

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1245 OF 2012

Victorio Gracias

..... Petitioner

VERSUS

**Mahindra & Mahindra Financial Services
Ltd. & Anr.**

..... Respondents

Mr.Durgaprasad Sabnis, i/b.Lex Firmus for the Petitioner.

Ms.Priya Crasto for Respondent no.1.

CORAM : R.D. DHANUKA, J.

DATED : 24th FEBRUARY, 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 10th April 2012 allowing certain claims made by the respondents. The petitioner was the original respondent in the arbitration proceedings whereas the respondents were the original claimants.

2. The petitioner was the guarantor in respect of the loan transaction between the principle borrower and the respondents. Dispute arose between the parties. The respondents invoked arbitration agreement and appointed an arbitrator.

3. It is the case of the petitioner that the petitioner was served with a copy of the statement of claim dated April 2010 inter alia praying for a sum of Rs.1,79,405/- togetherwith interest at the rate of 3% per month from the date of sale of the vehicle dated 1st March, 2008 till date of recovery and for cost. It is the

case of the petitioner that though the written statement was prepared by the petitioner, the advocate engaged by the petitioner did not file such written statement.

4. Learned counsel appearing for the petitioner invited my attention to the impugned award which refers to a different statement of claim i.e. dated 14th July, 2011. Learned counsel submits that even the claim amount in the statement of claim served upon the petitioner and the statement of claim referred by the learned arbitrator is different. He submits that the so called statement of claim dated 14th July, 2011 was never served upon the petitioner and thus the question of filing any written statement to the said statement of claim did not arise.

5. Learned counsel submits that the respondent is unable to show any proof of service of statement of claim which has been considered by the learned arbitrator. The petitioner was thus unable to file any written statement before the learned arbitrator. The matter is proceeded with ex-parte and thus impugned award is in violation of principles of natural justice.

6. Learned counsel appearing for the respondent no.1 on the other hand submits that the respondent no.1 had filed the arbitral proceedings twice inadvertently. The petitioner has not disputed the receipt of the statement of claim filed in the month of April 2010. Learned counsel submits that admittedly the petitioner had engaged an advocate who had appeared before the learned arbitrator in the first meeting and did not choose to appear in the subsequent meetings. She submits that if according to the petitioner, the petitioner was not served with the statement of claim filed in 2011, the petitioner ought to have made that grievance before the learned arbitrator. Since the petitioner failed to remain present before

the learned arbitrator on the subsequent dates of hearing, the learned arbitrator was justified in proceeding with the matter ex-parte. It is lastly submitted that the petitioner has already sold vehicle to the third party and thus this petition shall not be entertained by this court.

7. A perusal of the record indicates that the petitioner was served with a copy of the statement of claim dated April 2010. Though the learned counsel appearing for the respondent no.1 fairly admitted that the respondents had invoked arbitration agreement twice and had filed two separate statement of claims before the learned arbitrator, learned counsel is unable to produce any proof of service of the statement of claim filed on 14th July, 2011 which has been considered by the learned arbitrator in the impugned award. In so far as the acknowledgement sought to be relied upon by the respondent alongwith covering letter is concerned, a perusal of the acknowledgement produced by the respondents in the affidavit in reply indicates that the said acknowledgement was by the principle borrower and not by the petitioner.

8. A perusal of the record also indicates that the learned arbitrator was appointed admittedly after service of the first statement of claim and not after service of the second statement of claim. The learned arbitrator has therefore admittedly considered the second statement of claim which was not served upon the petitioner.

9. In my view the petitioner has therefore rightly not filed any written statement before the learned arbitrator. I am not inclined to accept the submission of the learned counsel for the respondent no.1 that the petitioner ought to have brought these facts to the notice of the learned arbitrator and even if the second

statement of claim is not served upon the petitioner, this award shall not be set aside on the ground of violation of principles of natural justice.

10. In my view, the learned arbitrator could not have proceeded with the matter ex-parte against the petitioner for want of service of statement of claim. The award in my view is in violation of principles of natural justice. The petitioner was justified in not filing written statement before the learned arbitrator. Case is made out for interference with the ex-parte award under section 34 of the Arbitration and Conciliation Act, 1996. Whether the petitioner has already sold the vehicle or not is not relevant for the purpose of deciding this petition challenging an ex-parte award.

11. I, therefore, pass the following order :-

- (a) The impugned award dated 10th April, 2012 is set aside.
Petition is made absolute in terms of prayer clause (a).
- (b) There shall be no order as to costs.

[R.D. DHANUKA, J.]