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

ARBITRATION PETITION NO.1621 OF 2014

Birla Power Solutions Ltd. & Ors. ...Petitioners

V/s.

Karvy Financial Services Ltd. ...Respondent

Dr.Birendra Saraf with Ms.Nimisha Rao i/b M/s.Chitnis & Co. for the
Petitioners.

Mr.Mayur Khandeparkar with Mr.Aman K. Shaikh i/b Vikas Salvi &
Associates for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 6TH APRIL, 2015.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996, the petitioners seek to impugn the arbitral award dated 24th March, 2014 directing the petitioners to pay a sum of Rs.23.00 crores with interest thereon at the rate of 18% from 17th July, 2013 till the date of realization and the arbitration cost quantified at Rs.30,000/-.

2. Dr.Saraf, learned counsel for the petitioners submit that during the pendency of the arbitration proceedings, the parties had arrived at the Memorandum Of Understanding, which is annexed at Annexure-I to the petition and thus rights and obligations of the

parties were thereafter governed by the Memorandum Of Understanding. He submits that in view of the execution of the said Memorandum Of Understanding, the respondent could not have continued the arbitration proceedings based on the earlier cause of action accrued prior to the execution of the said Memorandum Of Understanding. He submits that though the learned arbitrator has referred the said Memorandum Of Understanding in the impugned award he has not given effect thereof in the impugned award.

3. The next submission of learned counsel for the petitioners is that the respondent had filed arbitration petition under section 9 of the Arbitration & Conciliation Act, 1996 *inter-alia*, praying for appointment of the Court Receiver in respect of the mortgaged properties. He submits that for the enforcement of the said mortgage, the respondent will have to file an independent suit under section 34 of the Code of Civil Procedure, 1908 and the said order cannot be enforced by the respondent in this proceeding.

4. It is not in dispute that the petitioners did not file any written statement before the learned arbitrator. A perusal of the award indicates that the petitioners were served with the notices from time to time by the learned arbitrator. The petitioners had appeared before the learned arbitrator through their advocate, who had taken time to file the written statement. The matter was thereafter adjourned from time to time for settlement. Though there was no settlement arrived at between the parties, the petitioners did not choose to file the written statement. The petitioners also subsequently did not appear before the learned arbitrator. The learned arbitrator therefore, considered the pleadings filed by the

respondent and also the documents produced on record and has rendered a finding in favour of the respondent.

5. The learned arbitrator held that the respondent had adduced clear, conclusive and unchallenged evidence in support of their claim and has proved its claim. In my view, the learned arbitrator has not violated the principles of natural justice and has rendered the findings of fact after giving sufficient opportunities to the petitioners to file the written statement and on considering pleadings and documents on record. In absence of the written statement, the claims made by the respondent was deemed to have been admitted. The learned arbitrator in my view has rightly rendered a finding of fact. The findings rendered by the learned arbitrator are not perverse and thus no interference with such finding of fact is permissible under section 34 of the Arbitration & Conciliation Act, 1996.

6. Insofar as the submission of Dr.Saraf for the petitioner that after execution of the Memorandum Of Understanding, the rights and obligations of the parties were governed and no proceedings could have been continued on the original cause of action is concerned, it is not in dispute that the petitioners though were rendered an opportunity to file the written statement before the learned arbitrator, no written statement came to be filed by the petitioners. No issue of jurisdiction was raised by the petitioners. In my view, such issue thus cannot be allowed to be raised for the first time in this petition under section 34 of the Arbitration & Conciliation Act, 1996.

7. Insofar as the last submission of learned counsel for the petitioners that the respondent having filed the petition for interim

measure under section 9 of the Arbitration & Conciliation Act, 1996 and has got the Court Receiver appointed and thus in view of specific provision under section 34 of the Code of Civil Procedure, 1908, no other steps can be taken by the respondent for the enforcement of the mortgage without filing a suit is concerned, in my view this Court need not deal with the said issue raised by the learned counsel. A perusal of the award indicates that the learned arbitrator has only directed the petitioners to pay the awarded sum. No order is passed by the learned arbitrator for the enforcement of the mortgage. If any proceedings are filed by the respondent for enforcement of the mortgage or for sale of the property, the petitioners can raise such issue as may be permissible in law.

8. The petition is devoid of any merits and is accordingly dismissed.

9. There shall be no order as to costs.

(R.D. DHANUKA, J.)