

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

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

Original Petition No.262 of 2016

1.Bahid
2.Aabid

.. Petitioners

Vs.

1.M/s.Sundaram Finance Ltd.,
21, Patullos Road,
Chennai - 2, Tamil Nadu.

Also having its Branch office at
SCO: 35-36, First Floor,
Sector 12A, Commercial Complex,
Old Delhi - Gurgaon Road,
Haryana - 122 001.

2.K.Balasubramanian,
Arbitrator,
District Judge - Registrar General
(Retd.), Madras High Court,
No.18/009, Jeevan Bhima Nagar,
Anna Nagar West Extension,
Chennai - 101.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 15.04.2015 passed by the second respondent in Arbitration Case No.KB/SF/284 of 2014.

For Petitioners : Mr.C.C.Sivakumar

For Respondents : Mr.S.Suresh for R1

ORDER

Seeking to set aside the award dated 15.04.2015, the present Original Petition has been filed.

2.The first petitioner executed a loan agreement as borrower. The second petitioner is the guarantor. This was for the purpose of purchasing a commercial truck. As the petitioners defaulted in making the payment, notices were issued. Despite the same, no amount was paid. Therefore, the first respondent invoked the arbitration clause. Before the learned Arbitrator, the petitioners did not appear. After the award was passed, execution proceedings were initiated. At that point of time, the petitioners applied for certified copy of the order and thereafter filed this original petition inter alia contending that they have been kept in dark throughout.

3.Learned counsel appearing for the petitioners would submit that the petitioners were not put on notice. They came to know about

the award passed only during the execution proceedings. Further, there is no credit given for the payment made and the interest levied is excessive.

4.Learned counsel appearing for the first respondent produced the records pertaining to the award. Based upon the same, it is submitted that all the notices sent were received. There is no change of address involved. If the petitioners could appear in the execution petition, the same logic would apply for the hearing before the learned Arbitrator as well. Hence no interference is required.

5.A perusal of the records would show that the legal notice was issued to the petitioners by the first respondent pursuant to the communication sent earlier. An agreement entered into under Ex.C1 dated 15.04.2013 by way of loan agreement followed by the guarantee given by the second petitioner are not in dispute. Learned Arbitrator issued notices to the petitioners for their appearance on 07.01.2015 dated 02.12.2014. The notices were refused to be received by the petitioners as seen from the returned cover dated 29.12.2014. Therefore, it has to be taken as proper service of notice. There is no difficulty in holding that the refusal would amount to proper service.

Similarly, the subsequent notice dated 06.02.2015 was also returned with the endorsement "refused". The award passed was despatched on 25.07.2015. The same methodology was once again adopted by the petitioners, as seen from the returned cover dated 04.08.2015.

6.From the above, it is quite clear that the petitioners are consistent in not appearing before the learned Arbitrator. It is also not in dispute that the petitioners are residing in the very same address. When they appear before the executing court to contest the matter, there is no justification for not appearing before the learned Arbitrator. As recorded above, the existence of the guarantee letter and loan agreement are not in dispute. A perusal of the award would show that due credence has been given to the payment made. Therefore, even the Original Petition before this Court is not maintainable being barred by limitation. The Original Petition was filed before this Court on 17.03.2016 despite the fact the award was passed on 15.04.2015 and refused to be received by the petitioners on 25.07.2015. Hence, looking from any perspective, this Court is not inclined to allow this Original Petition.

7.However, this Court finds some force in the submission made

by the learned counsel for the petitioners. The award of interest at 18% per annum is excessive. Normally, interest that is being levied by the Courts 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.

8. With the above modification in rate of interest, the Original Petition stands dismissed. The deposit of Rs.3,00,000/- (Rupees Three Lakhs only) with interest made by the petitioners in compliance with the interim order passed by this Court is permitted to be withdrawn by the first respondent. No costs.

10.11.2017

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Note: (i) Issue copy of the order on 15.11.2017

(ii) Records pertaining to the Award are returned to the learned counsel for the first respondent in the Open Court.

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M.M.SUNDRESH,J.

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