

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**ARBITRATION PETITION NO.1126 OF 2013**

Prabhat General Agencies & Ors. .... Petitioners

Vs.

The Shamrao Vitthal Co-op. Bank .... Respondents  
Limited & Ors.

Ms. Sheetal Shah i/by M/s Mehta & Girdharlal, Advocate for the  
Petitioners.

Mr. N.N. Bhadrashete alongwith Mr. Makrand Patil, Advocate for  
the respondents.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 1st October, 2015

P.C. :

1            This petition filed under Section 34 of Arbitration & Conciliation Act, 1996 challenges exparte award dtd.9<sup>th</sup> February, 2013 passed by the Arbitrator in Case No.ARB/SVC/040 of 2004/05. Respondent no.1 is a bank registered under the Multi-state Co-operative Societies Act and respondent no.2 is the Arbitrator. The petitioner had obtained bill discounting facility from respondent no.1. The dispute raised in the arbitral proceedings was in respect of four such bills. The facility provided for discounting to the extent of 20%. It means the bank was to retain 20% of the bill amount and pay 80% to the

petitioner. The dispute initially had been taken by respondent no.1 to the Co-operative Court. After respondent no.1 became a multi-state co-operative society, the Co-operative Court ceased to have jurisdiction to decide any dispute relating to it. Thereafter the dispute was referred to the Arbitrator.

2           The first award made by the Arbitrator was challenged before this court and then the challenge was taken in appeal to the Division Bench. By the order dtd. 7<sup>th</sup> April, 2010, the Division Bench remitted the matter back to the Arbitrator for *de-novo* consideration. It directed respondent no.1 that, as soon as the Arbitrator was nominated and the Arbitrator fixed the date for hearing, it shall intimate to the advocate for the petitioners, who were appearing in the appeals, the name of the Arbitrator, the date fixed for appearance and the place where to appear. On that date, the petitioners had consented to appear before the Arbitrator and disclose to him their address for service. Pursuant to the order of the Division Bench, after the Arbitrator was appointed, respondent no.1 intimated the name of the Arbitrator, the date of appearance and the place of arbitration to the advocates for the petitioners, who had appeared in the appeal proceedings. The same advocates appear in the present proceedings also. But the petitioner did not appear before the Arbitrator, did not furnish it's address, for service and did not contest the dispute at any point of time. The arbitrator then passed the impugned award.

3           Ms. Shah, the learned advocate for the petitioners submits that the petitioners contest the award essentially on four grounds. Firstly that, though the bill discounting facility was to the extent of 20%, respondent no.1 has claimed the entire amount of 100% of the bill from the petitioners in the dispute. Secondly, that during the arbitration proceedings, there was change of Arbitrator, as well as, change of venue of arbitration of which no intimation was given to the petitioners. Thirdly, that the statement of accounts produced by respondent no.1 not being properly proved, could not have been admitted in evidence. It did not bear the certificate required under the Banker's Book of Evidence Act and fourthly the interest charged @15% was without any agreement and excessive and lastly respondent no.1 had also proceeded against the drawees of the bills and by filing suits against them and settle dispute with them. No credit for the amount received by the bank has been given to the petitioners.

4           Perusal of the written statement filed by the petitioners in the Co-operative Court shows that the petitioners have no dispute as regards correctness of the liability. Respondent no.1 nowhere states therein that though respondent no.1 is entitled to receive only 80% from the petitioners, considering the facility given, it had demanded entire 100% from the petitioners. In any case, in the affidavit filed in the present

proceedings, respondent no.1 stated that it has not demanded 100% bill amount from the petitioners, in fact claim of respondent no.1 has been for the amount due at the foot of the accounts maintained by it and the accounts referred to only 80% of the bill amount. There is no reason to dispute the averment in the affidavit-in-reply and in any case, it cannot be considered for the first time before this court.

5           The second contention of non-service is clearly a dishonest contention on the part of the petitioners. It is unfortunate that it is raised despite the facts that cannot be disputed. By its order dated 7<sup>th</sup> April, 2010, the Division Bench had specifically directed that the first notice of the arbitration would be served upon the Advocates for the petitioners, the very advocates who represent the petitioners in this petition. On receiving that notice, the petitioners were directed to appear before the Arbitrator and file the address at which further communications were to be sent. The petitioners did not comply with the order. They did not appear before the Arbitrator and did not file the address for further communication by the arbitrator. Despite the fact, respondent no.1 had been regularly sending intimations to the very advocate for the petitioners. The advocates for the petitioners during their course of professional conduct must have informed the petitioners about the dates of arbitral proceedings. It is also not the case of the petitioners that, their advocates had suppressed the letters from them.

6           As regards the interest @18% charged by respondent no.1, there is nothing on record to indicate that there was no agreement for the interest. In any case, as already mentioned above, the petitioners cannot be permitted to dispute that in the proceedings under Section 34 of the Arbitration Act.

7           The statement of account produced by respondent no.1 cannot be disputed by the petitioners and since they were not present before the Arbitrator to take the objection at the appropriate time. Similarly, the outcome of the suits filed by respondent no.1 against the drawees of the bills has also not been brought on record of the Arbitrator. The same is being contended before this court for the first time. Thus, there is no substance in the challenge to the arbitral award. The petition is dismissed.

(Smt. R.P. SondurBaldota, J.)

**CERTIFICATE**

Certified to be true and correct copy of the original  
signed Order.