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

ARBITRATION PETITION NO.416 OF 2017

Daljitsingh Matharoo And Another ... Petitioners
Versus
The Kapol Co-operative Bank Ltd.
And Another ... Respondents.

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Mr. Prakash Dhopatkar I/b Mr. S.K. Mhatre for the Petitioners.
Mr. R.M. Haridas for Respondent No.1.

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CORAM : S.C. GUPTE, J.

DATE : 8 OCTOBER 2018

P.C. :

. Heard learned Counsel for the parties.

2 This arbitration petition challenges an award passed by the sole Arbitrator appointed under Section 84 of Multi State Co-operative Societies Act, 2002. The dispute between the parties arises out of a loan agreement executed between them. The Arbitrator has awarded dues owed by the Petitioners to the Respondent-bank under this loan agreement. The grievance of the Petitioners against the impugned award is three fold. Firstly, it is submitted that the Petitioners were not allowed to cross examine the witness of Respondent No.1 bank (original claimant). Secondly, it is submitted that some of the payments made by the Petitioners have not been given credit of by the Respondent bank in its books; if these credits were to be considered, there would be no default on

the part of the Petitioners in repayment of the loan. Thirdly, it is submitted that there was no liability on the part of the Petitioners to pay any additional rate of interest as penal interest and the learned arbitrator has incorrectly awarded 2 per cent penal interest over and above the agreed rate of interest.

3 None of these grounds come within the available grounds of challenge under Section 34 of the Arbitration and Conciliation Act, 1996 as amended by the amending Act No.3 of 2016 ("Act"). Respondent No.1, who was the claimant in the arbitration reference, did not examine any witness. It relied only on admitted documents. If that is so, there is no right on the part of the Petitioners (respondents to the reference) to seek cross examination of the claimant. Not allowing such cross examination cannot be said to be either in contravention of the fundamental policy of Indian law or patently illegal. As for the argument concerning credit not being given of some of the payments and there being no cause of action to file a reference, the learned arbitrator has noted in his award, after referring to the sanction letter including the relevant clauses of repayment as also cheques given by the Petitioners in pursuance of the repayment clauses, that the Petitioners had agreed to repay the loan in thirty six equal monthly installments (EMIs) and that the extract of the loan account maintained by the claimant-bank made it clear that regular EMIs were paid till August 2011 and thereafter, there were defaults in payment of further EMIs; the cheques given by the respondent-debtors towards these further EMIs were dishonored upon presentation for payment due to insufficient funds; and that this clearly amounted to default in payment of installments as per regular terms, whereupon the claimant-bank had rightly classified

the account as NPA. No fault can be found with the observations of the learned arbitrator on this aspect within the parameters of Section 34 of the Act. As for the penal interest, the learned arbitrator has gone through the contract of loan and the particular clause concerning interest. Relying on the clause, which specifically refers to 2 per cent penal interest in case of a default, the learned arbitrator awarded penal interest @ 2 per cent per annum. Once again, no fault can be found with this part of the award within the grounds of challenge available under Section 34 of the Act.

4 Learned Counsel for the Petitioners lastly submits that Reserve Bank of India (RBI) had appointed an administrator for the claimant-bank and the officer of the bank, who had filed the statement of claim, had no authority to do so without the consent or authority of the Administrator. Besides the fact that there is nothing to suggest that the concerned officer had no authority or consent of the administrator, this is no ground of challenge permissible under Section 34 of the Act.

5 Accordingly, there is no merit in the arbitration petition. The Arbitration Petition is dismissed.

(S.C. GUPTE, J.)

Rajesh Vasant Chittewan

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Date: 2018.10.11 14:36:42 +0530