IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2017

CORAM

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

Original Petition No.585 of 2012

R.Sivakumar .. Petitioner

Vs.

1.M/s.Kotak Mahindra Bank Limited,
4th Floor, Ceebros Centre,
Montieth Road, Egmore,
Chennai - 600 008.

2.R.Hamsaveni,
Sole Arbitrator,
No.77/155, 4th Floor,
Broadway,
(Opp. to Police Quarters
Bus stop),
Chennai 600 108. .. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 10.08.2012 passed by the second respondent.

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For Petitioner : Mr.P.Muthusamy

For Respondents : Ms.Keerthana
for M/s Nathan & Associates
for R.1.

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ORDER

Seeking to set aside the award dated 10.08.2012 passed by the second respondent, the present Original Petition has been filed.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent.

3. A loan agreement was entered into between the petitioner and the first respondent on 24.09.2007. The petitioner was a borrower of the loan. Pursuant to the aforesaid agreement, certain amount was paid in favour of the petitioner. The petitioner defaulted in making payment with reference to the communication dated 26.03.2010 sent by the first respondent to the petitioner, the petitioner contended that the said communication has been complied with letter in spirit. But, the first respondent, as per the agreement entered into between the parties, made a claim before the Arbitration Tribunal claiming the due amount.

4. The claim was quantified as on 22.06.2012 before the learned Arbitrator. The first respondent herein marked Exs.A.1 to A.5.

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Ex.A.4 is the loan recall notice and Ex.A.5 is the statement of accounts.

5. The learned Arbitrator recorded the finding that the first notice dated 16.07.2012 sent to the petitioner herein being the borrower was returned with an endorsement "no such person". Then, the same was sent to the guarantor viz., T.Ramalingam, second respondent before the learned Arbitrator and it was returned with an endorsement "unclaimed". Accordingly, second notice dated 27.07.2012 was sent to the petitioner's alternative address herein, and the same was returned with an endorsement "refused". Satisfied with the compliance of the procedure in serving notice, the matter was proceeded with on merit and an award was passed for a sum of Rs.4,14,911/- with interest.

6. The learned counsel for the petitioner made the following two submissions:

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(i)The first submission is with respect to discharge pursuant to the letter dated 26.03.2010, that is one time closure letter.

(ii)The second submission is with respect to non service of notice by the learned Arbitrator. Incidentally, one more submission has been

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made by him that the guarantor was no more even during the process of service of notice.

7. The learned counsel for the first respondent submitted that even the receipts filed by the petitioner would show that what was paid only is a partial payment. Reliance has been made on the receipt dated 18.06.2010. Therefore, after giving credit, the claim was made. Thereafter, the petitioner was served with notice to his last known address. The learned Arbitrator has correctly recorded the fact that the petitioner has refused to receive the notice sent to the alternative address. Award was passed after perusing the records especially Exs.A.4 and A.5. Thus there is no interference required.

8. Coming to the issue pertaining to discharge, it cannot be gone into by this Court under Section 34 of the Arbitration and Conciliation Act, 1996. One thing is clear that the petitioner had received the one time closure letter dated 26.03.2010 and thereafter, certain payments have been made. Therefore, this Court cannot give a finding on the fact that discharge has been made.

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9. It is the case of the first respondent that for the claim, a due approach has been made for payment under one time closure letter. But, the petitioner has not paid his claim and not made the plea of discharge even before the learned Arbitrator. Therefore, it is not open to the petitioner to raise the plea of discharge and to substantiate it before this Court.

10. On the second submission, admittedly, notice was sent to the last known address. Earlier, the petitioner enclosed the consequential letter dated 26.03.2010, which was sent to the last known address. There is no need for the first respondent to send a communication to some other address other than the address given by the petitioner at the time of entering into the agreement. Further, the learned Arbitrator, did send another communication to the alternative address of the petitioner but, the petitioner has refused to receive the notice.

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11. It is settled law that refused to receive notice is to be taken as a deemed service. Therefore, the second contention raised by the learned counsel for the petitioner is erroneous.

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12. The question as to whether the guarantor was served or not is irrelevant. When the petitioner is the borrower and there is no discharge as per the agreement that was entered into between the parties and the petitioner did not raise any objection before the learned Arbitrator vide letter dated 26.03.2010, this Court does not find any merit in this petition.

13. The learned counsel for the petitioner has made one more submission with respect to the interest portion that interest at the rate of 18% is too high. This Court deserves to consider the same. Normally, interest that is being levied by the Court is only 12% per annum. In such view of the matter, the award of interest at 18% per annum is reduced to 12% per annum.

With the above mentioned modification, this petition is disposed of. No costs.

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Index:Yes/No

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M.M.SUNDRESH,J.

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