

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 168 OF 2015

1. Harikishan Shankarji Gogikar)
Millenium Technorbit Limited,)
24, Minerva Mansion, Dr.Ambedkar Road)
Dadar East, Mumbai 400014)

2. Millenium Technorbit Limited,)
At 24, Minerva Mansion, Dr.Ambedkar)
Road, Dadar East, Mumbai 400014)

..... Petitioners
Original Respondents

VERSUS

M/s. Reliance Home Finance Ltd.)
A Company incorporated under the)
provisions of the Companies Act, 1956)
and having its registered office at)
1st Floor, H, Dhirubhai Ambani Knowledge)
City, Koparkhairane, Navi Mumbai and)
Its corporate and head office at)
570 Naigaon Cross Road, Next to Royal)
Industrial Estate, Wadala-West,)
Mumbai 400031)

..... Respondent/
Original Claimant

Mr.Anand Kumar for the Petitioners.

Mr.Saurabh Oka for the Respondent.

CORAM : R.D. DHANUKA, J.

DATED : 4th AUGUST, 2015

JUDGMENT

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioners have impugned the arbitral award dated 10th March, 2014 passed by the arbitral tribunal directing the petitioners to pay a sum of

Rs.25,36,675.17 as per the foreclosure statement with interest thereon @ 12.50% per annum from 1st June, 2013 till payment or realization and also additional cost of Rs.7,500/-.

2. Learned counsel appearing for the petitioners invited my attention to the claim statement filed by the respondent and would submit that the entire claim before the arbitral tribunal made by the respondent in the statement of claim was for enforcement of mortgage as per foreclosure statement. Reliance is placed on the judgment of Supreme Court in case of **Booz Allen and Hamilton Inc. vs.SBI Home Finance Limited and others (2011) 5 SCC 532**. It is submitted that since the action of the respondent in the arbitral proceedings was action in rem, the learned arbitrator could not have decided such proceedings and the entire award was without jurisdiction. Learned counsel also invited my attention to the clauses 17 and 19 of the loan agreement and it is submitted that the clause 17 and clause 19 would operate for two different purposes. He submits that insofar as reliefs for redemption of mortgage is concerned, the same could fall only under clause 19 and not under clause 17 and thus the arbitral tribunal did not have jurisdiction to entertain such claim.

3. The next submission of the learned counsel for the petitioners is that though the petitioners have made payment of Rs.10,30,120/- to the respondent, the arbitral tribunal has not considered the said payment in the impugned award. He submits that the arbitral tribunal could not have permitted the respondent to withdraw their reliefs insofar as redemption of mortgage of the property is concerned on the oral application. It is submitted that in any event the arbitral tribunal ought to have given directions to the respondent to return the original documents of the petitioners which were deposited by the petitioners with the respondent at the time

of creation of mortgage.

4. The next submission of the learned counsel for the petitioners is that the arbitral tribunal has relied upon the photocopies of the documents tendered by the respondent which were not proved. He submits that the arbitral tribunal ought to have given an opportunity to cross examine the witness of the respondent. Learned counsel appearing for the respondent supported the findings rendered by the arbitral tribunal.

5. Insofar as first submission of the learned counsel for the petitioners that the arbitral tribunal did not have jurisdiction is concerned, in my view both the clauses have to be read together. Under clause 17 it was provided that venue of the arbitration shall be at Mumbai and for the purpose of jurisdiction, the Courts of the City of Mumbai shall have exclusive jurisdiction. In my view clause 19 cannot be read in isolation. There is thus no merit in this submission of the learned counsel for the petitioners.

6. Insofar as submission of the learned counsel for the petitioners that the arbitral tribunal could not have decided the entire claim of the respondent since the proceedings were in the nature of an action in rem is concerned, a perusal of the record indicates that though the respondent had made money claim based on the mortgage of the immovable properties, the respondent gave up their claim in respect of the enforcement of mortgage before the learned arbitrator. The arbitral tribunal in the impugned award has recorded such statement in paragraph (11) and has rightly held that since the prayers relating to the mortgage property was not pressed by the respondent herein for want of jurisdiction of the arbitral tribunal, the arbitral tribunal had jurisdiction to consider the monetary claim. In my view a

party seeking several reliefs is entitled to give up whole or part of the reliefs claimed even at the time of arguments before the arbitral forum. In view of the objection raised by the petitioners before the arbitral tribunal based on the judgment of Supreme Court in case of **Booz Allen and Hamilton Inc.(supra)**, the respondent agreed not to press for prayer for enforcement of mortgage and for sale of mortgage property and restricted its claim only to monetary claim. In my view the respondent was entitled to give up its prayer for sale of the mortgage property and for enforcement of mortgage and restrict its claim only to the extent of money claim. There was no bar against the arbitral tribunal for deciding the money claim simplicitor.

7. Insofar as submission of the learned counsel that the claim made by the respondent for recovery of the money is also based on the mortgage document and on the basis of the foreclosure statement and thus no such relief could have been considered is concerned, it is not disputed by the petitioners that the petitioners had taken loan from the respondent. The mortgage of the property was in my view was with a view to create a security in favour of the respondent by the petitioners to secure such loan granted to the petitioners by the respondent. The arbitral tribunal has allowed the money claim made by the respondent against the petitioners which was for recovery of the loan amount. There is thus no substance in this submission of the learned counsel for the petitioners.

8. Insofar as submission of the learned counsel that the arbitral tribunal has not complied with the principles of natural justice and has relied upon the photocopies of the document is concerned, a perusal of the record indicates that the grievance of the petitioners was that the signature of the petitioners was obtained and rubber stamp was affixed on various blank forms and the same were filled later by the petitioners is concerned, the learned arbitrator has rejected the said submission and

has rendered a finding that the petitioners had executed the said documents voluntarily knowing fully about the contents thereof. A perusal of the record indicates that the petitioners never disputed the contents of such documents after obtaining loan. The petitioners also did not dispute that the loan was obtained by the petitioners based on such documents which were signed by the petitioners. Since the execution of the documents was not in dispute and the contents were not disputed, the respondent was not required to prove the existence and contents of the said documents.

9. Insofar as submission of the learned counsel for the petitioners that an opportunity to cross examine the witness of the respondent ought to have been given by the learned arbitrator is concerned, since the respondent did not examine any witness, the petitioners could not have been given any opportunity to cross-examine such witness.

10. Learned counsel appearing for the respondent invited my attention to the Roznama of the arbitral proceedings and more particularly of 24th October, 2013 which indicates that the arbitral tribunal had given an opportunity to the petitioners to lead oral evidence and had in fact granted adjournment to render such opportunity. It is not the case of the petitioners that no such opportunity was granted by the arbitral tribunal or that after such meeting, the petitioners had offered to examine their witnesses and were not permitted by the arbitral tribunal. In my view there is thus no merit in this submission of the learned counsel for the petitioners.

11. The arbitral tribunal has considered the documents produced by the respondent including statement of accounts which reflected the credit given by the

respondent to the petitioners of all the amounts paid. There is thus no merit in this submission of the petitioners.

12. Insofar as return of the original documents of the petitioners is concerned, no such reliefs can be granted in this petition.

13. Petition is devoid of merits and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]