

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

+ **FAO No. 364/2017 & CM Appls. 32530/2017, 32531/2017, 32532/2017**

% **6th September, 2017**

KANIKA BANSAL Appellant

Through: Mr. Rishabh Gulati, Adv.

versus

INDIABULLS FINANCE SERVICES PVT. LTD. & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') impugning the judgment of the court below dated 11.04.2016 by which the objections filed by the appellant under Section 34 of the Act have been dismissed.

2. The respondent no.1/claimant filed arbitration proceedings for recovery of loan granted to the appellant and the

respondent no.3 herein. Appellant and the respondent no.3 were granted a loan of Rs.15 lacs on 29.09.2007 repayable in 36 equated monthly installments of Rs.56,513/-. Since the loan was not repaid, and the liability came to Rs.13,85,384.33/-, subject arbitration proceedings were initiated by the respondent no. 1/claimant.

3. In the arbitration proceedings, appellant failed to appear in spite of service. Appellant was therefore, proceeded *ex-parte* along with her husband/Sh. Rakesh Bansal/respondent no.3. Respondent no.1/claimant, during the course of arbitration proceedings thereafter led evidence, proved its claim by proving the loan agreement, demand promissory note, etc. Arbitrator thereafter passed the subject Award dated 27.11.2009 decreeing the claim for a sum of Rs.13,85,384.33/- along with interest at the of 12% per annum.

4. Appellant filed the following objections under Section 34 before the Court below:-

“Objections on behalf of the petitioner under section 34(1) of the Arbitration & Conciliation Act, 1996 read with provision under section 47 and under order 21 Rule 58 of the CPC.

Sir/ Madam,

It submitted as under:

1. That the decree holder filed execution on false grounds in the court of Mrs. Ritu Y.K. Behal, Additional District Judge Faridabad and same is fixed for 27.04.2013 and in the said execution the objector had appeared and filed the

objection but the objector had withdrawn the objections for filling in the court of proper jurisdiction and that is this Hon'ble court. It is pertinent to mention here that the award dated 27.11.2009 passed by the sole arbitrator, who is biased against the objector and towards the company and the sole arbitrator has no power, qualification to pass the award in the present matter. It is also pertinent to mention here that no notice under section – 21 of the act was never issued to the objector and no objection to the appointment of the sole arbitrator were invited to objector and the biased is prima facie from the fact that under section 9 of the act and the sole arbitrator proceeded ex-parte to the objector without any proper procedure.

2. That the arbitration award passed by the sole arbitrator dated 27.11.2009 against the law and facts of the case.
3. That no notice of the said award was served or received by the objector and she was proceeded ex-parte in that award which is totally against the law and fact and due to non service of the summons upon the objector in the Arbitration award, the award passed by the arbitrator is not binding upon the objector as she was not heard on merits and due to the said facts the rule of natural justice was snatched away by the arbitrator.
4. That the objector is made party by the decree holder because she was shown as a guarantor in the loan application as pleaded by the decree holder in the petition as well as in the execution petition whereas she had never signed any loan application as guarantor and never appeared before any concerned financial institution (India Bulls Finance). She was falsely implicated by the decree holder whereas she nowhere concerned with the said dispute or transaction.
5. That the present objection is filed by the objector under section 34 of the Arbitration and Conciliation Act as well as under Section 47 and order 21 rule 58 of civil procedure code because any question which is raised by any of the parties during the pendency of the execution as the law mentioned in the CPC and the question raised by the objector are necessary and need full for the rights, interest and title of the objector.
6. That the execution proceeding was pending in the court of Sh. Vimal Kumar Yadav, ADJ – IV, Tis Hazari Court and certificate of execution of award was issued on 23.03.2012.
7. That the court has the proper jurisdiction to try the matter and the cause of action has arisen in the jurisdiction of this Hon'ble Court.

PRAYER:

It is therefore prayed that the objections of the objector may kindly be accepted and the award passed to the extent of objector by the Arbitrator not to be executed in the light of the above facts and the circumstances and be declared as null not void and the execution proceeding may kindly be stayed and the objector may kindly be heard on merits.”

5. A reading of the aforesaid objections shows that the appellant did not state as to when she was served with a copy of the Award for the limitation of 120 days to commence for filing of objections to the Award. By the impugned judgment therefore it has been held that objections filed on 6.3.2013 to the Award dated 27.11.2009 were clearly barred by limitation. In my opinion, there is no infirmity in the findings of the court below that the objections under Section 34 of the Act were barred by limitation as in the objections it is not even pleaded as to when appellant received copy of the Award. In fact, the court below rightly notes that as per the arbitration record copy of the Award was duly served upon the appellant at the address bearing no.318, Sector-11(D), Faridabad, Haryana. I therefore hold that the court below has rightly dismissed objections as time barred.

6. Even on merits, appellant would have no case because it is seen that objections are wholly bereft of any legal or factual contents as required under Section 34 of the Act. Objections have already been reproduced above in its entirety and it is seen that once appellant was served in the arbitration proceedings but did not care to

appear, and the respondent no.1/claimant proved its claim, to such an Award there cannot be any valid objections under Section 34 of the Act. The order of the court below specifically notes that notices were served to the appellant both by registered AD post and UPC dated 25.6.2009 and the AD cards were returned back at the office of the learned Arbitrator. Once therefore the appellant chooses to remain *ex-parte* and does not contest the case, no objections on merits of the disputes can be addressed before this Court or under Section 34 of the Act before the court below.

7. The scope of challenge to an Award under Section 34 of the Act is limited. This challenge becomes further limited when the Award is an *ex-parte* Award deciding merits of the matter and where there is no defence of the appellant/objector. Therefore, the court below has rightly dismissed the objections filed by the appellant under Section 34 of the Act. The relevant observations of the court below in this regard are contained in paras 6 to 9 and which paras read as under:-

“6. Now, coming to the merits, the petitioner has taken the stand that she was never served with any notice issued by the Ld. Arbitrator. It has been further stated that the petitioner was totally unaware about the pendency of the arbitration proceedings before the Ld. Arbitrator.

7. In this regard, it has to be seen that the impugned award dated 27.11.2009 categorically states that the notices were sent to the respondent firm and the notices were also sent to the proprietor / borrower through Sh. Rakesh Bansal and the Guarantor Ms. Kanika Bansal through registered Post / UPC. It has been further stated that the notice upon the respondent firm was received back with the postal endorsement "addressee left", but, the notices, which were sent to the borrower and to the Guarantor Ms. Kanika Bansal were duly served upon them and AD cards were received back at the office of the Ld. Arbitrator. AD Cards are there on record in the proceedings conducted by the Ld. Arbitrator. AD card pertaining to the registered post, which was sent to the present petitioner, is there on record. Registered post was sent to the present petitioner and to the proprietor of the respondent firm Sh. Rakesh Bansal at the addresses, which were disclosed by the present petitioner and Sh. Rakesh Bansal as well in the loan documents. As such, I have no hesitation to hold that the abovesaid submission of the petitioner is fallacious.

8. The petitioner has further stated that she never appeared as a guarantor in the loan documents. It has to be seen that the letter of guarantee submitted by the petitioner is there on record. Perusal of the impugned award dated 27.11.2009 categorically reveals that the entire set of documents including the guarantee agreement, statement of accounts and every other material on record was scrutinized well by the Ld. Arbitrator and thereafter, the award dated 27.11.2009 was passed. As such, I am of the opinion that the abovesaid submission of the petitioner does not carry any weight.

9. Last, but, not the least, the petitioner has stated that Ld. Arbitrator was biased, but nothing has been mentioned in the entire petition as to how and in what way, Ld. Arbitrator was biased against the petitioner. As such, to my mind, the said allegation of the petitioner is merely a bald allegation in the absence of anything substantiative."

8. There is no merit in the appeal. Dismissed.

SEPTEMBER 06, 2017
ib/P

VALMIKI J. MEHTA, J