defaulted in payment of the instalments and at the reference of the petitioner herein, the said dispute was referred to the sole arbitrator at Bombay as per the arbitration clause as embodied in the said loan agreement. Despite due notice to the respondents-judgment debtors, they did not participate in the arbitral proceeding and finally, the award was passed by the sole arbitrator directing the respondent-judgment debtors jointly and severally to pay a sum of Rs.7,90,719.86/- together with interest @18% per annum w.e.f. 26th April, 2012 till payment or realization, with further direction that the petitioner would be at liberty to take possession of the vehicle and sell the same in public auction, appropriate the net sale proceeds towards the outstanding amount due by the judgment-debtors and pay the excess amount, if any, to the judgment-debtors. The judgment-debtors shall also be liable to pay a sum of Rs.5,000/- as cost of the arbitral proceeding.

[5] By an execution petition, the attachment of the said vehicle bearing registration No.AS-01DC-5762 or in the alternative, arrest and detention of the respondents in the civil imprisonment were also prayed. The executing court by the impugned order dated 10.12.2014 has observed as under:

Meaning thereby, even if the Judgment-debtors did not appear before the sole arbitrator and failed to submit statement of defence there was no impediment upon the arbitrator to deliver signed copy of the award by post or any other mode. Further, the arbitrator is not a public servant as defined in the Indian Penal Code who is competent to issue certified copy of a document. Therefore, in the absence of signed copy of the arbitral award available with this Court it cannot be said that there is an arbitral award against the Judgment-debtors. Consequently, there cannot be any execution of any award. Hence, the objection filed under Section 47 of the C.P.C. is allowed.

[6] Mr. D. Sarma, learned counsel appearing for the petitioner has submitted that the law has been appreciated incorrectly by the executing court, as in view of Section 2(D) of the Arbitration and Conciliation Act, 1996, the Arbitral tribunal means a sole arbitrator or a panel of arbitrators. As such, whether a sole arbitrator is a private person or not is immaterial. He takes up the powers of the arbitral tribunal. As such, any person who is working as the arbitral tribunal acquires the jurisdiction as provided under Section 16 of the said Act. Even in case of necessity, the said arbitral tribunal can seek assistance of the civil court for taking evidence in terms of Section 27 of the said Act. As such, the observation of the executing court that the arbitrator is not a public servant is entirely misplaced. The public servant as defined in Section 21 of the I.P.C. cannot have any application in this case in view of the statutory provisions made under the said Act. The 6th description of Section 21 of the I.P.C. is for the limited purpose, not for the purpose of Arbitration and Conciliation Act, 1996 inasmuch as

the said act is a self contained code. The issue before the court was not whether the arbitrator had sent a signed copy of the arbitral award to the judgment debtors or not, but whether the requirement of Section 36 of the Arbitration and Conciliation Act, 1996 has been fulfilled for purpose of enforcement of the said arbitral award. Mr. Sarma, learned counsel has contended that the apex court in **Hindustan Construction Company Ltd. vs. Union of India**, reported in **AIR 1967 SC 526** has observed as under:

This brings us to the meaning of the word "sign" as used in the expression "signed copy". In Webster's New World Dictionary, the word "sign" means "to write one's name on, as in acknowledging authorship, authorizing action etc." To write one's name is signature. Section 3(56) of the General Clauses Act, No. 10 of 1987, has not defined the word "sign" but has extended its meaning with reference to a person who is unable to write his name to include "mark" with its grammatical variations and cognate expressions. This provision indicates that signing means writing one's name on some document or paper. In *Mohesh Lal v. Busunt Kumaree I.L.R. (1881) Cal. 340*, a question arose as to what "signature" meant in connection with s. 20 of the Limitation Act, No. IX of 1871. It was observed that "where a party to a contract signs his name in any part of it in such a way as to acknowledge that he is the party contracting, that is a sufficient signature". It was further observed that the document must be signed in such a say as to make it appear that the person signing it is the author of it, and if that appears it does not matter what the form of the instrument is, or in what part of it the signature occurs. Or? We accept these observations and are of the opinion that so long as there is the signature of the arbitrator or umpire on the copy of the award filed in court and it shows that the person signing authenticated the accuracy or correctness of the copy of the document would be a signed copy of the award. It would in such circumstances be immaterial whether the arbitrator or umpire put down the words "certified to be true copy" before

signing the copy of the award. If anything, the addition of these words (namely, certified to be true copy) would be the clearest indication of the authentication of the copy as a true copy of the award, which is what s. 14(2) requires, so long as the authentication is under the signature of the arbitrator or the umpire himself. In the present case, the document was sent by the umpire along with a letter forwarding it to the court. In the letter it was stated that he was sending the award only signed and certified by him. Then turning to the document we find that it begins with the words "now I hereby reproduce a true copy of the said award which is as follows" and this is signed by Sri Dildar Hussain, the umpire. Then follows the copy of the award, at the end we find the words "certified correct copy of the award dated the 27th May, 1961". Underneath appears the signature of Sri Dildar Hussain, the umpire. Clearly therefore the document filed is a true or accurate and full reproduction of the original award and it bears the signature of the umpire, Sri Dildar Hussain, and thus is a signed copy of the award.

[Emphasis Added]

[7] Mr. Sarma, learned counsel has also stated that even the observation that the judgment debtors did not receive the arbitral award is totally incorrect inasmuch as, with the signed arbitral award, the postal receipt as generated electronically has also been forwarded to the petitioner for enforcement of the arbitral award and the said signed copy with the postal endorsement was also submitted before the execution court. But the executing court did not make any inquiry to that aspect of the matter. From the electronic report of the Bulk Mail Service, it appears that by the post under No.EM052866759IN, the respondent No.1, Aftab Ali was sent one registered letter being RL. No.5434 under SR No.39 and by the post under No. EM052879655I, RL No.6724 and SR No.39 was sent to the

respondent No.2, Faizun Nessa. The arbitral award with a forwarding letter dated 14.12.2015 was sent to them. The said Bulk Mail service report dated 24.01.2013 was generated from the post office, Navi, Mumbai. As such, the statement made in the objection filed under Section 47 of the C.P.C. is false and so has been done with a mala-fide purpose.

[8] Mr. S.M. Chakraborty, learned senior counsel appearing for the respondent-judgment debtors has submitted that the copy of the arbitral award signed by the arbitrator, as filed in the execution proceeding cannot be treated as the arbitral award in view the provisions of Section 31(5) of the Arbitration and Conciliation Act, 1996 which reads as under:

5. After the arbitral award is made, a signed copy shall be delivered to each party.

No such signed copy has been ever delivered to the respondents and for non-delivery of the arbitral award, the said arbitral award cannot be enforced under Section 36 of the said act. Mr. Chakraborty, learned senior counsel has further submitted that for non-delivery of the arbitral award, the respondents could not file any application for setting aside the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996. As a result, a valuable right of the respondents has been curbed. He has submitted that Section 36 of the Arbitration and Conciliation Act, 1996 has clearly stipulated that an arbitral award can only be enforced in the

same manner as if it were a decree of the court where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused.

[9] Having due regard to the submissions made by the learned counsel for the parties, this Court is clearly of the view that the executing court, the District Judge, Unakoti Judicial District, Kailashahar has entirely misdirected his consideration. From the scrutiny of the arbitral award, it appears to this Court that every page of the arbitral award is signed by the sole arbitrator on the required non-judicial stamp. The said arbitral award dated 14.12.2012 delivered in the arbitral proceeding being TMFL/8606/2012 was also sent to the respondent-judgment debtors. The postal records, generated electronically cannot be disbelieved unless such records are proved manipulated by way of rebuttal evidence. On query from this Court, Mr. Chakraborty, learned senior counsel has fairly submitted that no notice was served by the respondent-judgment debtors to the arbitrator complaining that he has failed to discharge his duty of supplying the signed arbitral award. That apart, the apex court in **Hindustan Construction Company Ltd. vs. Union of India** has categorically laid down that it is immaterial whether the arbitrator or umpire put down the words "certified to be true copy" before signing the copy of the award. If anything, the addition of these words (namely,

certified to be true copy) would be the clearest indication of the authentication of the copy as a true copy of the award, which is what Section 14(2) requires, so long as the authentication under signature of the arbitrator or the umpire is concerned. In that case, the apex court has further observed that the fact that the umpire wrote the words "certified as correct copy of the award dated the 27th May, 1961" above his signatures does not make any difference and the document is still a signed copy of the award.

[10] The said interpretation entirely covers the present dispute. This Court, therefore, is of the view that merely as the sole arbitrator has on his signature written the words 'certified copy' that will not change the character of the document, neither will it frustrate the requirement of Section 31(5) of the Arbitration and Conciliation Act, 1996. Such note, 'the certified copy' written over the signature of the arbitrator will not render the document inexecutable. The said copy of the award has to be treated as the signed copy of the arbitral award. So far the dispute as to non-delivery of the award, this Court is of the considered view that the petitioner who sought the enforcement of the award has clearly shown that the arbitral award was sent to the respondent-judgment-debtors by the registered post in the address given in the loan agreement. As the registered letter has been tendered in the correct address, it has to be presumed that the letter reached to the judgment-debtors, unless

otherwise proved by the judgment-debtors with the clinching evidence. On the face of the electronic report of the Bulk Mail Service, this Court has no hesitation to hold that the judgment debtors were sent the signed arbitral award. Thus, the objection raised by the judgment debtors under Section 47 of the C.P.C. ought to have been straightway dismissed by the executing court.

[11] Having held so, the impugned order dated 10.12.2014 delivered in Civil Misc. (Arbitration) 01 of 2014 is set aside. Simultaneously, the objection filed under Section 47 of the C.P.C. is also dismissed. The District Judge, Unakoti Judicial District, Kailashahar is directed to enforce the arbitral award treating the arbitral award as the decree of the court without any further delay.

With these observation and directions, this petition stands allowed.

Send down the LCRs forthwith.

JUDGE

Sujay