

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

CORAM

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

Original Petition No.621 of 2010

A.Ramakrishnan .. Petitioner

Vs.

1.Barclays Bank PLC,
801/808, CEEJAY House,
Shivasagar Estate,
Dr.Annie Besant Road,
Worli, Mumbai – 400 018.

2.Mr.Justice V.R.Datar (Retd.),
C-501, Silver Birch,
Vasant Garden, Swapna Nagari,
Off. LBS Marg, Mulund (West),
Mumbai – 400 080.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award passed by the second respondent dated 27.04.2010.

For Petitioner : M/s.Rank Associates

For Respondents : No appearance for R1

ORDER

Seeking to set aside the award dated 27.04.2010 passed by the second respondent, the present Original Petition has been filed.

2.The petitioner applied for loan from the first respondent. Accordingly, a sum of Rs.4 lakhs was disbursed to the petitioner on 06.05.2008. The agreement does contain an arbitration clause.

3.Admittedly, the petitioner went in default. Therefore, the arbitration clause was invoked. The learned Arbitrator viz,the second respondent issued a notice dated 04.09.2009 informing the reference entered on 05.10.2009, to which, the petitioner gave the following reply:

"1.You have disclosed that you are an empanelled Arbitrator for Barclays Bank PLC, to act as an Arbitrator in references made by the said Bank.

2.You have also disclosed that you are paid a fixed fees for each Arbitration proceedings.

3.You have also said that any pleadings or

application for interim relief will not be entertained by post/courier/hand delivery/through messenger, except advocate.

4.You have also indicated that my failure to appear before you on 08.10.2009 will result in your proceeding with the matter exparte against me.

From the above, I am of the earnest opinion that I will not get an unbiased and fair conclusion in your hands. It is pertinent to point out that Barclays has not even asked for my consent for nominating you as an Arbitrator. It is very unfortunate that you have pre-decided the matter, by sending a standard letter, stating that no pleadings will be entertained by post.

In the circumstances, I earnestly request you to recuse yourself from the reference, enabling me to approach the Hon'ble Court under Section 11 of the Arbitration and Conciliation Act, 1996."

4.Despite receipt of the same, it appears that the second respondent proceeded with the arbitration proceedings. In the interregnum, on 29.10.2009, the first respondent sent a notice to the petitioner asking him to pay the amount within 24 hours by way of one time settlement. The aforesaid amount was paid by the petitioner subsequently in instalments and the last of the same being 31.12.2009. According to the petitioner, earlier, the period granted for one time settlement granted was extended by the first respondent.

5.On 27.05.2010, notice was issued by the first respondent to the petitioner informing him that the award was passed by the Arbitrator viz., the second respondent on 27.04.2010. On receipt of the same, the present petition is filed.

6.Despite notice having been served, none appears for the respondents.

7.As rightly submitted by the learned counsel appearing for the petitioner, the award is likely to be interfered with and set aside for more than one reason. It is a case of likelihood of bias. Secondly, the award did not take note of the subsequent proceedings inclusive of the requisite payment made by the petitioner. When it is the case of likelihood of bias, what is required is the subjective satisfaction. The

learned Arbitrator did not even consider the objection raised by the petitioner. Hence looking from any perspective, this Court is of the view that the award is liable to be set aside. Accordingly, the award dated 27.04.2010 stands set aside and the original petition is allowed.

No costs.

11.10.2017

mmi



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M.M.SUNDRESH,J.

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