

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2017

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

O.P.No.893 of 2017

1.Mr.Sasi Kumar,
S/o Lakshmi Narayanan,
Door No.1, Rediyar Street,
Thenpakkam, Cuddalore, Pin-607 402.

2.Mr.Sabari,
Door No.32, Perumal Koil Street,
Thirubuvani, Pondicherry, Pin-605 107.

3.Mrs.Hemamalini,
W/o Lakshmi Narayanan,
Door No.4, 6th Cross Street,
Pon Nagar, Pondicherry,
Pin-605 013.

..Petitioners

Vs.

M/s John Deer Financial India Private Limited,
Non-Banking Finance Company having its registered
Office at Tower XIV, Cyber City, Magarpatta City,
Hadapur, Pune-411 013 and its area office at GKs
Annexe, Old NO.3, New No.20, Pycrofts Garden Road,
Chennai-600 006. ... Respondent

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award passed by the learned Arbitrator in Arbitration Case A.C.P.(JDF) No.13366/43 of 2017 dated 12.06.2017 and for costs.

For Petitioners : Mr.P.Ravi Shankar Rao

For Respondent : Mr.Ashokapathy for
M/s Pass Associates

ORDER

Petitioners 1 and 2 are the borrowers with the petitioner No.3 as the guarantor. The first respondent is the company incorporated under the Companies Act, 1956. It is also a non-banking finance company. The petitioners approached the respondent and applied for financial assistance for the purchase of the machinery. This is for sugar cane harvesting. An agreement was entered into on 30.10.2014 for loan hypothecation and guarantee.

2. As the petitioners defaulted, after issuing notices, the respondent invoked arbitration clause. Before invoking arbitration clause, notices have been issued indicating the intention to invoke and also with respect to the appointment of the arbitrator, the petitioners did not respond. The learned Arbitrator also issued notices. These notices were returned as "unclaimed".

3. Learned counsel for the petitioners would submit that

either at the time of invoking the arbitration clause or thereafter during the proceedings, the petitioners were not put on notice. Therefore, the award will have to be set aside. To buttress his submission, the learned counsel has relied upon the judgment of the Apex Court in SACHIN GUPTA AND ANOTHER V. K.S.FORGE METAL PRIVATE LIMITED ((2013) 10 Supreme Court Cases 540).

4. The learned counsel for the respondent would submit that the "refusal" or "unclaimed" has to be deemed to be a service. The notices were served to the last known address of the petitioners. It is not their case that they were not aware of the default, in fact, they themselves have committed default and no attempt is made to make the payment. Award notices were issued to the very same address. Thus, no interference is required.

5. For setting aside the award, a person has to file a petition under Section 34 of the Arbitration and Conciliation Act, 1996, especially when the grounds are available for the above said purpose. Therefore, onus is on the petitioners to satisfy the contention raised. The existence of the agreement *inter se*

parties has not been disputed. Pursuant to the agreement, petitioners 1 and 2 were in fact purchased the machinery. The fact that the notices have been sent to the last known address of the petitioners are also not in dispute. As rightly submitted by the learned counsel for the respondent, a "refusal" or an endorsement indicating "unclaimed" has to be construed as proper service. In such view of the matter, this Court does not find that the procedure adopted by the learned Arbitrator cannot be found to be not in accordance with law. Added to that, the award was also served on the petitioners on the very same address. Therefore, this Court is of the view that the petitioners wilfully not appeared before the learned Arbitrator. The learned Arbitrator was not supposed to wait for the petitioners to come. It is not, as if, an ex-parte award was passed immediately. The learned Arbitrator passed an award on 12.06.2017. The initiation was on 21.04.2017. Therefore, this Court is of the view that no ground is made out to exercise the power under Section 34 of the Arbitration and Conciliation Act, 1996. The decision relied upon by the learned counsel appearing for the petitioners also has no application. In the said decision, the Apex Court has given a finding on the non service, which is not

the case before us.

6. However, this Court finds some force in the submission of the learned counsel for the petitioners insofar as the interest awarded is concerned. The learned Arbitrator awarded interest at 18%. Normally, the Courts would award interest either at 9% or 12% as the case may be. In such view of the matter, this Court is inclined to modify the rate of interest from 18% to 12% per annum. With the above modification, the original petition stands dismissed. No costs.

raa

14.12.2017

सत्यमेव जयते

WEB COPY

M.M.SUNDRESH,J.

raa



O.P.No.893 of 2017

WEB COPY

14.12.2017