

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

Arb.A.No. 30 of 2015

AGAINST THE JUDGMENT IN OP 194/2013 of II ADDL. DISTRICT
COURT, KOZHIKODE, DATED 18-10-2014

APPELLANT(S)/PETITIONERS:

1. KUNHUMHAMMED, AGED 43 YEARS,
S/O. HAMZA, KAIPPANGANI HOUSE, PINANGOD PO,
KALPETTA, WAYANAD DISTRICT.

2. KUNHUMHAMMED,
S/O.SIDDIQUE, PAINATT HOUSE, PINANGOD PO,
KALPETTA, WAYANAD DISTRICT

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENT(S)/RESPONDENT:

SHRIRAM TRANSPORT FINANCE CO.LTD.,
SREEPADAM BUILDING, CHEROTTY ROAD,
CALICUT- REPRESENTED BY POWER OF ATTORNEY
HOLDER RANJITH.

BY ADV. SRI.RAJESH NAMBIAR

THIS ARBITRATION APPEAL HAVING BEEN FINALLY HEARD
ON 23-09-2015, THE COURT ON 09-10-2015 DELIVERED THE
FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

Arb. Appeal No. 30 of 2015

Dated this the 9th day of October, 2015

JUDGMENT

Harilal, J.

The appellants are the petitioners in OP No.194/2013 filed before the II Additional District Judge, Kozhikode, under Sec.34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') challenging the award passed by the sole Arbitrator in O.P. No. 110/2012. The above O.P. was filed by the respondent herein seeking an award directing the appellants to pay ₹8,82,166/- with interest due to them under Ext.A1 hypothecation agreement executed between the appellants and the respondent. The respondent/claimant is a non-

banking finance company, doing business in hire purchase, lease, loan from hypothecation and allied business. The appellants borrowed a sum of Rs.6,10,000/- and entered into a loan hypothecation agreement with the respondent on 4/8/2005 for purchasing a vehicle bearing Registration No.KL-12C-1975. The total agreement value is ₹8,30,225/- repayable in 60 monthly instalments. The appellants further agreed to pay the over due compensation, at the rate of 3% per month, in the case of delayed payment of monthly instalments, insurance premium etc., incurred by the respondent/company. The appellants were irregular in paying monthly loan instalments and eventually they defaulted the same. According to the respondent, as on 30/1/2010 a sum of ₹8,82,166/- was due from the appellants towards the loan amount. To realise the said amount, the respondent filed the claim petition before the sole Arbitrator, invoking the Arbitration Clause in Ext.A1 agreement and prayed for passing an award directing

the appellants to pay a sum of Rs.8,82,166/- with interest at the rate of 12% p.a. till realisation.

2. The appellants were set ex parte by the Arbitrator consequent on their non-appearance despite the service of notice. On behalf of the respondent proof affidavit was filed and Exts.A1 to A5 were marked. After evaluating the evidence on record the impugned award was passed against the appellants directing them to pay total sum of Rs.8,82,166/- with interest at the rate of 12% per annum from 30/1/2010 till realisation with cost. Aggrieved by the said award, the appellants have preferred the above O.P. before the District Court. The learned District Judge meticulously considered the contentions raised in the O.P. within the scope of interference under Sec.34 of the Act and dismissed the O.P. on a finding that none of the grounds raised in the O.P. warranted interference under Sec.34 of the Act. The legality and correctness of the said findings, whereby the court below dismissed the O.P., are under challenge in this

Arb. Appeal.

3. The learned counsel for the appellants advanced arguments challenging the dismissal of the appeal. The learned counsel mainly contended that the court below ought to have seen that no proper opportunity for defending the proceeding was given to the appellants by the Arbitrator. The Arbitrator has shown undue haste in setting the appellants ex parte and passing the award without considering merits. Therefore, the appellants are entitled to get an opportunity to defend the case on merit below the Arbitrator. Thus, the counsel urged for remanding the case to the sole Arbitrator after setting aside the impugned award and the order passed by the court below.

4. Now the point arises for consideration in this Arb. Appeal is whether the appellants have made out a case before the court below warranting interference under Sec.34 of the Act? Going by the impugned order, apparently, we find that the learned District Judge in

the light of the decisions in K.V. Mohd. Zakir v. Regional Sports Centre [AIR 2009 (SC) Suppl. 2517]; Oil and Natural Gases Corporation v. SAW Pipes Ltd., [AIR 2003 SC 2629]; M/s. Markfed Vanaspathi and Allied Industries v. Union of India [AIR 2007 (SC) Suppl. 880] and Pathros O.P. v. State of Kerala and others [2010 (3) ILR Kerala 87 (SC)] correctly comprehended the scope and extent of jurisdiction envisaged under Sec.34 of the Act and rightly applied the principles laid down in the above decisions in the instant case. The principle, in brief, that can be culled out from the proposition laid down in the above decisions is that the scope of interference under Sec.34 of the Act is very narrow and limited one, as the District Court does not sit in appeal over the arbitration award. The scope of interference is confined to the grounds specified under sub-sections (2) and (3) of Sec.34 of the Act. Those grounds are confined to incapacity of parties, invalidating of the arbitration agreement, lack of proper notice of

appointment of Arbitrator, disputes not contemplated by or not falling within the terms of submission to arbitration, legal infirmity in composition and procedure of Arbitrator Tribunal, incapability of the subject matter for settlement and conflict of the award with the public policy etc.

5. Here, we have meticulously examined the arbitral award and the impugned order confirming the same passed by the learned District Judge keeping in view the limited scope of interference, which we referred above.

6. The impugned award passed by the Arbitrator is an ex parte award only. Indisputably, the appellants failed to appear before the Arbitrator for contesting the Ar. O.P., on merit. As rightly observed by the court below as per Sec.34(2)(iii) of the Act, the arbitral award can be set aside by the court only if the party making application was not given proper notice of the appointment of an Arbitrator or of the arbitral proceedings or was otherwise unable to present his

case. The learned Sessions Judge after examining the proceedings papers and the case records of the Arbitrator, specifically observed that those papers show that notice was duly served to the appellants and they did not appear before the Arbitrator, despite the receipt of the notice. We do not find any reason to disbelieve the observation made by the learned District Judge, in the absence of sufficient cause for non-appearance. In such circumstance, the Arbitrator is justified in setting them ex parte and passing the award on merits after considering the evidence adduced by the respondent.

7. In this Arb. Appeal also, it is contended that the arbitral award was one passed without considering merits. But, going by the award, it is seen that the respondent has produced Exts.A1 to A5 and the Arbitrator has meticulously examined those documents and arrived at a finding that the amount claimed was one due to the respondent, in view of Ext.A4 account statement. In the absence of any

objection from the part of the appellants, despite the receipt of the notice, the Arbitrator is justified in relying on the documents produced by the respondent for passing the award. In the O.P., the learned District Judge also examined the evidence on record and concurred with the findings of the Arbitrator. We also find that the appellants miserably failed to make out a case which would fall under the parameters specifically enumerated under sub-sections (2) & (3) of Sec.34 of the Act. We do not find any legal infirmity or jurisdictional error in the impugned order and we confirm the same.

8. At last, the learned counsel for the appellants urged for granting permission to pay the award amount by instalments, if this Arb. Appeal is found meritless, since they are suffering due to paucity of funds. Having regard to the facts and circumstances of this case and the submissions made at the Bar, the appellants are allowed to remit the award amount by 10 equal monthly instalments, starting from 1st

November, 2015. It is made clear that they shall pay each instalment on or before 5th day of every month and in the event of failure to pay any of the instalments within the specified time, the instalment facility will stand automatically cancelled and the respondent will be at liberty to realise the entire amount in lump sum by resorting to appropriate proceedings, in accordance with law.

The Arb Appeal is devoid of merit and is dismissed accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge