

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Original Petition No.199 of 2012

Mr.Naresh Kumar

... Petitioner

-vs-

1. M/s.IndusInd Bank Ltd.,
Rep. by its Manager / Executive-Legal,
New No.34, Old Nos.115 & 116,
G.N.Chetty Road, T.Nagar,
Chennai-600 017.

2. Mr.D.Saravanan,
Sole Arbitrator,
No.90(73), 4th Floor,
Armenian Street,
Chennai-600 001.

... Respondents

Prayer: This Petition is filed under Section 34 of The Arbitration and Conciliation Act, 1996 to set aside the Award dated 23.09.2009 passed by the Arbitrator in dispute between the petitioner and the Respondent No.1 in A.C.P.No.306 of 2009.

For Petitioner

: M/s.H.Mubena Almas

For Mr.M.J.Jaseem Mohamed

For R1

: Mr.K.Moorthy

ORDER

The Original Petition has been filed, seeking to set aside the Award dated 23.09.2009 passed in Arbitration Case No.306 of 2009, by which the

petitioner herein was directed to pay a sum of Rs.5,12,212/- to the 1st respondent herein.

2. The sum and substance of the issue on hand is that the petitioner herein and the first respondent / IndusInd Bank (in short “the Bank”) have entered into an agreement between themselves, as a result of which, the Bank had agreed to extend loan facility to the petitioner to the tune of Rs.13,26,720/- for purchase of Ashok Leyland 401 vehicle, with a condition to repay the loan in 46 monthly instalments. According to the 1st respondent, though the petitioner had repaid only Rs.8,78,930/- with several defaults, subsequently, despite the request of the Bank to settle the entire amount in terms of the agreement, the petitioner did not repay any amount due to the Bank, which resulted in initiation of arbitration proceedings in terms of Clause No.23 of the Loan Agreement and thereafter, the vehicle was repossessed and sold. As per the agreement, the petitioner will have to repay the amount together with interest and only a part of the amount was paid by the petitioner.

3. It is seen that on 30.05.2009, the dispute was referred to an Arbitrator and thereafter, the notice of first hearing was sent on 06.06.2009 and on 08.07.2009, notice along with the claim statement and documents sent to the petitioner herein were neither returned as served nor unserved and therefore, a

fresh notice was ordered, fixing the date of hearing as 19.08.2009, which was also returned unserved. It is pertinent to mention here that the notice, which was returned as unserved, could be deemed to be proper notice in view of the earlier decision of this Court in the case of **K.Vijaya Kumar vs. M/s.Shriram Transport Finance Co. Ltd., Represented by its Power of Attorney Holder Mr.S.Vardhan, Registered office at No.123, Angappa Naicken Street, Chennai - 600 001 and others [Original Petition No.627 of 2015] decided on 11.12.2018,** wherein it has been held as under:

“8.....Though the argument of the learned counsel for the petitioner that in case of non-service of notice, paper publication has to be effected, appears to be sound, the decision relied on by the learned counsel appearing for the 1st Respondent in the case of **P.T.Thomas vs. Thomas Job, (2005 (4) CTC 30)**, is against the Petitioner and the 3rd Respondent herein, as the Apex Court, while considering the issue with regard to service of notice, has held that when the postal authority returns a cover with the endorsement 'unclaimed', a presumption can be drawn that it has been served on the party.

9. In the decision rendered by the Bombay High Court in the case of **Francisco A. D'souza vs. L & T Finance Ltd., Mumbai (2015 SCC OnLine Bom 6864)**, it has been categorically held that when notices are sent at the last known addresses of the parties and the same have not been returned by the postal authority, it would amount to a deemed service of such notices. It was further held therein that it is suffice that notice has been sent to the last known address of the party as mentioned in the Agreement, unless and otherwise the party is able to produce a document to the effect that change of address was duly communicated.

10. In the case on hand, notices have been sent to the last known addresses of the Petitioner and the 3rd Respondent

herein. Hence, the contention of the Petitioner that the Award under challenge is an Exparte Award, cannot be accepted.....”

4. The main contention of the petitioner is that the signature, which is said to have been made by the petitioner on the acknowledgment card does not match with his actual signature and therefore, the acknowledgment card cannot be relied upon for the purpose of adjudication of the matter. It is further contented that Ex.A6 & Ex.A7 were not on the petitioner and hence, the entire proceedings are vitiated and the same has got to be interfered with.

5. Per contra, learned counsel for the respondent has submitted that though the petitioner had received the reference with regard to arbitration, the first notice sent to him was wantonly returned and once notice has been sent to the last known address that has been returned as unserved, it can very well be treated as proper service. It is further submitted that the contention raised by the petitioner that the signature of the petitioner does not tally with Ex.A6 and A7 cannot be gone into at this stage, as the petitioner did not evince any interest to appear before the Arbitrator to defend his case. Therefore, the finding arrived at by the Arbitrator, upon consideration of the entire aspects, need not be interfered with and the petitioner is not entitled to any relief sought for in this petition.

6. In reply to the above, learned counsel for the petitioner has reciprocated by reiterating his previous stand that the notice, which was returned as unserved cannot be taken as proper service and during pendency of proceedings, a sum of Rs.50,000/- has been paid to the 1st respondent as early as in the month of February, 2012. Contending that the Award is liable to be set aside for want of proper service, it is prayed that the Original Petition is to be allowed.

7. Heard the learned counsel on either side and perused material documents available on record.

8. Admittedly, the petitioner had entered into a Loan Agreement with the 1st respondent on 14.04.2006 for purchasing Ashok Leyland 401 vehicle at the rate of Rs.13,26,720/- and the said amount was agreed to be repaid along with interest in 46 instalments. The 1st respondent, on account of default committed by the petitioner in repayment of the loan amount, had seized the vehicle and later on, sold it to a third party, on the prevailing market rate available on the date of resale. The plea raised by the petitioner with respect to contradiction in his signature cannot be apprised at this distant point of time and as could be seen from the records, though the petitioner was duly served notice, which, of course, was returned as unserved, the address given by the

petitioner as found in the Loan Agreement and all other related documents produced before this Court are one and the same and therefore, it can be construed that the petitioner had wantonly evaded from service so as raise the plea of unambiguity about the arbitration proceedings.

9. When the petitioner has borrowed a loan for his livelihood, it is equally imperative on his part to repay the same without any default or at least, he could have contacted the Bank to clarify his position or some interest ought to be shown by him to repay the amount. Without doing so, the mere stand of the petitioner, that the signature in the acknowledgment card does not belong to him, cannot be accepted. Even assuming for the sake of argument that some of the documents were not furnished to him, it is the primary duty of the borrower of the loan to appear and collect the same from the Arbitrator so as to reveal his bona fide intention to repay the amount.

10. A reading of the provisions of Section 21 of The Arbitration and Conciliation Act, 1996 clearly unfolds the fact that on the appearance of parties, the Arbitrator will have to hand over the copies of documents and in this case, despite the petitioner's awareness about the reference of arbitration, he had not chosen to appear before the Arbitrator, which resulted in not handing over the relevant documents to him.

11. It is a settled law that where a finding is based on no evidence, or an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at or ignores vital evidence in arriving at its decision, such decision would necessarily be perverse. In this case, no such perverse finding has been rendered or arrived at by the learned Arbitrator. Since the learned Arbitrator has rendered a clear finding of fact, I find that there is no error on the face of record to interfere with the said finding and this Court is not inclined to take a different view merely on the basis of the technical ground of non-service of notice raised by the petitioner.

12. In the result, this Original Petition is dismissed. No costs.

12.12.2018

Index : Yes / No
Internet : Yes/ No
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Note: Registry is directed to hand over the Original Documents either directly to the Arbitrator or to the person authorized by him on proper identification under acknowledgment.

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S.VAIDYANATHAN,J.
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