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

\+ O.M.P. (COMM) 456/2016 & IA Nos.13429-13430/2016

SANGEETA CHADHA & ORS. ..... Petitioners

Through: Mr N. M. Popli, Advocate.

versus

M/S BANSAL CREDITS LTD. ..... Respondent

Through: Mr Kunal Madan and Mr Shyam, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 07.03.2017

<u>VIBHU BAKHRU, J</u>

1. The petitioners have filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning an arbitral award dated 19.10.2015 (hereafter 'the impugned award') rendered by the Sole Arbitrator, Sh. R.C. Vashist.

2. The present petition was filed on 03.10.2016, which is apparently beyond the period of limitation as specified in Section 34(3) of the Act. However, the petitioners claim that they had not received a signed copy of the impugned award and, therefore, the present petition is within time.

3. The petitioners further allege that respondent had played a fraud and had secured the impugned award by claiming that a loan of ₹1 crore was disbursed whereas infact the petitioners had only applied for a loan of

₹30,00,000/- and only ₹23,00,000/- had been disbursed by the respondent.

4. The present petition was listed for the first time on 27.10.2016 and on the said date, it was contended on behalf of the petitioners that out of a sum of ₹23,00,000/- disbursed to the petitioners, they had already returned more than ₹13,00,000/- and to show their *bonafides,* the petitioners would deposit a sum of ₹15,00,000/- within a period of three weeks. Notice in the petition was issued subject to the petitioners depositing the sum of ₹15,00,000/- with the Registrar General of this Court.

5. The petition was taken up again on 11.01.2017 and on the said date, the learned counsel for the petitioners submitted that he was carrying a demand draft aggregating ₹15,00,000/- and undertook to deposit the same by 13.01.2017. Since it was not disputed that at least a sum of ₹15,00,000/- was payable by the petitioners to the respondent, the Registry was directed to encash the said drafts and release the funds in favour of the respondent.

6. The respondent had filed a response to the present petition claiming that the impugned award was duly served upon the petitioners at the correct address. The respondent has also filed postal receipts along with its reply to indicate that the impugned award was dispatched to the respondents by registered post. Subsequently, the respondent also filed information received from the Office of the Senior Superintendent of Post Offices, Ghaziabad Division, Ghaziabad pursuant to an application under the Right to Information Act, 2005 which indicated that the postal "*articles were delivered to Shri Anil Chaddha whose mobile number is 9810000603*". An attested copy of the delivery slip was also attached with the response of the

postal authorities. The delivery slip indicates that the articles in question were delivered at the address III-E 126; the delivery slip bears the signatures of the recipient and the mobile number 9810000603.

7. The petitioners have flatly denied the receipt of the postal articles (the impugned award) and it is asserted that the signatures on the delivery slip are not that of any of the petitioners or their family members. Mr Popli, learned counsel appearing for the petitioners also contended that the address of the petitioners, being III-E 126, Nehru Nagar, is also similar to the address III-E/26, Nehru Nagar and, therefore, it is possible that the impugned award would have been delivered at the said incorrect address, which is also occupied by a family with the surname Chadha.

8. The attested copy of the delivery slip produced by the respondent establishes that the postal articles (stated to contain the impugned award) were received at the address of the petitioners. The person receiving the same had signed and also put the telephone number of petitioner no.3. A bare perusal of the signatures also indicates that the surname of the recipient is Chadha. Thus, the contention that the postal articles may have been delivered at a wrong address, cannot be accepted. The mobile number mentioned on the delivery slip is admittedly that of petitioner no.3 and it is not possible to accept that a person residing at III-E/26, Nehru Nagar would have accepted the postal articles addressed to the petitioners and also given the mobile number of petitioner no.3.

9. It is clear that the arbitrator had sent the impugned award by registered post which was duly received at the residence of the petitioners

and, therefore, the present petition is beyond the period of limitation.

10. In the given circumstances, it is difficult to accept that the petitioners had not received the copy of the impugned award sent by registered post. It is also not possible to accept that the postal authorities would have manipulated the delivery slip/ receipts to show the delivery of the postal articles at the address of the petitioners. Thus, this court finds that the present petition is not maintainable as having been filed beyond the period of limitation.

11. Notwithstanding that this Court finds that the present petition is barred by limitation, it is also considered apposite to examine the petition on merits as well.

Factual background

12. Briefly stated, the relevant facts necessary to consider the controversy in the present petition are as under:

12.1 The respondent is a company which is *inter alia* engaged in the business of providing loans and financial assistance to various borrowers. The petitioners are individuals and had availed the financial assistance from the respondent.

13. The respondent claimed that it had advanced a loan of ₹1 crore to the petitioner no.1, which was guaranteed by petitioner nos. 2 and 3. It is claimed that the said loan was also secured against equitable mortgage of the property bearing No. III-E 126, Nehru Nagar, Ghaziabad and the title deeds of the said property were also deposited with the respondent company. The

parties also entered into a loan agreement (being loan agreement no. S-6391-P-14) dated 14.06.2013.

14. The respondent claimed that the said loan was to be repaid in 59 monthly instalments. The respondent claims that the petitioners paid a sum of ₹13,40,000/- but defaulted in repayment of further instalments. Consequently, the respondent terminated the loan agreement on 07.05.2014. Thereafter the respondent sent a legal notice dated 18.11.2014 calling upon the petitioners to pay a sum of ₹1,37,09,516/- comprising of ₹1,08,73,594/- as instalments and ₹28,35,922/- as interest and incidental charges till 12.11.2014. The respondent also demanded further interest on the said sum at the rate of 3% per month from 13.11.2014 till realisation.

15. The petitioners responded to the aforesaid notice by a letter dated 06.12.2014 issued by their advocate simply denying their liability to pay the amount demanded without mentioning any particulars.

16. The respondent referred the disputes to Shri R. C Vashisht, who was named as the arbitrator in the loan agreement and filed the Statement of Claims. The arbitrator entered upon reference and by a letter dated 06.02.2015 forwarded the Statement of Claims to the petitioners and called upon the petitioners to file their objections. He also scheduled a hearing on 12.03.2015.

17. The petitioners responded to the said notice by a letter dated 07.03.2015 issued by their advocate. The petitioners alleged that the arbitrator was not impartial, however, the petitioners did not deny the existence of the loan agreement in question and did not make any allegation

that the same was fabricated or doctored.

18. The petitioners did not participate in the arbitral proceedings and were proceeded *ex parte*. The arbitrator considered the material on record and passed the impugned award awarding a sum of ₹1,45,07,714/- as on 20.01.2015 (₹1,08,73,594/- as instalments and ₹36,34,120/- as interest and charges till 20.01.2015). The arbitrator also awarded interest at the rate of 12% p.a from 21.01.2015 till the date of realisation.

19. In the meantime, the respondent also filed a petition under Section 9 of the Act [OMP(I) 255/2015] and on 18.05.2015, this court issued notice and also directed that *status quo* be maintained in respect of the property bearing no. III-E 126 Nehru Nagar, Ghaziabad. The matter was also listed for mediation however the same was not successful. The said petition was subsequently withdrawn on 26.04.2016. In the meanwhile, on 19.10.2015, the arbitrator published the impugned award and the respondent also moved the Court at District Judge Ghaziabad for enforcement of the arbitral award.

20. The petitioners allege that the arbitral award has been procured by fraud inasmuch as the petitioners claim that only ₹23,00,000/- had been disbursed by the respondent in the bank account of petitioner no. 1. It is alleged that the petitioners had signed the loan agreement in blank and the respondent had filled up the blanks to reflect a loan of ₹1 crore.

Submissions

21. Mr Matta, learned Senior Counsel appearing for the respondent had contended that the averments made in the petition were palpably false. He

drew the attention of this Court to the request letter dated 14.06.2013 issued by petitioner no.1 which indicated that the petitioner no.1 had requested for a loan of ₹1 crore out of which ₹23,00,000/- was to be disbursed in the bank accounts and ₹77,00,000/- was to be adjusted against other outstanding loans of petitioner no.1 and her family members, which were listed out in the annexure to her request letter.

22. Mr Matta also contended that petitioners' contention that they were not aware of the impugned award, was erroneous as the postal authorities had confirmed that the postal articles (containing the impugned award) were delivered at the petitioners' address. He contended that the respondent had initiated execution proceedings for enforcement of the impugned award before the District Court Ghaziabad and the counsel appearing for the petitioners had requested documents on 29.04.2016; pursuant to which, the same were provided to the counsel. He submitted that although the Court had not recorded that the documents had been received by the counsel, the orders passed subsequently indicated that no grievance regarding non-receipt of documents was made by the counsel appearing for the petitioners. And, this clearly implied that the documents including a copy of the impugned award had been received by the petitioners' counsel.

23. Mr N.M. Popli, learned counsel appearing for the petitioners disputed that any loan was transferred on the request of petitioner no.1. He also drew the attention of this Court to affidavits filed by petitioner no.2 affirming that the loans taken earlier had been duly repaid. The petitioner no.1 had filed an affidavit disputing the signatures on the request letter dated 28.03.2012 filed by the respondent.

Reasons and conclusion

24. At the threshold, it is necessary to observe that there is no dispute that the petitioners had availed a loan from the respondent. It is admitted that the petitioner no.1 had received a sum of ₹23,00,000/- by RTGS in her account. The respondent had claimed that in addition to the sum of ₹23,00,000/-,there were other loans outstanding against petitioner no.1 and other members of the family, which were discharged by passing book entries and including the outstanding amount in the amount of ₹1 crore under loan agreement. According to the respondent, outstanding amounts aggregating ₹77,00,000/- were transferred to the loan account of petitioner no.1 at her request and accordingly discharged.

25. The petitioners have disputed the same. The petitioners do not dispute that other loans had also been availed by the petitioners/family members. However, their case is that the said loans were repaid.

26. The principal component of the sum of ₹77,00,000/- is stated to be a loan of ₹49,00,000/- availed by petitioner no.1 on 31.03.2011. The respondent had filed a statement of its bank account indicating that a sum of ₹48,09,305/- was remitted by RTGS to the account of petitioner no.1 on 31.03.2011. Petitioner no.2 has filed an affidavit enclosing therewith a statement of the loan account No. S-5081-P-28/2011 indicating that a sum of ₹48,09,250/- was received by petitioner no.1 in her bank account. Thus, there is no material dispute as to the receipt of the aforesaid amount. Admittedly, the said sum was disbursed after deducting certain charges by the respondent, therefore, the minor discrepancy as to the amounts is not

material and it cannot be disputed that the sum of ₹48,09,305/- was remitted directly into the bank account of petitioner no.1.

27. However the petitioners state that the said loan was repaid. The respondent on the other hand disputes the same and has produced a letter dated 28.03.2012 addressed by petitioner no.1 to the respondent, which reads as under:-

> "DATE: 28/03/12
>
> M/S BANSAL CREDITS LTD.
>
> 1, ANSARI ROAD,
>
> DARYA GANJ,
>
> NEW DELHI.
>
> Reg.:- LOAN AGAINST PROPERTY OF RS. 49 LACS
>
> Sir,
>
> I, Sangeeta Chadha W/o Sh. Nand Kisore Chadha R/o III-E 126, Nehru Nagar, Ghaziabad (UP) inform you that I will not be able to repay the balance outstanding against Property under Loan Agreement No.S-5081-P-28. I request you to sanction a fresh loan of Rs. 49 Lacs against my Property for a period of 5 years so that I can gradually clear off my liability.
>
> I further request you to adjust this fresh sanction of Loan against Property of Rs. 49 Lacs against overdue payment in the Loan against Property under Loan Agreement No. S-5081-P-28.
>
> I shall be thankful to you.
>
> Thanking you
>
> Yours Faithfully

S/d

Sangeeta Chadha"

28. The aforesaid letter indicates that the loan disbursed on 31.03.2011 was not repaid.

29. The respondent has also produced another letter dated 14.06.2013 addressed by petitioner no.1, which reads as under:-

"DATE: 14/06/13

M/S BANSAL CREDITS LTD.

1, ANSARI ROAD,

DARYA GANJ,

NEW DELHI.

REG. :- LOAN AGAINST PROPERTY OF RS. 1 CRORE

Sir,

I, Sangeeta Chadha W/o Sh. Nand Kisore Chadha R/o III-E 126, Nehru Nagar, Ghaziabad (UP) along with my husband Sh. Nand Kishore Chadha and my brother in law Sh. Anil Kumar Chadha had approached your company and explained about our family transport business not running well as a result of which there are overdues in the loan against Property under loan agreement no. S-5613-P-28. Besides this there are heavy overdues against the vehicles financed under the guarantee of my husband Sh. Nand Kishore Chadha and my brother in law sh. Anil Kumar Chadha and also in the vehicles financed in their name by your Company. I am thankful that you considered our request and agreed to sanction a loan of Rs. 1Crore against my property at III-E

126, Nehru Nagar, Ghaziabad (UP).

I now request you to disburse the loan of Rs. 1Crore against my Property in the following manner:-

1. Rs.77,00,000/- (Rupees Seventy Seven Lacs Only) towards the overdue payments of the loan agreements as per the list attached.

2. Rs.23,00,000/- (Rupees Twenty Three Lacs Only) to be paid to me to bring the family business back on track.

I shall be thankful to you.

Thanking you

Yours Faithfully

S/d

Sangeeta Chadha"

30. The list annexed with the aforesaid letter refers to various loan agreements and the amounts outstanding against the said loans. The list included a specific reference to loan agreement No. S-5613-P-28 against which a sum of ₹49,00,000/- was shown as outstanding.

31. The respondent has also produced a loan agreement being S-5613-P-28 dated 28.03.2012 indicating a disbursal of ₹49,00,000/-. The said loan agreement is signed by the petitioner no.1. Petitioner no.3 has also signed the said agreement as a Co-guarantor. As per the said loan agreement, petitioner no.1 had agreed to repay a total sum of ₹79,67,500/- inclusive of interest at the rate of 21.46% per annum in 60 monthly instalments including

first instalment of ₹5,000/-, 58 instalments of ₹1,35,000/- and the final instalment of ₹1,32,500/-. The statement filed by petitioner no.2 as annexure A to his affidavit dated 01.03.2017 indicates that petitioner no.1 had received an amount of ₹48,09,250/- on 31.03.2011 (in loan agreement No.S-5081-P-28/ 2011) and the said loan was fully repaid by 06.07.2013. Thus, whereas according to respondent, the amount of ₹48,09,305/- disbursed under loan agreement No.S-5081-P-28/2011, was re-scheduled on 20.03.2012 (as loan No. S-5613-P-28) and subsequently included in the loan agreement pertaining of ₹1 crore (loan agreement no. S-6391-P-14), which was the subject matter of proceedings before the arbitrator. The petitioners on the other hand claim that the said loan was discharged in the manner as indicated in the statement of account annexed with the petitioner no.2's affidavit of 01.03.2017.

32. In the affidavit dated 01.03.2017, petitioner no.2 has, *inter alia,* affirmed certain entries reflected in the statement annexed to that affidavit which were made in cash and were not reflected by the respondent. If the said dates of the said entries as stated in the affidavit are co-related with the entries in annexure A to the said affidavit, it would be clear that it is the petitioners' case that the following amounts were paid in cash in discharge of the loan of taken by petitioner no.1 in the following manner:-

(i)₹5,00,000/- on 08.03.2013

(ii)₹4,00,000/- on 21.03.2013

(iii)₹5,00,000/- on 02.04.2013

(iv) ₹1,35,000/- on 30.04.2013

(v) ₹10,00,000/- on 15.06.2013

(vi) ₹9,00,000/- on 17.06.2013

(vii) ₹2,50,000/- on 06.07.2017

Total ₹ 36,85,000/-

33. Thus, it is the petitioners' case that, in aggregate, a sum of ₹36,85,000/- was paid in cash during the period of approximately four months from 08.03.2013 to 06.07.2013. Mr Popli was pointedly asked whether the petitioners have any evidence by way of receipts to show that the respondent had received any of the aforesaid payments allegedly made in cash. Mr Popli responded in the negative. He stated that no such receipts were available as according to the petitioners, the respondent did not issue receipts for payments received in cash.

34. The respondent is a company engaged in the business of extending credit. The agreements with petitioners have been documented and it is not possible to believe the petitioners' affidavit that they had paid a sum of ₹36,85,000/- in cash and were naive enough to do so without any acknowledgement. It is also relevant to mention that repayment of loan in cash for the sum specified above, is impermissible under the Income Tax Act, 1961 and is also contrary to law.

35. I am in no manner of doubt that the affidavit affirmed by petitioner

no.2 is false as there is no plausible reason as to why the petitioners would be compelled to make the payments in cash and that too without obtaining any receipts from the respondent company. Thus, in my view, the fundamental assertion that the petitioners had only received a sum of ₹23,00,000/- against a loan of ₹1 crore as claimed by the respondent, cannot be accepted and consequently, the petitioners are not entitled to any relief.

36. It is also relevant to note that it is not disputed that the petitioners were fully aware of the arbitral proceedings and that the arbitrator had under the cover of his letter dated 06.02.2015 forwarded the Statement of Claims filed by the respondent in terms of the agreement dated 14.06.2013. The petitioners had responded to the said notice through their Advocate challenging the authority of the arbitrator. However, they had not denied the agreement dated 14.06.2013. Plainly, if the agreement had been manipulated or fabricated to show a loan of ₹1 crore instead of ₹23,00,000/-, surely the petitioners would have made a mention of it in their response. However, the petitioners did not raise any issue regarding the genuineness of the agreement.

37. The petitioners have annexed the loan agreement dated 14.06.2013 (loan agreement No.S-6391-P-14) which expressly indicates that the petitioners have availed of a loan of ₹1 crore and had agreed to pay a sum of ₹1,65,00,000/- inclusive of interest at the rate of 22.18 % per annum in 59 monthly instalments, comprising of 58 instalments of ₹2,80,000/- each and last instalment of ₹2,60,000/-.

38. The agreement includes an arbitration clause. The arbitrator has

considered the evidence produced by the respondent and has made the award in terms of the agreement on the basis of the material on record. The petitioners having elected not to participate in the arbitral proceedings, cannot now make a grievance of the award being rendered *ex parte*.

39. In view of the above, this Court finds no ground to interfere with the impugned award even on merits. As discussed above, this Court finds the defence raised by the petitioners to be plainly dishonest and thus finds this a fit case for imposition of costs. The petition is, accordingly, dismissed both on account of being belated as well as on merits, with costs quantified at ₹2,00,000/-. The pending applications are also dismissed.

VIBHU BAKHRU, J

MARCH 07, 2017
RK