

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

% *Judgment reserved on: 26th July, 2016*
Judgment pronounced on: 29th July, 2016

+ **O.M.P. 1062/2013**

SHABNAM GULATI Petitioner
Through Mr.Sonam Sharma, Adv. with
Ms.Chandni Goyal, Adv.

versus

M/S RELIGARE FINEVEST LTD Respondent
Through Mr.Ajay Uppal, Adv. along with
Mr.Yogesh, Manager, in person.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. Shabnam Gulati, one of the co-borrowers, has filed the present petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the "Act") against the award dated 27th April, 2013 passed by the sole Arbitrator.
2. The respondent-Company sanctioned and disbursed a loan for a sum of Rs.2,90,00,000/- to the petitioner. The petitioner on grant of the aforesaid loan executed Loan Agreement No.XMORGHT00029775 dated 31st August, 2011 thereby *inter alia* agreeing to repay the said loan amount with interest @19.5% p.a. and also created a mortgage with respect to their immovable property bearing No. "Flat No.603, 6th Floor, D-Wing, Elco Archde, TPS IV, Hill Road, Bandra (W), Mumbai-400050" (hereinafter referred to as the "said property") by handing over the original title papers

with respect to said property to the respondent Company; to secure the repayment of loan amount with charges.

3. As the post dated cheques issued by the petitioner and her late husband towards payment of the equal monthly installment were dishonored, the respondent-Company recalled the aforesaid loan facility vide legal notice dated 14th August, 2012, wherein the petitioner was called upon to pay the entire loan amount with interest and other charges as agreed in the aforesaid Loan agreement amounting to Rs.2,88,78,504.23/- which was due and payable on 14th August, 2012. The legal notice was sent to the petitioner vide Registered Post. But the petitioner and her late husband failed to pay the aforesaid dues despite being served with the aforesaid notice of demand dated 14th August, 2012, therefore, the respondent-Company was left with no option but to refer the present claim/disputes for arbitration.

4. The respondent-Company has claimed that the petitioner is liable to pay a sum of Rs. 2,88,78,504.23/- along with interest @ 19.5% per annum, to be computed from 14th August, 2012, till the date of realization of the amount. The respondent-Company has further prayed for directions to the effect that the petitioner be directed to hand over the vacant peaceful possession of the said property to the respondent-Company with further directions/permission to the respondent-Company to sell, transfer, and/or alienate the said property, for the purpose of realization/satisfaction of their claims, along with the cost of the proceedings.

5. As the petitioner had failed to pay the amount overdue on time despite of several reminders, the respondent was constrained to file

an application for interim relief under Section 9 of the Act before this Court and after hearing the application, this Court passed an order dated 3rd September, 2012 thereby restraining the petitioner (respondents therein) from creating /assigning any interest and / or transferring or encumbering the said property.

6. By letter dated 12th September, 2012 the respondent nominated the sole Arbitrator to adjudicate upon disputes of the claim made by it against the petitioner.

7. The sole Arbitrator fixed the matter for preliminary hearing and directions for 3rd October, 2012. The Arbitrator had also made the disclosure about the number of cases handled by him in which the respondent-Company was a party.

8. Copy of the notice to present proceedings was sent to the petitioner by registered AD post. Postal receipts are available in the arbitral record. The said notice was issued at the same address as mentioned in the memo of parties filed along with the objections under Section 34 of the Act. However, it appears that the petitioner avoided receiving the said notices sent at the same address. All envelopes are available in the arbitral record. The respondent entered appearance on 3rd October, 2012 and filed its claim petition along with photocopies of documents. The petitioner did not appear.

9. Despite of non-appearance, the matter was adjourned to 4th December, 2012. On 4th December, 2012 no one appeared before the Arbitrator on behalf of the petitioner.

10. In view of the agreement between both the parties read with Section 3 of the Act, the petitioner was deemed to be duly served. Therefore, the petitioner was proceeded ex-parte on 4th December,

2012 due to non-appearance as the address mentioned in the notice, postal receipts as well as on the acknowledgement due is the same address given by the petitioner at the time of taking loan. The petitioner's husband died in the meanwhile, however, the petitioner has not denied the fact that the loan was taken and the loan agreement and all other documents were executed by the petitioner and her husband.

11. The respondent filed the true copy of Special Power Attorney dated 25th April, 2011 executed by Mr. Ashutosh Sharma, of the respondent-Company whereby Mr. Mukesh Kumar Choudhary of the respondent-Company has been authorized to pursue the present proceedings on behalf of the respondent-Company. The respondent averred that the petitioner as on 14th August, 2012 owed a total sum of Rs.2,88,78,504.23/- in furtherance of the loan disbursed by the respondent to the petitioner. The respondent-Company has placed on record the true copy of the Loan Agreement executed between the parties along with the schedule annexed thereto. In terms of the said schedule, a sum of Rs.2,90,00,000/- was advanced by the respondent to the petitioner by way of loan which was repayable with interest @19.5% p.a. in 120 equal monthly installments of Rs.4,50,273/- each. The respondent had also filed true copy of demand promissory note executed by the petitioner and her late husband agreeing to pay a sum of Rs. 2,90,00,000/- along with interest @19.5% p.a. The respondent had also filed a computerized copy of statement of account for the loan account bearing No. XMORGHT00029775 pertaining to the petitioner and her late husband being maintained by the respondent, in its books of accounts which showed the details of the dishonored cheques issued

by the petitioner towards the repayment of the loan amount and also the outstanding principal amount and the interest/ other charges payable. The total amount payable as on 14th August, 2012 has been shown as a sum of Rs. 2,88,78,504.23/- A copy of the legal notice issued by the counsel for the respondent dated 14th August 2012 demanding a sum of Rs. 2,88,78,504.23/- due on 14th August 2012 has been placed on record. In the legal notice, it was averred that the petitioner and her late husband had defaulted in payment of the EMIs on due date as post dated cheques issued by the petitioner and her late husband were dishonored by their banker.

12. The award was accordingly passed on the basis of material placed on record.

13. During hearing of the present petition, an offer was made to the petitioner to pay the amount in installments and by way of simple interest, however, the petitioner was not agreeable to any suggestion. On merit, the petitioner has no case as far as objection is taken about the appointment of sole arbitrator. The decision of this Court referred by the counsel for the petitioner in the case of **Aditya Ganapa & Anr. v Religare Finvest Ltd** O.M.P. No.1038/2014 decided on 30th January, 2015 does not help the case of the petitioner as in that case in para 13 the Arbitrator did not disclose that he is the sole Arbitrator in 28 cases; however, in the present case, the disclosure was made. Further, the petitioner in the present case is not ready to pay any amount which is the admitted liability. Even the respondent is ready to reduce the agreed interest. The conduct of the petitioner was very strange, firstly she did not contest the matter before the Arbitral Tribunal and at the time of hearing, she denied her signature on the agreement although the

said objection was not taken in her petition. Even she also did not deny about the receipt of the loan.

14. Hence, the objections are misconceived. The same are accordingly dismissed.

**(MANMOHAN SINGH)
JUDGE**

JULY 29, 2016

