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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO. 810 OF 2014

Diwaker Prasad Verma

...Petitioner

vs.

M/s. HDFC Bank Limited

...Respondent

Mr. Rajender Singh Saluja i/b. Mr. Maurya K. Nath, for the
Petitioner.

None for the Respondent.

CORAM : R.D. DHANUKA, J.

DATED: APRIL 29, 2015

P.C. :

. By this Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, the Petitioner has impugned the arbitral award dated 2nd April, 2014 directing the Petitioner to pay a sum of Rs. 3,08,907.08/- together with interest at the rate of 18 % p.a. from the date of filing of the reference till realization to the Respondent.

2] None appeared for the Respondent.

3] It was the case of the Respondent that the Respondent had given a loan in the sum of Rs. 3,80,000/- to the Petitioner with a loan

agreement dated 25th April, 2009. The Petitioner committed a default in making the payment of some of the installments. The dispute arose between the parties and were referred to the learned Arbitrator Mr. Vinod V. Savaji under the provisions of the agreement.

4] It is not in dispute that the statement of claim along with documents were served upon the Petitioner. The Petitioner also filed a written statement before the learned Arbitrator. The Respondents had examined the witnesses before the learned Arbitrator.

5] The learned counsel appearing for the Petitioner states that though the agreement entered into between the parties provided that learned Arbitrator shall be appointed by the Respondent, the Respondent ought to have taken consent of the Petitioner for the appointment of learned Arbitrator. It is submitted by the learned counsel for the Petitioner that the learned Arbitrator did not give any opportunity to the Petitioner to cross examine the witness examined by the Respondent. He submit that the Petitioner was not keeping good health and thus could not remain present before the learned Arbitrator. On the date of meeting for the purpose of cross examination of the witness, the advocate of the Petitioner was absent and thus the witness

could not be cross examined. He submits that various dates mentioned in the impugned award as the dates of hearing are manipulated and fabricated by the learned Arbitrator.

6] A perusal of the award indicates that the matter had been adjourned for more than 15 times and on most of the dates, the Petitioner herein was absent. The learned Arbitrator has stated in the impugned award that in the meeting held on 18th March, 2014 a specific direction was issued by the learned Arbitrator of placing the matter for cross examination and it was made clear that the parties shall remain present on that date, otherwise the matter would proceed ex-parte.

7] A perusal of the award indicates that the learned Arbitrator has rendered the findings that there was no dispute that the loan application had been signed by the Petitioner and that the Petitioner was sanctioned a loan by the Respondent. The learned Arbitrator has also considered the pleadings as well as documents annexed to the pleadings and has rendered a finding that all such documents were executed by the Petitioner. The Petitioner had also given a demand promissory note issued by the Respondent. The Petitioner went on taking adjournments before the learned Arbitrator on the ground of settlement. However, no

settlement took place. In these circumstances, the learned Arbitrator has rendered the finding after considering the pleadings and documents that the case of the Respondent herein was supported by cogent evidence and the defence raised by the Petitioner was bogus and was raised with only an intention to delay the claim of the Respondent. The learned Arbitrator also considered the statements of account and that various cheques issued by the Petitioner in discharge of the said liability were bounced.

8] In so far as the submission of the learned counsel for the Petitioner that Respondent ought to have taken consent of the Petitioner for appointment of the Arbitrator, though clause 25 of the agreement permitted the Respondent to appoint an Arbitrator is concerned, there is no dispute that the said clause permitted the Respondent exclusively to appoint an Arbitrator. In my view, the Respondent did not require any consent of the Petitioner for appointment of learned Arbitrator, in view of the said clause.

9] The learned Arbitrator has shown more indulgence than required to the Petitioner to remain present but on one or the other ground, the Petitioner remained absent. The learned Arbitrator, in my

view, thus was justified in rejecting the application for further adjournment on 27th March, 2014 and closing the evidence and placing the matter for award. In my view, a party who unnecessarily delays the proceeding without any reason, cannot be shown any indulgence. A perusal of the award clearly indicates that the Petitioner took several adjournments somehow to delay the proceeding and to great extent he was successful in delaying the matter. I am not inclined to accept the submission of learned counsel for the Petitioner that impugned award is in violation of principles of natural justice.

10] In so far as the submission of learned counsel for the Petitioner that the learned Arbitrator has manipulated the record is concerned, there is no substance in the submission of the learned counsel and the same is without any basis.

11] The Petition is devoid of any merits and hence dismissed.

12] There shall be no order as to cost.

(R.D. DHANUKA, J.)