

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION PETITION NO. 652 OF 2014****M/s.Novelty Power and Infratech Ltd. & Ors. Petitioners****VERSUS****M/s.Shriram City Union Finance Ltd. Respondent**

Mr.Bhavin Gada, i/b. Mr.Vijendra Mishra for the Petitioners.

None for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 19th JANUARY, 2018****P.C.**

Learned counsel appearing for the petitioners states that the respondent has been served. The respondent has not filed any Vakalatnama or affidavit in reply to the arbitration petition though served. None appeared for the respondent when the matter was called out.

2. By this petition filed under section 34 of the Arbitration and Conciliation Act,1996, the petitioners have impugned the arbitral award dated 19th July, 2013 passed by the learned arbitrator allowing the claim made by the respondent directing the petitioners to pay a sum of Rs.16,67,421/- with interest at the rate of 3% per annum from default in payment i.e. 20th July, 2011 till date of filing of claim i.e. 12th January,2013 and also directing further interest thereon.

3. Some of the relevant facts for the purpose of deciding this petition are as under :-

4. It was the case of the respondent that the petitioner no.1 had approached the respondent for a loan of Rs. 20 lacs. The respondent has sanctioned a loan of the said amount in favour of the petitioners. The parties executed various documents. It is the case of the petitioners that the petitioners were insisted to sign those documents by the respondent. The dispute arose between the parties.

5. The respondent invoked arbitration agreement and appointed the learned sole arbitrator. The respondent filed a statement of claim of Rs.20,15,510/-.

6. It is the case of the petitioners that except two notices, i.e. dated 2nd January,2013 and 16th February,2013, the petitioners were not served with any notices by the learned arbitrator. The petitioners did not appear before the learned arbitrator on 9th January,2013, however appeared through an advocate on 9th March,2013 in response to the said notice dated 16th February, 2013. The petitioners through their advocates made an application on 19th March,2013 before the learned arbitrator for an adjournment to enable the learned arbitrator to direct inspection of documents to the petitioners from the respondent. The petitioners also applied for the directions against the respondent for inspection of the original documents and also to serve the copy of the claim application filed by the respondent before the learned arbitrator. It is the case of the petitioners that the respondent neither furnished any copy of the statement of claim nor furnished any inspection of the documents.

7. It is the case of the petitioners that the petitioners thereafter did not receive any notices from the learned arbitrator or from the respondent. The learned arbitrator made an award on 19th July, 2013 directing the petitioners to pay various amounts. The petitioners came to know about the said award much later and applied for certified copy of the arbitration proceedings vide their advocates' letter dated 10th October, 2013. Similar letter was addressed to the respondent by the petitioners through their advocates for certified copy of the arbitration proceedings. In the said letter, it was mentioned that the said award was rendered by the learned arbitrator *ex-parte*.

8. Learned counsel appearing for the petitioners invited my attention to some of the documents from the compilation of the arbitral proceedings which were furnished to the learned advocate representing the petitioners filed before the learned arbitrator. He invited my attention to the Roznama of the arbitral proceedings and would submit that except earlier two notices, none of the notices were furnished to the petitioners. He further submits that the respondents had filed statement of claim and various documents and during the course of the proceedings also filed affidavit of evidence. Neither the statement of claim nor the affidavit of evidence was served upon the petitioners by the learned arbitrator or by the respondent. He submits that no inspection of the documents was also furnished by the respondent to the petitioners though was prayed by the petitioners. He submits that the entire award is in violation of the principles of natural justice.

9. None appeared for the respondent though served. No affidavit in reply is filed.

10. A perusal of the record and proceedings of the arbitral proceedings produced on record clearly indicates that the learned arbitrator has allowed the respondent to file affidavit of evidence along with documents. A perusal of the award indicates that it is not the case of the respondent that such affidavit of evidence along with documents were served upon the petitioners. It is the specific case in the arbitration petition of the petitioners that even the statement of claim was not served upon the petitioners.

11. In my view, the learned arbitrator would not have taken affidavit of evidence along with documents on record in view of the fact that the copy thereof was not served upon the petitioners. The respondent has not disputed the averments made by the petitioners in the petition that except two notices, the petitioners were not served with any other notices of hearing or with the evidence and the documents.

12. In view of the fact that the averments made in the petition are not controverted by the respondent, I am inclined to accept the submissions of the petitioners that impugned award is in violation of principles of natural justice. In my view, the learned arbitrator has rendered an award in violation of principles of natural justice and without being giving appropriate opportunity to the petitioners of being heard and to represent their case before the learned arbitrator.

13. I, therefore, pass the following order :-

Interim award dated 19th July, 2013 rendered by
the learned arbitrator is set aside.

14. Arbitration petition is made absolute in the aforesaid terms. No
order as to costs.

15. The petitioners are directed to convey this order to the
respondent.

[R.D. DHANUKA, J.]