IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETI TION NO. 27 OF 2016

Muniyappa Prakash S/o Ramapura
Ekappa Muniappa ... Petitioner

vs.

HDB Financial Services Ltd. and ors. ... Respondents

Mr. Ditendra Mishra, Advocate for the petitioner.
Mr. Derendra Nawalkar i/by Ashish Aggarwal, Advocate for the respondents.

Coram : Smt. R. P. SondurBaldota, J.
Date : 6th December, 2016.

P.C.

1. This petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ('the Arbitration Act', for short) is directed against the award dated 26th May, 2016 of a sole Arbitrator. Respondent no.1 is the original claimant and respondents no.3 to 5 are original respondents no. 2 to 4. Petitioner is the original respondent no.1 and respondent no.2 is the Arbitrator.

2. The dispute between the parties which was referred for adjudication by way of arbitration arose under loan agreement dated 28th February, 2014. The petitioner and respondents no.3 to 5 had availed of loan facility from respondent no.1 to the extent of Rs.1,64,00,000/-. The borrowers had agreed to repay the loan with 132 equated monthly installments each of Rs.1,85,220/-. They had

secured the loan amount by mortgaging their property being property no.1963, 9th Main Road, 2nd Cross, Kumarswami Layout, Bangalore, Karnataka and property no.727, 14th Main Road, Kumarswami Layout, Bangalore, Karnataka. Later the borrowers committed defaults in payment of the equated monthly installments and became liable to repay the entire outstanding amount of Rs.1,18,42,983/- as on 12th January, 2016. Respondent no.1 then invoked arbitration by it's letter dated 29th January, 2016 in accordance with the agreement between the parties. In addition to the recovery of the outstanding amount of Rs.1,18,42,983/-, respondent no.1 claimed interest at the rate of 24% p.a. On the amount from 12th January, 2016 till realisation.

3. The Arbitrator sent notices dated 13th February, 2016 to the borrowers through Registered Post A.D. to the addresses as disclosed to respondent no.1 in the various document executed by the borrowers. The notices returned with remark “left”. Thereupon he directed that arbitral proceedings be heard ex-parte against the borrowers. This order was communicated to the borrowers by the intimations dated 24th February, 2016. These notices also sent by Registered Post A. D. to the same address were however received by them. Despite receipt of the second notice, the borrowers failed to appear before the Arbitral Tribunal. Then the arbitrator passed ex-parte award against the borrowers.

4. By the intimation dated 22nd March, 2016 the arbitrator informed the borrowers that ex-parte award has been passed against them. This intimation moved the borrowers into an action and advocate Mr. S. R. Murlidhar for Murlidhar Law Associates appeared

before the Arbitrator on 11th April, 2016. He filed an application for setting aside the ex-parte order against the borrowers. After due notice to respondent no.1 the application was heard and the ex-parte order set aside by imposing costs quantified at Rs.100/- against the borrowers. Then another application was filed seeking leave to file objections to the statement of claim of respondent no.1, which was also allowed and the objections of the borrowers to the statement of claim were taken on file. After completing the pleading in the proceedings when the matter was to be heard on 20th May, 2016, the borrowers and their advocates remained absent and once again notices were sent to them that on account of non-appearance on their part, the proceedings would be heard ex-parte.

5. Respondent no.1 thereafter examined it's witness and produced all the documents concerning the loan transaction between the parties. The learned Arbitrator considered the evidence and passed the impugned award, inter alia, directing the borrowers to pay a sum of Rs.1,26,25,777/- together with interest at the rate of 18% p.a. thereon from the date of the award till payment or realisation.

6. The petitioner does not dispute the transaction of loan under the loan agreement dated 28th February, 2014, disbursement of loan of Rs.1,64,00,000/-, mortgage of two properties by deposit of title deeds and the agreement for repayment of the loan by 132 equated monthly installments of Rs.1,85,220/-. He however claims that, by 2nd June, 2015 he had cleared the loan to the extent of Rs.69,21,916/- and he intended to clear the balance loan amount by selling one of the properties i.e. property no.1963, 9th Main Road, 2nd Cross, Kumarswami Layout, Bangalore, Karnataka. For that purpose

he had demanded return of the title deeds of the two properties. In order to facilitate the sale, respondent no.1 executed Memorandum of Discharge dated 16th July, 2015, which was duly registered with the office of the Sub-Rgistrar, Baswangudi, Bangalore. But, thereafter respondent no.1 failed to return the original title deeds claiming that the same were lost. The petitioner alleges that respondent no.1 compelled him to execute Indemnity Bond dated 21st July, 2015. The petitioner had no choice but to execute the Indemnity Bond. The petitioner has filed complaint with Malleshwaram Police Station, Bangalore regarding loss of the original documents. The petitioner alleges that because of non-availability of the original documents he was unable to get proper price for the property sold. He could get offer of only Rs.45,00,000/- causing loss to him of Rs.70,00,000/-. In view all the above facts, the petitioner claims to have filed a complaint before Karnataka State Consumer Dispute Redressal Commissioner at Bangalore.

7. Respondent no.1 has filed affidavit-in-reply in which it denies all the allegations made by the petitioner. It denies that the title deeds in respect of one of the properties are misplaced by it. It contends that the same were not handed over to the petitioner because he failed to complete the formalities therefor.

8. Mr. Mishra, the learned advocate for the petitioner submits that, the ex-parte award passed against the borrowers is not valid and enforceable in law. He also submits that there was no willful default on the part of the petitioner in payment of the monthly installments. According to him, the arbitrator failed to appreciate that the borrowers suffered losses on account of failure on the part of

respondent no.1 in returning the title deeds.

9. Considering the limited scope for judicial intervention under Section 34 of the Arbitration Act, the only aspect that can be considered by the Court, in the facts of the case, as the opportunity of hearing to the petitioner. Undoubtedly there can be no grievance about the same. Surprisingly in his petition, the petitioner does not even so much as state the reason for his absence in the arbitral proceedings after opportunity to defend the same was given to him by setting aside the ex-parte award passed earlier. As regards the merits, the Arbitrator has taken a plausible view of the matter based on the evidence produced before him. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]