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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1075 OF 2012

Sunil Narhari Parab ..Petitioner.

V/s.

New India Co-operative Bank Ltd. and Ors. ..Respondents.

Mr.I.K.Tripathi with Mr.Akhilesh Singh with Mr.Manish Dubey and
Ms.Bhagyashir Gawas for the petitioner.

Mr.Vatsal Shah i/b. MMK Law Associates for respondent No.1.

CORAM : R.D.DHANUKA, J.

DATED : 9TH DECEMBER, 2016

PC. :-

By this petition under section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 24th January, 2012 passed by the learned arbitrator thereby allowing the claim made by respondent No.1 and directing the petitioner and respondent Nos.2 and 3 to pay a sum of Rs.25,78,049/- with costs and interest at the rate of 14% p.a. from 1st July, 2009 till realisation.

2. Some of the relevant facts for the purpose of deciding this petition are as under:-

3. The petitioner was the original respondent No.3 in the arbitration proceedings and was alleged to be a surety of respondent No.2 in respect of the housing loan facility granted by respondent No.1 to respondent No.2. It was the case of respondent No.1 that the petitioner and respondent Nos.2 and 3 were members of respondent No.1. Respondent No.1 had granted loan to respondent No.1 in the sum of Rs.25 lakhs on 12th September, 2007 against equitable mortgage of flat Nos.301 and 401, 3rd and 4th floor, Regent Apartment, Plot No.49, Sector No.19/20, Village, Phanaspada, Belapur, Taluka and District Thane, Navi Mumbai. The petitioner and respondent No.3 were sureties for the said loan availed by respondent No.2. There were breaches of agreement by the principal debtor as well as sureties. Respondent No.1 issued notices to respondent No.2 and the sureties for repayment of the loan. Neither the petitioner nor respondent Nos 2 and 3 replied the said notice nor made any payment. Respondent No.1 invoked the arbitration agreement.

4. Shri S.B.Pawar was appointed as the sole arbitrator under the provisions of the Multi State Co-operative Society Act, 2002. It was the case of respondent No.1 that the learned arbitrator issued various notices from time to time to the petitioner as well as respondent Nos.2 and 3. The petitioner did not file written statement before the learned arbitrator and also failed to remain present on the subsequent dates of hearing, though appeared once. Respondent Nos.2 and 3 also did not appear before the learned arbitrator and did not file their written statements. Respondent No.1 filed affidavit in lieu of evidence before the learned arbitrator. Neither the petitioner nor respondent Nos.2 and 3 appeared before the learned arbitrator during the course of arguments nor cross examined the witness examined by the arbitrator. The learned arbitrator passed an ex-parte award on 24th January, 2012 which is impugned by the original respondent No.3 in this petition.

5. Mr.Tripathi, the learned counsel for the petitioner, submits that the petitioner was not served with any notice or

statement of claim by respondent No.1 or by the learned arbitrator. He submitted that the impugned award is an ex-parte award and is in violation of the principles of natural justice.

6. It is submitted by the learned counsel that the petitioner had filed a Writ Petition (3015 of 2010) in this Court inter alia challenging the order of attachment passed by the learned arbitrator. He submits that this Court disposed of the said writ petition by holding that the property of the petitioner was not attached by the said order passed by the learned arbitrator. He submits that after the said order dated 8th October, 2010 came to be passed by this Court in the said Writ Petition No.3015 of 2010, no notice of any nature was served upon by the petitioner by the learned arbitrator or by the respondent No.1.

7. In view of the dispute between the parties whether the petitioner was served with any notice as well as the proceedings by respondent No.1 or by the learned arbitrator, this Court directed respondent No.1 bank to produce the original record and proceedings, including the roznama to verify whether there is any

truth in the allegations made by the petitioner.

8. Respondent No.1 filed an affidavit in reply before this Court on 31st January, 2013 and also produced the roznama and original file containing record and proceedings.

9. Mr.Shah, the learned counsel appearing for respondent No.1 invited my attention to some of the averments made in the affidavit in reply filed by respondent No.1 and re-joinder filed by the petitioner. He submits that contention of the petitioner that no signature of his wife appears on the summons or the show cause notice is totally false. He invited my attention to the some of the roznama maintained by the learned arbitrator and submits that on 11th March, 2010 the petitioner herein had appeared before the learned arbitrator and had requested for time to file reply. The learned arbitrator had granted time to the petitioner to file reply and has recorded the same in the roznama dated 11th March, 2010. He submits that the petitioner has suppressed this fact in the arbitration petition and has misled this Court. He submits that the despite opportunities given by the arbitrator to the petitioner

to file reply and to remain present, the petitioner failed to remain present and also failed to file the written statement. He submits that respondent No.1 had also filed affidavit in lieu of examination-in-chief and has produced documents before the arbitrator. After considering the affidavit in lieu of examination-in-chief on which there was no cross-examination by any of the respondents to the arbitration proceedings, including the petitioner, the learned arbitrator rightly made an award in favour of respondent No.1.

10. Mr.Tripathi, the learned counsel for the petitioner in rejoinder submits that the learned arbitrator has not recorded any reasons in the impugned order and has not recorded any finding on the authenticity of the documents produced by respondent No.1.

11. So far as the first submission of the learned counsel that the petitioner was not given any notice by the learned arbitrator and that impugned award was passed in violation of the principles of natural justice is concerned, perusal of the roznama

produced by the learned counsel for respondent No.1 indicates that the petitioner was present before the learned arbitrator on 11th March, 2010 and had applied for adjournment to file reply. The petitioner has suppressed this fact in the arbitration petition and has falsely stated that no notice was served upon the petitioner.

12. Perusal of the roznama indicates that the matter was adjourned from time to time to enable the petitioner and other two respondents to appear before the learned arbitrator. Since neither the petitioner nor respondent Nos.2 and 3 appeared, the learned arbitrator after considering the pleadings and documents on record and affidavit in lieu of examination-in-chief rightly allowed the claim made by respondent No.1.

13. Perusal of the record further indicates that the notice issued by the learned arbitrator on 28th July, 2009 was unclaimed by the petitioner and the same was returned to respondent no.1.

14. It is not in dispute that the petitioner had filed a writ

petition in this Court inter alia challenging the order of attachment. The petitioner was thus fully aware of the arbitration proceedings filed by respondent No.1 for recovery of their legitimate claim. After this Court disposed of the said petition by holding that there was no attachment of the property of the petitioner, the petitioner did not bother to file reply in the pending proceedings though he was served with the copy of the notice and had appeared before the learned arbitrator once I am not inclined to accept the argument of the learned counsel for the petitioner that the impugned award was rendered by the learned arbitrator without following the principles of natural justice.

15. In so far as the second submission of the learned counsel for the petitioner that the learned arbitrator has not gone into the authenticity of the documents produced by respondent No.1 bank in the impugned award is concerned, respondent No.1 had relied upon the documents and had filed an affidavit in lieu of examination-in-chief and proved the contents of those documents. In any event, as there was no written statement filed by the petitioner nor was there any cross-examination on the affidavit in

lieu of examination-in-chief of respondent No.1, the averments and deposition made by respondent No.1 remained uncontraverted and thus the learned arbitrator was justified in making an award in favour of respondent No.1. In my view, there is no substance in this submission of the learned counsel for the petitioner.

16. In my view, the petitioner has suppressed the facts from this Court. The statement of the petitioner that the award was made by the learned arbitrator without complying with the principles of the natural justice is contrary to the record and is, therefore, rejected. In my view, there is no merit in the submissions made by the learned counsel for the petitioner. The petition is devoid of any merits and is accordingly dismissed. No order as to costs.

(R.D.DHANUKA, J.)