IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

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THE HONOURABLE MR.**JUSTICE M.M.SUNDRESH**

O.P.No.227 of 2014

Vidyasagar V.
S/o Late N.Venkataram,
Aged about 49 years,
R/a Parvathamma Building,
Near Thindlu Main Bus Stop,
Vidyaranyapura Post,
Bangalore-560 097. .. Petitioner

Vs.

1.Pheonix Arc Private Limited,
7th Floor, Dani Corporate Park,
#158, C.S.T. Road,
Kalina, Santacruz(East),
Mumbai-400 098.

2.Sri G.Dharamaraj
Age: Major,
Retired District judge (Retd.)
and Sole Arbitrator,
No.19/2, 8th Street,
Easwaran Nagar, Pammal,
Chennai-600 075. .. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the ex-parte Award passed by the second respondent dated 17.01.2014 in the Arbitration Case No.ARB/278/2013 and for costs.

For Petitioner : Mr.Sai Srujan Toy for
M/s Giridhar & Sai

For Respondents : Mr.S.Namasivayam

ORDER

The petitioner is the Borrower. The loan was sanctioned by the erstwhile bank viz., Barclays Bank on 25.03.2008. The loan amount was to be repaid in 48 instalments. The petitioner, admittedly, defaulted in making the payment. Therefore, a legal notice was issued on 29.06.2009. Clause 6.3. of the agreement is as follows:

> "6.3. Upon the occurrence of any Event of Default and at any time thereafter, Barclays shall have the right, but not the obligation (without prejudice to any right at law or otherwise).
>
> (a) Immediately to recall the entire Loan and demand immediate payment of all amounts outstanding or payable, including all Interest and Overdue charges; and
>
> (b) to issue civil and /or criminal proceedings against the Borrower, including any action under Section 138 of the Negotiable Instruments Act, 1881."

2. As per the aforesaid clause, the recall notice was issued on 09.07.2009 by the Barclays Bank. Thereafter, the loan was recalled as per the legal notice dated 09.07.2009.

3. In the meanwhile, the loan was assigned in favour of the first respondent. The first respondent issued a recall notice on 14.04.2011. Since no payment was made, the matter went before the Tribunal. The Tribunal passed an Award on merit without going into the issue of limitation. The petitioner did not appear before the Tribunal. However, the award was challenged on the ground of limitation.

4. The learned counsel appearing for the petitioner would submit that the Tribunal is bound to satisfy the compliance of Section 3 of the Limitation Act, 1963. If the first recall notice is taken into consideration, the claim is barred by limitation.

5. The learned counsel appearing for the respondent would submit that as per Section 3 of the Limitation Act, 1963, the recall notice is well within the period of limitation.

6. Admittedly, the Barclays Bank has issued notice to the petitioner on 09.07.2009. Once the factum is not denied merely because the loan was assigned, the period of limitation would not get vanished. Under Section 3 of the Limitation Act, 1963, the Court of law is bound to test and check its jurisdiction as to whether the claim is within the limitation or not. Despite the fact that award is passed ex-parte, the Tribunal ought to have considered this aspect. In such view of the matter, this Court finds that the very claim is being barred by limitation in the eye of law. Accordingly, the award passed by the Tribunal on 17.01.2014 in Arbitration Case No.ARB/278/2013 is set aside and the original petition stands allowed. No costs.

07.03.2018

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M.M.SUNDRESH,J.

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