IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.450 OF 2017
WITH
NOTICE OF MOTION NO.1238 OF 2017
IN
ARBITRATION PETITION NO.450 OF 2017

Madanlal Aggarwal And Sons And 2 Ors. … Petitioners
Versus
Abhyudaya Co-Operative Bank Ltd. And Anr. … Respondents

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Mr. G.B. Kedia, a/w. Mr. M.G. Agre, for the Petitioners.

Mr. Vishal C. Ghosalkar, for Respondent No.1.

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CORAM : S.C.GUPTE, J.

DATED : 10 OCTOBER 2018

P.C.:

. Heard learned Counsel for the parties. This arbitration petition challenges an award passed by the sole arbitrator under Section 84 of the Multi-State Co-operative Societies Act.

2. The first Petitioner is a partnership firm, of which the other Petitioners are partners/legal heirs of deceased partners. The Petitioner firm was a constituent of the Respondent bank and had availed of a loan from the latter. The loan liability was not discharged and, as a result, the account of the firm was treated by the bank as NPA. A recovery notice was issued by the bank and, thereafter, arbitration proceedings were commenced under Section 84 of the Multi-State Co-operative Societies

Act. An award came to be passed for a sum of Rs.81.53 lakhs, which included principal amount of Rs.67 lakhs and balance interest. The award was challenged by the Petitioners before this Court. On that petition, this Court set aside the award and remanded the arbitration reference to the sole arbitrator for a fresh hearing in accordance with law. The arbitration reference, thereupon, re-commenced before the sole arbitrator. In the meantime, the Respondent bank took an action under the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) in respect of its security interest, namely, the shop premises of the Petitioners, which was mortgaged to it for repayment of the loan. The shop was, thereupon, sold under the SARFAESI Act and an amount of Rs.62 lakhs recovered from the sale was appropriated by the Respondent bank. After giving credit of this amount of Rs.62 lakhs towards its principal dues, the Respondent bank pursued its claim in the arbitration reference in respect of the balance principal amount of Rs.5 lakhs and interest. The sole arbitrator passed an award in favour of the Respondent bank in the sum of Rs.26,01,845.08 as of 31 July 2014 with interest on at the rate of 14.5% p.a. on the balance principal amount of Rs.5 lakhs with effect from 1 August 2014 and till payment or realization and also for costs. This award is the subject matter of challenge in the present petition.

3. Learned Counsel for the Petitioners submits that the award deals with a dispute not contemplated by, or falling within, the terms of the submission to arbitration and ought to be, accordingly, set aside under the provisions of sub-clause (iv) of clause (a) of sub-section (2) of Section 34 of the Arbitration and Conciliation Act, 1996. Secondly, learned Counsel submits that the arbitral procedure was not in accordance with the

agreement between the parties and the award deserves to be set aside even under sub-clause (v) of clause (a) of sub-section (2) of Section 34.

4. Neither of the contentions has any merit. Merely because the terms of submission to arbitration included the entire claim of Rs.81.53 lakhs, as at that day claimed to be due and owing to the Respondent bank, the reference considered by the sole arbitrator upon remand by this Court concerning the balance amount claimed as due and payable by the Respondent bank after giving credit for the amount realized by the sale of the mortgaged asset under the SARFAESI Act in the meanwhile, cannot be considered to be a dispute either not contemplated or falling within the terms of submission or containing a decision on any matter beyond the scope of submission. The submission was in respect of the entire claim, which was claimed as due and payable as at the date of the submission. If, during the course of the arbitration reference, there is any payment or adjustment towards the claim, obviously due credit will have to be given for that payment or adjustment, as the case may be, and that is precisely what has happened in the present case. Any claim, which is within the amount forming part of the submission, is within the submission. There is absolutely nothing on record to show that the arbitral procedure applied in the present case is not within the agreement between the parties. No submission is advanced in that behalf. None of the two contentions, accordingly, has any merit.

5. It is also submitted by learned Counsel for the Petitioners that the Respondent bank's claim was beyond limitation. The issue in respect of limitation was addressed by the sole arbitrator in his award as Issue No.3.

The arbitrator answered the issue against the Petitioners holding that under Section 85(1)(a) of the Multi-State Co-operative Societies Act, by which the parties were governed, limitation for filing a recovery proceeding is computed from the date, on which the member dies or ceases to be a member of the society and, on that basis, held the recovery proceeding to be within time. This is clearly a possible view and no fault can be found with the determination of the issue within the framework of Section 34 of the Arbitration and Conciliation Act, 1996.

6. Accordingly, there is no merit in the petition and the petition is dismissed.

7. In view of the dismissal of the petition, the notice of motion does not survive and the same is also dismissed.

(S.C.GUPTE, J.)