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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27th September, 2017

FAO(OS) (COMM) 182/2017 & CM Nos.35501-06/2017

SANGEETA CHADHA AND ORS Appellants
Through Mr.N.M.Popli and Mr.V.M. Popli,
Advts.

versus

BANSAL CEDITS LTD Respondent
Through Mr.Kunal Madan, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

Sangeeta Chadha, N.K. Chadha and Anil Chadha in this appeal under Section 13(1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts, 2015 impugn the final judgment and order dated 07.03.2017 passed by the learned Single Judge in OMP (COMM) 456/2016, dismissing their objections under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'A & C Act').

2. The appellants, vide the said objection petition, had challenged the ex-parte arbitral award dated 19.10.2015 passed by the sole arbitrator Mr. R.C. Vashist.

3. The impugned order holds that the objections were barred by limitation. The award dated 19.10.2015 was duly served upon the

appellants by registered post on 21.10.2015. The objections under Section 34 of the Act filed on 3.10.2016 were barred by limitation.

4. The appellants' contend that the award was served on a different address, namely, III-E/26, Nehru Nagar, Ghaziabad, whereas the appellants were residents of III-E/126, Nehru Nagar, Ghaziabad. The said contention was rejected by the single judge, after noticing that the registered post was delivered to one of the appellant, i.e. Anil Chadha, whose Mobile No.9810000603 was recorded on the delivery receipt.

5. We agree with the learned Single Judge that the objection petition was clearly barred by the limitation as per Section 34 (3) of the A & C Act.

6. The appellants had also failed to appear before the Arbitrator. The award dated 19.10.2015 is an ex-parte award. This is a case of multiple and repeated defaults.

7. The main grievance raised by the appellants is that the learned Single Judge should not have examined and commented on the merits, if the objections were barred by the limitation. Learned Single Judge had examined and considered the objections on merits for the benefit of the appellants and to ensure that no injustice was done. We do not appreciate and find merit in the said contention.

8. Learned counsel for the appellants has submitted that the appellants had not borrowed and taken loan of Rs.1,00,00,000/-. Even if we add Rs. 48,09,305/- and Rs.23,00,000/-, the total amount would be Rs.72,09,305/-. The Arbitrator had erroneously taken the borrowed amount as Rs.1,00,00,000/- and has pronounced the award.

9. Same contention was examined and rejected by the learned Single Judge, who has observed that there was earlier loan agreement dated 31.03.2011, being Agreement No.5081-P-28/2011, and Rs 48,09,250/- was given as loan. Rs.77,00,000/- was outstanding in this agreement, when the Agreement No.S-5613-P-28, dated 14.06.2013, was executed. At that time, the appellant No.1 Sangita Chadha had written the letter dated 28.03.2012, followed by another letter dated 14.06.2013. The second letter refers to Rs. 77,00,000/- as the payment due under the loan agreement as per the list attached. The appellant, Sangeeta Chadha was paid Rs.23,00,000/- by RTGS in her account. Outstanding amount of Rs.77,00,000/- due under the Agreement No. 5081-P-28/2011 dated 31.3.2011 was discharged by passing book entries and transferred to the new Agreement No. S-5613-P-28 dated 14.06.2013. The plea raised by the appellants is sham and not bona fide. This contention was not raised by the appellants before the Arbitrator as they have failed to appear and contest the proceedings.

10. Along with present appeal, the appellants have filed CM No.35502/2017 for taking on record additional documents, being annexures P-6 to P-8. Annexure P-6 is a copy of the petition under Section 9 of the Act filed by the respondent. Annexure P-7 is a copy of the notice dated 06.02.2015 sent by the sole Arbitrator to the appellants and Annexure P-8 is the order passed on 16.03.2015 by the Additional District Judge on the application under Section 9 of the Act holding that the Court lacks pecuniary jurisdiction. After the order dated 16.03.2015, the respondent had filed OMP (I) No.225/2015 before Delhi High Court under Section 9 of the Act and by order dated 18.05.2015 notice was directed to be issued to the appellants. The appellants were restrained from selling,

parting or creating any third party interest in respect of the property bearing No.III-E/126, Nehru Nagar, Ghaziabad, UP. On 10.09.2015 the appellants had entered appearance. The Court on the said date had directed that the matter be listed before Delhi High Court Mediation and Conciliation Centre on 21.09.2015 at 4.00 p.m. The OMP was listed on 15.12.2015 for reporting the outcome of the mediation proceedings. Interim order was directed to be continued. It is submitted that the award was passed on 19.10.2015. Mediation had failed. The orders in the mediation proceedings are not filed. They are withheld. In the absence of the relevant documents we would not assume that the mediation proceedings were still pending when the award was pronounced. The arbitration proceedings were not stayed. Moreover, this does not explain the failure and lapse to challenge the arbitration award, within the limitation period.

11. In view of the aforesaid position, we are not inclined to issue notice on the application seeking condonation of delay of 80 days in re-filing of the appeal. We affirm the order passed by the learned Single Judge as do not find any infirmity in the same. The appeal, as well as all pending applications, are dismissed.

SANJIV KHANNA, J

NAVIN CHAWLA, J

SEPTEMBER 27, 2017/vp