

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 24.01.2017**

Date of Reserving the Order	Date of Pronouncing the Order
12.01.2017	24.01.2017

CORAM :**The Honourable Mr. Justice T.S.SIVAGNANAM****O.P.No.231 of 2014**

M.Venugopal Munaga
No.10, South Street,
Sriram Nagar,
Chennai - 600 018.

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Petitioner

Vs

1.M/s.Kotak Mahindra Bank Limited,
Rep., by its Legal Manager,
No.39, Montieth Road,
Chennai - 600 008.

2.S.H.Vinod Kumar Mishra,
Arbitrator,
D-1, Sudha Hospital,
Gokul Dham,
Goregaon East,
Mumbai 400 063

Respondents

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Prayer: Original Petition filed under section 34(1) of the Arbitration and Conciliation Act, 1996 to set aside the award passed by the second respondent/Hon'ble Arbitrator in Claim Petition No.L-9/206 of 2010, dated 22.10.2010.

For Petitioner : Mr.V.V.Sairam

For Respondents : Mr.S.Namasivayam

ORDER

This Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, (Act) to set aside the award passed by the second respondent, Arbitrator, on a claim petition filed by the first respondent finance company. The petitioner herein availed a credit card facility from the first respondent and defaulted in payment of the dues. A legal notice dated 19.09.2009 was issued to the petitioner by the first respondent claiming a sum of Rs.1,45,741.56ps. Though the legal notice was served on the petitioner as he failed to pay the amount, the first respondent invoked clause 32.2 of the card holders agreement, which provides that any dispute or difference or claims arising out of or in connection with or in relation to the agreement shall be settled by Arbitration in accordance with the provisions of the Act. The dispute having been referred to the Arbitrator, the Arbitrator is stated to have issued notices to the petitioner and the notices returned with endorsement "no such addressee" or "left". Ultimately, the Arbitrator passed the award dated 05.09.2010, for a sum of Rs.1,82,607.06ps. This award is put to challenge in this petition.

2. Mr.V.V.Sairam, learned counsel for the petitioner

<https://hcservices.ecourts.gov.in/hcservices> that after the initiation of the Arbitration proceedings, no notice with regard to initiation of

Arbitration proceedings was served on the petitioner and this is sufficient to set aside the impugned award. Further, the Arbitrator did not give any notice to the petitioner that he is going to set the petitioner *exparte* and this is a mandatory duty cast upon the Arbitrator. It is further submitted that the notices were sent to the wrong address of the petitioner, which will go to prove that if the first respondent had sent notices to the correct address and if the Arbitrator had sent notice to the correct address, the petitioner would have responded to the same and without making any reasonable enquiries as required under Section 3(b) of the Act, the petitioner has been condemned unheard. However, in the Execution Petition, the first respondent has mentioned the correct address of the petitioner which would go to show that no enquiry was made while initiating arbitration proceedings. In support of his contentions, the learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Dharma Prathishthanam vs. M/s.Madhok Construction Pvt., Ltd.***, reported in **2004 (5) CTC 442** and the decision of the Delhi High Court in the case of ***Union of India vs. The Kohinoor Tarpaulin Industries*** reported in **2009 (156) DLT 106** and ***M/s.Lovely Benefit Chit Fund and Finance Pvt., Ltd., vs. Puran Dutt Sood & Ors.***, reported in **AIR 1983**

Delhi 413(1).

3. Mr.S..Namasivayam, learned counsel for the first respondent company submitted that there is no reason for the first respondent to send the notice to an incorrect address and the notice was sent to the petitioner in the address given in the agreement, the last known address of the petitioner and this is in compliance of Section 3(a) of the Act. After resorting to proper procedure, the learned Arbitrator has passed the impugned award and when the award was to be executed the team of officers in Chennai had made extensive enquiry and investigation and were able to ascertain the present place of residence of the petitioner and the said address has been given in the Execution Petition and this is not a ground on which the impugned award could be set aside. Further, it is submitted that the scope of Section 34 of Act is limited and this Court will not interfere with the speaking award. Further, it is submitted that the decisions relied on by the learned counsel for the petitioner are under the 1940 Act and cannot be applied to the present proceedings.

4. I have heard the learned counsels appearing on either side and perused the materials placed on record.

5. The challenge to the impugned award is primarily on the ground that the petitioner was not given proper notice by the Arbitrator at the commencement of the Arbitration

and during the proceedings. This submission is sought to be buttressed by referring to the Execution Petition filed by the first respondent to execute the award and it is pointed out that in the Execution Petition, the present residential address of the petitioner had been given correctly and only after the petitioner received notice in the Execution Petition, he came to know about the *exparte* award passed against him. Thus, it is the submission of the learned counsel for the petitioner that the petitioner has been condemned unheard and the proper procedure for the Arbitrator is to send notice to the correct address and Section 3(1)(b) states that if the known place referred to in clause (a) of Section 3(1) can be found after making a reasonable enquiry, a written communication is deemed to have been received, if it is sent to the addressee "last known place of business". Therefore, it is submitted that to draw a presumption of service of notice, the first respondent should have made a reasonable enquiry and without doing so, the arbitration proceedings commenced and culminated in an award. The petitioner does not deny that he availed credit card facility from the first respondent nor has specifically denied the claim made by the first respondent. The challenge to the impugned award is only on the ground of violation of principles of natural justice.

letter dated 21.05.2010, which was sent by speed post to the parties to appear before the learned Arbitrator on 26.06.2010. The claimant company was represented, but none appeared on behalf of the petitioner herein. Another notice dated 21.08.2010, was issued to the petitioner vide speed post and in spite of such notice, he did not appear. Further, the notices specifically stated that it is being sent to the "last known address of the respondent". The original files which were called for from the learned Arbitrator shows that the petitioner is not the only defaulter, but there are several defaulters and the petitioner was conscious of the fact that in terms of the agreement between the parties, the notice would be sent to the "last known address". The reference to arbitration by the first respondent is by letter dated 17.11.2009, which pertains to about 450 defaulters. Thus, the contention of the petitioner that reasonable enquiry was not done is not well founded, as Section 3(1)(a) states that any written communication is deemed to have been received, if it is delivered to the addressee personally or at his place of business, habitual a residence or mailing address. Thus, the address mentioned in the agreement is the address furnished by the petitioner. The petitioner has not furnished any change of address and in the application form signed by the petitioner while availing the credit card facility both the addresses given by the petitioner are one

and the same. Therefore, the procedure adopted by the first respondent as well the Arbitrator would be saved in terms of Section 3(1)(a) of the Act. The contention has been raised that when the first respondent was able to ascertain the correct address and filed the Execution Petition, such attempt should have been made even at the time of initiation of arbitration.

7. It is to be noted that the petitioner agreed that the arbitration will be at Mumbai and the agreement states that the notice of the proceedings would be sent to the "last known address". This has been complied with. After the award was passed, the first respondent office at Chennai filed Execution Petition in E.P.No.4248 of 2013, on the file of the 10th Assistant Judge, City Civil Court at Chennai. It appears that the Execution Petition was returned by the Executing Court and thereafter investigation was conducted presumably for the purpose of ascertaining the whereabouts of the petitioner. After such exercise, the Execution Petition was re-presented after ascertaining the petitioner's whereabouts. Thus, this exercise done by the office of the first respondent at Chennai can hardly have any bearing on the arbitration proceedings, which were conducted at Mumbai based on agreed terms. All the decisions relied on by the learned counsel for the petitioner arose under the provisions of the

Arbitration Act, 1940, the scheme of the Act is entirely different and factually the cases are distinguishable and cannot be made applicable to the facts and circumstances of the case. Above all, this Court exercising jurisdiction under Section 34 of the Act will not convert itself as an appellate Court over the reasoned award passed by the learned Arbitrator.

8. Hence, for all the above reasons, the petitioner has not made out any grounds for setting aside the impugned award and accordingly, the Original Petition fails and it is dismissed.

sd/.T.S.S.J

24.01.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/10.02.2016

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

COURT OFFICER

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