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

NOTICE OF MOTION NO. 401 OF 2018

IN

ARBITRATION PETITION NO. 217 OF 2018

Deepak Batra and Kumad Batra ... Plaintiffs
vs.
Karvy Financial Services Limited ... Respondent

Mr. Vivek Salunke i/b. Mr. Ramdas H. Patil for the Plaintiffs.
Mr. Omar Shaikh for the Respondent.

CORAM : A.K. MENON, J.
DATE : 23rd JULY, 2018

P. C.

1. This Notice of Motion is taken out by the petitioner seeking stay of the operation of the Award dated 6th May, 2017 passed by the Sole Arbitrator in a combined reference in respect of two loan agreements bearing nos. 417538 and 413897 dated 31st May, 2013. The petitioners were borrowers under two loan accounts. Considering the scope of the motion, by consent the Arbitration petition is taken up for hearing on admission.

2. Four submissions have been made in respect of the application for stay; Firstly, that the Tribunal has no jurisdiction to entertain the claim. Secondly, the witness who deposed on behalf of the respondent institution did not have any personal knowledge since he had joined the claimant after the loan was sanctioned

and availed of. Thirdly that certain amounts paid had not been given credit to and fourthly on the computation of interest.

3. I have heard the counsel for the petitioners in respect of their application for stay. As far as the first point is concerned clause 10.7(h) of the loan agreement which is described as "Secured Business Loan Agreement" reads as follows :

> *"10.7 (h) In the event of any dispute or differences arising under this Agreement including any dispute as to any amount outstanding the real meaning or purport hereof ("Dispute"), such Dispute shall be finally resolved by arbitration. Such arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any amendment or reenactment thereof, by a single arbitrator to be appointed by the Lender. The venue of arbitration shall be at Mumbai and the arbitration shall be conducted in English language."*

4. The agreement therefore clearly provides that in view of the disputes the document is executed by both the parties and there is no dispute about the fact that the contents of the loan agreement were known to both petitioners. Moreover the case is sought to be made out that the document were executed at New Delhi and therefore arbitration proceedings could not be held in Mumbai. In this respect the arbitration agreement contained in clause 10.7(h) is clear. The arbitration proceedings were to be held in Mumbai. The petitioners have also participated in the arbitration. They have led evidence of one Deepak Batra who was also cross examined. Thereafter written arguments were filed on behalf of the petitioner.

5. The learned counsel for the petitioner has invited my attention to the fact that one of the challenges in this petition is contained in ground "i" wherein the question of jurisdiction has been raised. It is also pointed out that the aspect of jurisdiction was also raised in the written statement in paragraph 7. However the fact remains that this argument on lack of jurisdiction has not been pressed at the time of hearing. It is evident from the fact that the written submissions did not canvass the objection to jurisdiction. On the other hand written submissions were addressed only on the merits of the matter. In any event even assuming in favour of the petitioner that the objection to jurisdiction was taken the arbitrator has dealt with the same in the award in paragraph 7 and 8 wherein it holds that clause 10.7(h) of the Secured Business Loan Agreement execution of which is not in dispute clearly provides that arbitration to be conducted at Mumbai and it was accordingly been acted upon. In the circumstances, there is no merit in the objection to jurisdiction.

6. The second objection viz the witness not having personal knowledge the same has been raised in ground "j" in the petition. Although in the written submissions it is contented that the document has not been proved, the petitioner has not denied execution of the document. On the other hand the mortgage is admitted and in paragraph 6 it is stated that the petitioner (respondent therein) was ready and willing to auction the mortgaged premises to recover the amount actually due and payable to the respondent. In the circumstances, there is no merit in this objection either.

7. As far as credit for part payments and interest computation is concerned there is nothing brought on record even before the Tribunal to support the ground that part payments made have not been given credit to or that interest rate applied was not the agreed rate. Although it is case of the petitioner that a sum of Rs. 18,90,615/- has been paid over, the petitioner is unable to demonstrate that these amounts have not been credited to the account. In any event these are matters which were to be considered by the Tribunal which on the other hand arrived at a finding that credit for part payments made had already been given as per Exh 29. In the circumstances, there is no merit in the challenge and the following order is passed;

(i) Arbitration petition is dismissed.

(ii) In view of the disposal of the Arbitration petition, notice of motion does not survive. Notice of Motion is also dismissed.

(iii) No order as to costs.

(A.K. MENON, J.)