

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2184 of 2016

R.Subramaniam

... Appellant

-Vs-

1. Fin Cruise Credit Services Pvt.Ltd.,
having its office at C-36,
Gulmohar Park, New Delhi 110 049
2. Ms.Jyoti Mestry (Advocate)
Sole Arbitrator
Office at No.19, Ravi Industrial Estate
Off Mahakali Caves Road
Andheri (East), Mumbai 400 093

... Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 read with Order 43, Rule 1(1) of the Civil Procedure Code, against the final order and decree dated 30.06.2016 made in A.O.P.No.144 of 2014 on the file of the learned Principal District Judge, Tirupur, confirming the award dated 10.09.2014 passed by the second respondent/Arbitrator allowing the claim petition filed by the first respondent.

For Appellant : Mr.P.Kalimuthu

JUDGMENT

Mr.R.Subramaniam, aggrieved by the impugned order passed by the learned Principal District Judge, Tirupur in A.O.P.No.144 of 2014 dated 30.6.2016, confirming the ex parte award passed by the learned Arbitrator on 10.9.2014 in Arbitration Proceedings No.AA-FIN-ARB-00191/2013, has come to this Court with this civil miscellaneous appeal, on the ground that the learned Principal District Judge failed to consider that the award has been passed without giving any reasonable opportunity to the appellant, therefore, the same is unsustainable and unacceptable in law. Adding further, it was stated that the learned Principal District Judge has committed a grave error in dismissing the

A.O.P., without appreciating the evidence available on record, merely based on the documents filed by the first respondent/claimant before the Arbitrator. As the learned Arbitrator had passed the ex parte award without providing any sufficient opportunity to the appellant to rebut the evidence put forth by the first respondent/claimant, at least the learned Principal District Judge, on appeal, without dismissing the A.O.P., should have given an opportunity. The learned Principal District judge has also failed to note one important fact that when this appellant denied the execution of agreement and promissory note in respect of the loan transaction, it is the bounden duty cast on the claimant to prove the same with sufficient evidence. This also has not been shown. Therefore it was pleaded that the impugned order is liable to be interfered with.

2. This Court is not able to find any merit or justification whatsoever for the appellant to complain against the order passed by the learned Principal District Judge or the award passed by the learned Arbitrator. The reason is that the appellant had availed financial assistance to the tune of Rs.10,00,000/- on 30.9.2008 agreeing to repay the said loan along with interest at the rate of 10.47% per annum and other charges in sixty equal monthly instalments of Rs.25,394/-. After receipt of the loan, there were repeated defaults in repayment. Therefore, the first respondent/claimant, invoking the arbitration clause, raised a dispute before the second respondent/Arbitrator to adjudicate upon the dispute between the appellant and the first respondent and based on the concurrence given by the second respondent to the first respondent/claimant, she was appointed as the sole arbitrator. Thereafter, the learned Arbitrator issued a notice to the appellant on 9.11.2013. Subsequently, the Arbitrator had also directed both the parties to appear before her on 18.11.2013. When the notice was issued to the appellant at the last known address supplied by the first respondent/claimant, the appellant remained absent in the hearing held on 18.11.2013. Therefore, another notice was also issued on 26.3.2014 to the appellant providing one more opportunity. But in spite of the further notice issued to the appellant to appear before the Arbitral Tribunal, again the appellant continued to remain absent. Finally, on the basis of the available documents placed by the first respondent/claimant, the learned Arbitrator proceeded ex parte to pass the following award:-

"(a) The Respondent/s do pay to the Claimant a sum of Rs.12,08,943/- (Rupees Twelve Lakhs Eight Thousand Nine Hundred Forty Three only) as on 21.10.2013 on account of the total outstanding amount which include a principal loan amount, contractual interest and other charges,

subject to adjustment of payment made by the Respondent/s, if any after 21.10.2013.

(b) The Respondent/s do pay to the Claimant a sum of @ 18% simple interest on account of interest on the outstanding amount from the date of filing of the Claim Petition i.e.18.11.2013 till the passing of the award.

(c) The Respondent/s do pay to the Claimant the sum of interest @ 18% p.a., on the amount awarded from the date of award till realization of the amount.

(d) The Respondent/s do pay to the Claimant a sum of Rs.5,000/- (Rupees five thousand only) is awarded as cost towards present proceedings."

3. When an appeal was filed by the appellant before the learned Principal District Judge challenging the award, finding no sufficient cause shown for his absence before the learned Arbitrator, the learned Principal District Judge also declined to interfere with the award. Even before this Court also, the appellant/borrower has not placed any document to show that on any of the dates fixed for hearing by the learned Arbitrator, he was unable to appear due to any good cause. Finally, it is an admitted case that the appellant being the borrower has not disputed the borrowing of Rs.10,00,000/- with interest at the rate of 10.47% per annum, therefore, he has to repay the balance amount. Hence, this Court is not able to find any grounds to interfere with the impugned order passed by the learned Principal District Judge, Tirupur, confirming the award passed by the learned Arbitrator. Accordingly, the civil miscellaneous appeal fails and it is dismissed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ss

To

The Principal District Judge
Tiruppur.

C.M.A.No.2184 of 2016

RSI (CO)
CA(18/11/2016)