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

ARBITRATION PETITION NO. 1609 OF 2015

Mukesh Trambaklal Mehta	...Petitioner
vs	
M/s Bajaj Finance Ltd.	...Respondent
And	
Kotak Mahindra Bank Ltd.	...Respondent.

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Mr Sahil Mahajan for the Petitioner.
Mr Rohan Savant a/w Nikhil Rajani i/b V. Deshpande & Co. for
the Respondent.

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**CORAM : B.P.COLABAWALLA J.
JUNE 12, 2017.**

P.C.:

This Arbitration Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) to quash and set aside the award passed by the Arbitrator dated 20th July, 2015.

2 Though several grounds have been raised in the Petition, the learned advocate appearing on behalf of the Petitioner fairly pressed only two grounds before me. The first

ground pressed by the learned advocate for the Petitioner was that the award passed by the Arbitrator is an ex-parte award and the Petitioner was not properly served with a notice of the arbitration proceedings, and therefore, was unable to effectively defend the same before the Arbitrator. The second ground pressed before me was that the entire claim made in the arbitration is on the basis of forged and fabricated documents which were never signed by the Petitioner. This being the case, there was no arbitration agreement at all between the Petitioner and the Respondent, and therefore, the Arbitrator had no jurisdiction to enter upon the reference.

3 Before I deal with both these contentions, it would be appropriate to refer to a few facts which are really undisputed. The Petitioner was one of the Directors of a company called M/s BST Packaging Pvt. Ltd. According to the Petitioner he resigned from directorship vide his letter dated 31st August, 2011. However, due intimation of this resignation came to be given to the Registrar of Companies only on 17th February, 2013.

4 The said M/s BST Packaging Pvt. Ltd. had applied for

a loan from Bajaj Finance Ltd. of Rs.15,50,000/- for the purpose of working capital. After considering the aforesaid application, the same was granted by Bajaj Finance Ltd. on certain terms and conditions specifically stated in the “Terms and Conditions; Personal / Business loans” along with the promissory note and the loan application. All these documents constitute the agreement bearing No. 405TSB0038117 which is executed between the said Bajaj Finance Ltd. and the Petitioner as co-borrower along with M/s BST Packaging Pvt. Ltd.

5 As per the terms of the said agreement, the Petitioner as a co-borrower and M/s BST Packaging Pvt. Ltd. were to repay the aforesaid loan amount along with interest thereon in monthly installments. In the event of default, the Petitioner as well as M/s BST Packaging Pvt. Ltd. were jointly and severally liable to pay overdue interest and other charges as agreed between the parties.

6 As defaults were committed, the said Bajaj Finance Ltd. by their Advocate's notice dated 11th January, 2013 called upon the Petitioner as well as the said M/s BST Packaging Pvt.

Ltd. to pay their outstanding dues and also informed them that in the event of failure to comply, Mr Dharmadhikari M.D., Advocate, was appointed as a Sole Arbitrator to conduct the arbitration proceedings. It is common ground before me that this Arbitrator resigned and thereafter a fresh Arbitrator was appointed by Bajaj Finance Ltd. vide its notice dated 13th May, 2015.

7 Thereafter the second Arbitrator gave a notice on 21st May, 2015 to the Petitioner as well as M/s BST Packaging Pvt. Ltd. to appear before the Arbitrator on 6th June, 2015. It is not in dispute before me that this notice dated 21st May, 2015 has been received by the Petitioner. Despite receipt of this notice, none appeared on behalf of the Petitioner or M/s BST Packaging Pvt. Ltd. before the Arbitrator on 6th June, 2015. On the said date (6th June, 2015) Bajaj Finance Ltd. appeared before the Arbitrator and filed their claim petition along with the compilation of documents. Thereafter the Arbitrator issued a second notice dated 11th June, 2015 calling upon the Petitioner as well as M/s BST Packaging Pvt. Ltd. to appear before the Arbitral Tribunal on 4th July, 2015. I must mention here that in

the affidavit-in-rejoinder filed on behalf of the Petitioner, it is their case that this notice of 11th June, 2015 was not received by them. I shall deal with this contention a little later.

8 Be that as it may, on 29th June, 2015 the advocate for the Petitioner addressed a letter to the Arbitral Tribunal *inter alia* contending that the signature of the Petitioner was forged and he has not signed any documents sought to be relied upon by the M/s BST Packaging Pvt. Ltd. It was accordingly contended that there was no arbitration agreement within the meaning of Section 7 of the Act, and therefore, the Arbitral Tribunal has no jurisdiction to enter upon the reference and proceed with the arbitration. It was further stated that despite this, if the Arbitrator persisted or insisted on going on with the arbitration, the Arbitral Tribunal should intimate the Petitioner accordingly so as to enable the Petitioner to takeout appropriate proceedings and challenge the arbitration proceedings in a Court of Law.

9 Since none appeared on behalf of the Petitioner, the arbitration proceeded ex-parte and finally on 20th July, 2015 an award came to be passed whereunder the Petitioner as well as

M/s BST Packaging Pvt. Ltd. were held jointly and severally liable to pay to Bajaj Finance Ltd. a sum of Rs.11,41,149/- inclusive of interest and other charges together with further interest @ 18 % per annum to be paid from 2nd June, 2015 till payment and/or realization. Being aggrieved by this award the Petitioner approached this Court under Section 34 of the Act. During the pendency of this Petition, the debt under the loan agreement was assigned in favour of the Respondent (Kotak Mahindra Bank Ltd.) vide a deed of assignment dated 30th November, 2015. Accordingly, on 16th August 2016 this Petition was amended and Kotak Mahindra Bank was substituted as the Respondent herein, in place of Bajaj Finance Ltd.

10 In this factual backdrop the learned advocate appearing on behalf of the Petitioner firstly contended that the Petitioner was not duly served and given notice of the arbitration proceedings, and therefore, on this count alone the arbitration award ought to be quashed and set aside. The next contention raised by the learned counsel for the Petitioner was that none of the documents on which reliance has been placed by the Respondent herein, have been signed by the Petitioner.

This being the case there was no arbitration agreement at all as contemplated under Section 7 of the Act and consequently the Arbitrator lacked jurisdiction to enter upon the reference and proceed with the arbitration. I must mention here that despite several other grounds being raised in the petition, these were the only two grounds that were pressed before me for my consideration.

11 On the other hand, learned advocate appearing for the Respondent contended that the Petitioner was deliberately staying away from the arbitration proceedings. He submitted that admittedly the Petitioner was served with the notice dated 21st May, 2015 informing the Petitioner to appear before the Arbitral Tribunal on 6th June, 2015. It is admitted that as far as this notice is concerned it has been duly received by the Petitioner. Despite receipt of this notice the Petitioner sought to stay away from the arbitration proceedings. Despite this, the Arbitral Tribunal even issued a second notice dated 11th June, 2015 asking the Petitioner to appear before it on 4th July, 2015. Learned advocate brought to my attention the said notice which is at page 106 of the paper book as well as the acknowledgment

evidencing receipt of this notice which can be found at page 107 of the paper book. Looking to all these facts, he submitted that the Petitioner was duly served and deliberately chose to stay away from the arbitration proceedings and the contentions raised in this behalf by the learned advocate for the Petitioner are without any merit.

12 As far as the next contention is concerned, namely, regarding forgery, the learned advocate for the Respondent submitted that this Court in its limited jurisdiction cannot decide this issue under Section 34 of the Act. This is a question of fact and evidence which ought to have been first pleaded and then proved by the Petitioner before the Arbitrator. Not having done so, the Petitioner now cannot agitate this issue for the first time before this Court. He submitted that in the affidavit-in-rejoinder, during pendency of this petition, the Petitioner has obtained a Signature Comparison report indicating that the documents relied upon by the Respondents are *prima facie* not signed by the Petitioner. He submitted that nothing stopped the Petitioner from obtaining this report during the arbitration proceedings and presenting the same before the Arbitrator. Not having done

so, and having deliberately stayed away from the arbitration proceedings, the Petitioner cannot be allowed to agitate this issue at this late stage. Accordingly, the learned advocate appearing for the Respondent submitted that there was no merit in this Petition and the same ought to be dismissed.

13 I have heard the learned advocates for the parties at length and have perused the papers and proceedings in the Petition along with the affidavit-in-reply and rejoinder thereto. I have also carefully gone through the impugned award. I find considerable merit in the arguments canvassed on behalf of the Respondent. On the issue of the Petitioner not being served and hence unable to effectively defend the arbitral proceedings, I find that the Petitioner was well aware of the arbitration proceedings and was given notice to appear before the Arbitral Tribunal, not only on one occasion but two occasions. Firstly a notice was issued on 21st May, 2015 to the Petitioner to appear before the Arbitral Tribunal on 6th June, 2015. Despite this notice the Petitioner chose to stay away from the arbitration proceedings. Thereafter, another notice was issued on 11th June, 2015 asking the Petitioner to appear before the Arbitrator

on 4th July, 2015. This notice also was ignored by the Petitioner. It has been contended for the first time in the rejoinder that this notice is never received by the Petitioner. This is despite the fact that this notice as well as its acknowledgment has been annexed to the affidavit-in-reply filed by the Respondent. Even assuming for the sake of argument that this notice was not received by the Petitioner, the same would make no difference. As mentioned earlier, the notice dated 21st May, 2015 was admittedly received by the Petitioner. He was well aware of the arbitration proceedings. This becomes further clear from the letter written by the Petitioner to the Arbitrator dated 29th June, 2015 wherein the Petitioner contends that the documents before the Arbitral Tribunal were never been signed by him and Tribunal has no jurisdiction to enter upon the reference. Looking to these facts, I find no merit in the contention of the learned advocate for the Petitioner that the Petitioner was not duly served, and therefore, was unable to effectively represent himself before the Arbitral Tribunal. This contention, therefore, stands rejected.

agreement with the arguments canvassed on behalf of the Respondent. The Petitioner had full opportunity to appear before the Arbitrator and canvass this issue before it. In fact the Arbitral Tribunal would have been the proper authority before whom such a contention could have been raised, which would have examined this issue after both parties were allowed to lead their respective evidence. This not having been done by the Petitioner, it is too late for the Petitioner to contend before me in my limited jurisdiction under Section 34 of the Act that the documents relied upon in the arbitration proceedings and on the basis of which the impugned award is passed, are forged and fabricated. Not having raised these issues before the Arbitral Tribunal, the Petitioner cannot be allowed to raise them for the first time under Section 34 of the Act. Whether a document is forged and/or fabricated is squarely a question of fact which has to be firstly pleaded and then proved. Under Section 34 of the Act, this Court cannot reappraise the facts and re-appreciate the evidence led before the Arbitral Tribunal. In this view of the matter, I find that even the second contention raised by the Petitioner is without any merit.

15 No other contentions have been raised before me by the learned advocate for the Petitioner. For the reasons stated earlier, the Arbitration Petition is accordingly dismissed. However, there shall be no order as to costs.

(B.P.COLABAWALLA, J.)