

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

ARBITRATION PETITION NO.908 OF 2016

Mr. Manish Kumar Agarwal And Another ... Petitioners
Versus
M/s Reliance Capital Limited ... Defendant

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Mr. K.C. Jacob i/b Mr. Prashant V. Ingle for the Petitioners.
Dr. Abhinav Chandrachud a/w Ravi Goenka i/b Goenka Law Associates for
the Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 22 JUNE 2017

P.C.

. Heard learned Counsel for the parties.

2 This Arbitration Petition, filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenges an award passed by a Sole Arbitrator. The award was passed in the absence of the Petitioners herein (original Respondents to the arbitral reference).

3 It is apparent from the award that inspite of giving a number of opportunities to the Petitioners herein, the Petitioners never attended the arbitration reference nor filed their statement of defence. The Respondent (original Claimant in the arbitral reference) having complied with the mandatory requirements, such as filing of statement of claim, compilation

of documents with copies to the Respondents, after hearing learned Counsel for the Claimant, and after going through documentary evidence filed in support of the claim, learned Arbitrator proceeded to pass a reasoned award granting the Respondent's claim.

4 The claim itself arises out of an agreement of housing loan executed between the parties, in pursuance of which a sum of Rs.94,00,000/- was lent by the Respondent to the Petitioners. Upon a query by this Court as to what defence do the Petitioners have to the Respondent's claim on merit, learned Counsel for the Petitioners is unable to point out any credible defence. The only ground pressed before this Court by learned Counsel for the Petitioners is that the learned Arbitrator had been appointed as Arbitrator by the Respondent in some other references and this fact had not been disclosed by the Arbitrator in his letter addressed to the Petitioners on 14 February 2014. In this letter, the Arbitrator had claimed that *“this arbitral tribunal is totally an independent person not at all concerned in any manner with either of the parties i.e. the claimants company and the Borrower, Co-borrower, under the said loan agreement nor have any interest in relation to a dispute or disputes required to be adjudicated upon, in the above referred Arbitration reference.”* It is pertinent to note that this communication was addressed and the reference was acted upon prior to coming into force of the Arbitration & Conciliation (Amendment) Act, 2015. This amendment came into force retrospectively with effect from 23 October 2015. The requirement of disclosure as to whether the arbitrator has, within the past three years, been appointed as arbitrator on two or more occasions by any of the parties or affiliate of any of the parties, has been introduced by this amendment. There was no such requirement

prior to coming into force of this amendment. There was, accordingly, no obligation on the part of the Arbitrator to communicate in writing to the Petitioners the fact of his having been appointed as an arbitrator in other matters of the Respondent. Going by the provisions of Section 12 of the Arbitration and Conciliation Act, 1996, in the first place, it cannot be suggested that the mere fact that the Arbitrator was appointed as arbitrator in a couple of other references of the same party does not in itself signify or suggest that there were circumstances likely to give rise to a justifiable doubt as to his independence or impartiality. Besides, it is for the party, who complains of such circumstance/s, to apply first to the Arbitrator and invite a decision on the circumstance/s. This challenge procedure was not followed by the Petitioners. Learned Counsel for the Petitioners submits that the Petitioners were not aware of this circumstance, before the award was passed by the learned Arbitrator. It appears that after the award was passed (award was passed on 4 August 2014, though a copy was served on the Petitioners on 28 August 2014), the Petitioners moved an application under Section 16 (?) of the Arbitration and Conciliation Act, 1996, challenging the Arbitrator purportedly on the ground of his having been appointed as arbitrator in other arbitration proceedings, which fact was not disclosed in his letter dated 14 February 2014, and which gave rise to justifiable doubts as to his independence or impartiality. It is pertinent to note that there is nothing in the application to indicate as to when the Petitioners came into the knowledge of the Arbitrator's having acted as arbitrator in other arbitration proceedings initiated by the Respondent. All three letters referred to in this behalf, purportedly addressed by the Arbitrator to the Respondent's Advocate, are of a date much prior to 21 August 2014, when the application was moved by the Petitioners for

recusal of the Arbitrator.

5 In the premises, there is no merit in the contention of the Petitioners. The Arbitration Petition is, accordingly, dismissed. No order as to costs.

(S.C. GUPTE, J.)