IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1030 OF 2016
ALONGWITH
NOTICE OF MOTION NO.176 OF 2017

Geeta Narayandas Shivdasani … Petitioner
Versus
Phoenix ARC Pvt Ltd. … Respondent

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Mr. K.T. Kukreja a/w Mr. Nilkanth Gharkar I/b Arvind Manghirmalani for the Petitioner.
Mr. Rohan Savant a/w Mr. Nikhil Rajani I/b V. Deshpande And Co. for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 8 OCTOBER 2018

O R D E R :

. Heard learned Counsel for the parties.

2 This petition challenges an arbitral award passed by a Sole Arbitrator in an arbitration reference between the parties. The Respondent herein (original claimant) claims to be an assignee of Barclays Bank PLC having the right to enforce the security interest created by the debtor in favour of the bank. The claim is in respect of a personal loan facility granted by Barclays Bank PLC to the Petitioner herein. The loan facility was for a sum of Rs.6,01,000/-, which was to be repaid in sixty months, in accordance with the schedule to the agreement, the last of such installments being due on 5 March 2013. It is not in dispute that there have been defaults in payment of installments due on and from 5 December 2018. The

Respondent invoked the arbitration agreement for the present reference on 29 January 2013. One of the issues raised before the sole arbitrator concerns the bar of limitation. It was contended by the Petitioner that the Respondent's claim was barred by limitation, since the default occurred on 5 December 2008 and the invocation was made on 29 January 2013, i.e. more than three years after the date of the default. The learned arbitrator, in his impugned award, negatived the Petitioner's contention in this behalf and held that the cause of action in the present case accrued when the notice calling upon the Petitioner to pay the outstanding dues was received by her on 29 March 2013 and that the claim was accordingly within time.

3 Learned Counsel for the Petitioner submits that the claim in the present case was clearly barred by the law of limitation, since, according to the agreement between the parties, the right to sue accrued to the Respondent-claimant when the first default was made by the Petitioner on 5 December 2008. Learned Counsel submits that the arbitrator having awarded a time barred claim, the award is in contravention of public policy of India and ought to be set aside by this court.

4 It is apparent from the record of the case that the agreement between the parties provided for repayment of the personal loan in sixty installments, the first of such installment being due on 5 March 2008 and the last on 5 March 2013. Though under the agreement between the parties, any failure on the part of the borrower to pay any EMI on or before due date of payment, was an event of default, on the occurrence of such event of default and at any time thereafter, the creditor had the right but not the obligation to recall the entire loan and demand immediate payment

of all amounts outstanding or payable, including any interest and overdue charges. It is the case of the Respondent-claimant that this recall was made on 29 January 2013. On the other hand, it is the case of the Petitioner that the recall was by a letter dated 12 July 2011. I need not decide this controversy, since whether the entire loan was recalled on 29 January 2013 or on 12 July 2011, the claim would still be within time. Learned Counsel for the Petitioner submits that the right to sue in the present case has accrued when the first default was committed by the Petitioner. That would be in the teeth of the agreement between the parties. The agreement between the parties gives to the Respondent-creditor a right to recall the entire advance but not an obligation to do so in the event of a default. In any event, the view taken by the arbitrator in this behalf is a pre-eminently possible view, which cannot be interfered with under Section 34 of the Arbitration and Conciliation Act, 1996.

5 Learned Counsel for the Petitioner relies on several judgments of this court as well as the Supreme Court in support of his case on limitation as also patent illegality committed by the arbitrator and breach of public policy. These judgments were delivered on the basis of the law as it stood prior to the amendment to the Arbitration and Conciliation Act, 1996, by Amending Act of 2016, namely, Act No.3 of 2016. Under the Arbitration Act, as amended by the Amending Act, it has been clarified that an arbitral award is conflict with the public policy of India only when it falls under either of the three circumstances mentioned in Explanation-1 to Clause (2)(b) of Section 34 of the Act. The relevant circumstance in the present case is contravention of the fundamental policy of Indian law. For the avoidance of doubts, it has also been clarified vide Explanation-2 that the

test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute. So also, it is clarified that an award shall not be set aside merely on the ground of erroneous application of law or erroneous appreciation of facts. The argument of learned Counsel for the Petitioners amounts to this. Despite there being a clear clause in the agreement between the parties, the learned arbitrator has wrongly applied Indian Law of Limitation by treating the date of 29 January 2013 as the date of accrual of cause of action as opposed to 5 December 2008. If an arbitrator takes a view on this aspect, however, that wrong view may be, so long as it is a possible view, it cannot be said that award is in conflict of public policy of India in the sense it is in contravention of fundamental policy of Indian Law.

6 Learned Counsel for the Petitioner also points out that the agreement between the parties was not signed by the Petitioner. He draws my attention to page no.40 of the arbitration petition and submits that the signature on that page does not belong to his client. Learned Counsel submits that this is mentioned in the written statement of the Petitioner. Whether or not a party has signed a contract, which forms the subject matter of an arbitration reference, is a pure question of fact. Aside of the fact that there was no evidence in this behalf led before the arbitrator, even if there had been evidence led and arbitrator had taken a certain view which can be demonstrated as a wrong view, the award is still not open to challenge. The arbitrator is the final master of a conclusion of facts.

7 In the premises, there is no merit in the arbitration petition. The Arbitration petition is dismissed.

8 In view of the dismissal of the arbitration petition, the Notice of Motion does not survive and the same is also disposed of.

(S.C. GUPTE, J.)