

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on February 11, 2015

+ **O.M.P. 154/2015**

KAMAL GHANSHYAMDAS BHATIA & ORS Petitioner

Through: Mr.Prashant Mendiratta,
Mr.Adarsh Ramakrishnan, Advs.

Versus

RELIGARE FINVEST LTD Respondent

Through: Mr.Ajay Uppal, Adv. with
Mr.Kuljeet and Mr.K.Karthikey,
AR of the respondent company

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. This is a petition filed by the petitioners under Section 34 of the Arbitration and Conciliation Act, 1996 (Act in short), challenging the award dated December 5, 2014 passed by the sole Arbitrator in Arbitration Petition No. RFL/Mortgage/LRN/L-3/540.

2. Some of the relevant facts are that, the petitioner No. 1 had offered a loan of Rs. 5 Crores to the respondent. The EMI was fixed for 84 months at Rs. 8,90,142/- per month. The petitioner No. 1 defaulted in making the monthly instalments. The respondent had invoked the arbitration clause and appointed an Arbitrator. The Arbitrator had held the first proceedings on August 12, 2013 on which date, notice was

issued for August 27, 2013. Since the registered A.D./Post was not received back, nor anyone was present for the respondent, the matter was adjourned by the learned Arbitrator to September 20, 2013. On September 20, 2013, no proceedings could take place. When the proceedings were held on January 10, 2014, a representation was made by Mr. Rajneesh Diwan, Advocate for the petitioners herein. The proceedings were adjourned to January 21, 2014. On January 21, 2014, statement of claim was filed by the respondent herein and the matter was adjourned to February 14, 2014 when time was sought by the counsel appearing for the petitioners for filing reply and matter was adjourned to March 7, 2014, on which date, last opportunity was given for filing reply to the petitioners herein.

3. The petitioners, on April 1, 2014, filed an application under Section 16 of the Act. The learned Arbitrator heard the arguments on the application and reserved the application for orders to come on April 16, 2014. It appears that the respondent herein also filed an application under Section 17 of the Act. Be that as it may, no order on the application of the petitioners was passed by the learned Arbitrator on the said date. The matter was adjourned to April 21, 2014. On April 21, 2014, no-one was present for the petitioners herein. Vide order dated April 21, 2014, the learned Arbitrator allowed the application filed by

the respondent herein under Section 17 and dismissed the application under Section 16 filed by the petitioners herein. It is also seen from the arbitral record, which has been produced in the Court, that pursuant to the passing of the order dated April 21, 2014, neither the order dated April 21, 2014 was sent to the petitioners herein nor any communication/information was sent by the learned Arbitrator for holding the proceedings on May 21, 2014.

4. Thereafter, the proceedings were held on July 4, 2014 when no-one was present for the petitioners herein and the same was adjourned to September 12, 2014. On September 12, 2014, the learned Arbitrator heard the arguments on behalf of the respondent herein and directed the respondent to supply the stamp papers as soon as possible and reserved the proceedings for award.

5. A perusal of the proceedings sheets on the dates mentioned above, would show that even though no representation was made by the petitioner on April 21, 2014, when the matter was adjourned to May 21, 2014, the learned Arbitrator had neither sent the copy of the order dated April 21, 2014, dismissing that application filed by the petitioners herein nor informed the next date of hearing, in the proceedings i.e. May 21, 2014, with the result, the petitioners herein, were not aware of the date of hearing and could not present themselves before the learned Arbitrator.

Suffice to state, the non-issuance of notice for the hearing of May 21, 2014 and for the subsequent proceedings, is surely in violation of principles of natural justice.

6. Learned counsel for the respondent would urge that the petitioners went unrepresented because of their own fault inasmuch as despite knowing the date of hearing as April 21, 2014, when the date of May 21, 2014 was fixed, no-one was present for the petitioners herein on that date.

7. In other words, had there been representation on behalf of the petitioners, the petitioners would have known the date of hearing as May 21, 2014. The resultant absence in future proceedings was also for the same reason. He would state that the learned Arbitrator was not required to send the notice in that regard. I am unable to agree with the learned counsel for the respondent on this inasmuch as, when the learned Arbitrator has passed an order dated April 21, 2014, on the application filed by the petitioners herein under Section 16 of the Act, he would at least, require to send the copy of the order to the petitioner herein for its information. Surprisingly, I note, that the learned Arbitrator has sent the copy of the order passed by him on the application filed by the petitioners herein under Section 16 of the Act to the bank. Vide the order dated 21st April, 2014 the learned Arbitrator has attached the bank

accounts. This conduct of the learned Arbitrator appears to be very peculiar inasmuch instead of giving the copy to the respondent herein, to enable the respondent to take the matter with the bank, the Arbitrator himself directly communicated with the bank. In any case, if the petitioners had known the passing of the order dated April 21, 2014, the petitioners would have at least come to know of the dismissal of the their application.

8. It is the stand of the petitioners that the counsel informed the Sole Arbitrator that he has filed an application under Section 16 of the Act that, while taking objection to his appointment as the Sole Arbitrator and the said objections need to be decided first so that the petitioners can take recourse in case the Sole Arbitrator decides to reject the application. The Sole Arbitrator assured that he will decide the application under Section 16 of the Act and would inform him. However, till December 26, 2014, despite repeated requests and reminders, the Sole Arbitrator did not inform the counsel for the petitioners as to what has been the fate of the said application. The counsel for the petitioners has sent associate advocate as well as the clerk to find out the fate of the application. No information was forthcoming except kept stating that the matter is pending.

9. In any case, even if it can be said that the date of April 21, 2014

and May 21, 2014 were in the knowledge of the counsel for the petitioners, the learned Arbitrator knowing the fact that there is no appearance on behalf of the petitioners, could have even then informed the petitioners or their counsel of the next date of hearing i.e. July 4, 2014. Even such a communication was not sent and on the said date, the final arguments were heard from the respondent's (Claimant therein) side. I find that this is in violation of principles of natural justice as due opportunity was denied to the petitioner. On this ground, the impugned award needs to be set aside. I do so.

10. The matter is remanded back to the learned Arbitrator with a direction to afford the petitioners herein an opportunity of filing reply to the claim petition filed by the respondent herein, and thereafter, proceed with the matter in accordance with the law. The learned counsel for the parties agree that a date be fixed before the learned Arbitrator. I do so accordingly. The parties to appear before the learned Arbitrator on February 24, 2015 at 4.00 p.m.

11. The petition is disposed of accordingly with the aforesaid directions. No costs.

(V.KAMESWAR RAO)
JUDGE

FEBRUARY 11, 2015/akb