

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 29.06.2018****CORAM:****THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE****OP No.132 of 2015**

1.Siva Subbu (Borrower)

2.Vallinayagam (Guarantor)

...Petitioners

vs.

1.Mahindra and Mahindra Financial Services Ltd.,
having Branch Office,
at No.15, Arcot Street, Opposite,
MGR Memorial House, T.Nagar,
Chennai – 600 017.

2.A.Srinivasan (Arbitrator)
No.121/3, Flat-4, Baba Foundation,
N.T.R. Street, Rengarajapuram,
Kodambakkam, Chennai – 600 024.

...Respondents

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 20.03.2014 passed by the 2nd respondent/Arbitrator in 10K-NPA-ARB-AS No.4842/RN2145/1458090/FB2161/2012.

For Petitioners

: Mr.K.Rajasekaran

ORDER

The instant petition has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, challenging the Award dated 20.03.2014, passed against the petitioner directing the the petitioner as well as the guarantor to pay jointly and severally a sum of Rs.2,47,000/- together with interest at the rate of 3% per month from 09.11.2012 till date of the Award and further interest the rate of 18% per annum from the date of Award till date of the payment and also directed the petitioner to pay Rs.10,000/- towards the cost of the Arbitral proceedings.

2.The brief facts leading to the filing of the instant petition are as follows:

(i)The petitioner availed loan from the first respondent for the purchase of Hyundai I10 Era vehicle dated 31.01.2011. Under the loan agreement, the first respondent lent a sum of Rs.3,10,000/- to the petitioner, which was repayable with interest in periodical instalments as set out in schedule I and II of the loan agreement.

(ii)According to the first respondent, the petitioner committed default in repayment of the loan in accordance with the loan

agreement. Since there arose disputes between the parties, the dispute was referred to Arbitration by the first respondent by appointing the second respondent as the Arbitrator to decide the dispute on merits. The learned Arbitrator acted upon the reference and after issuing notices to both the parties to the dispute has passed an Award dated 20.03.2014, directing the petitioner and the guarantor to pay the sum referred to above to the first respondent.

(iii) Aggrieved by the Arbitral Award dated 20.03.2014, the petitioner has filed the instant petition challenging the said Award.

3. The learned Counsel for the petitioner submitted that the main grounds for challenge is that no sufficient opportunities were given to the petitioner to defend his claim before the learned Arbitrator. The learned Counsel for the petitioner drew the attention of this Court to a letter dated 12.11.2012 of the learned Arbitrator to the petitioner fixing the date of hearing on 30.11.2012.

4. The learned Counsel then drew the attention of this Court to a letter dated 06.03.2013 of the learned Arbitrator addressed to the petitioner intimating the next date of hearing as 25.03.2013. He

submits that the notice dated 12.11.2012 and the letter dated 06.03.2013, sent by the learned Arbitrator were received by the petitioner.

5.The learned Counsel for the petitioner then drew the attention of this Court to the impugned Award dated 23.03.2014. He submitted that on 25.03.2013 when the hearing took place before the learned Arbitrator, he had informed that the next date of hearing will be intimated to the petitioner by a separate letter.

6.The contention of the learned Counsel for the petitioner is that without sending any letter intimating the next date of hearing, the learned Arbitrator has passed an *ex parte* Award dated 20.03.2014, in favour of the first respondent.

7.The learned Counsel for the petitioner further drew the attention of this Court to a letter dated 21.05.2013, sent by the petitioner to the learned Arbitrator, requesting him to inform the next date of hearing to enable him to file the counter and typed set of papers, which has been duly acknowledged by the learned Arbitrator on 24.05.2013.

8. According to the learned Counsel for the petitioner, since the next date of hearing subsequent to the hearing on 25.03.2013, was not informed as indicated during the hearing on 25.03.2013, the petitioner has not been given sufficient opportunity to defend his claim made by the first respondent before the learned Arbitrator.

9. This Court has perused the Arbitral Award, which is under challenge in the instant petition. As seen from the Award, the petitioner was served with notice in the Arbitral proceedings for the hearing on 30.11.2012 and for the hearing on 25.03.2013. The petitioner had appeared before the learned Arbitrator and sought time to pay the outstanding dues of the first respondent for the hearing on 25.03.2013.

10. No Counter was also filed by the petitioner before the learned Arbitrator in the Arbitral proceedings. Even though, two opportunities were given to the petitioner one on 30.11.2012 and the other on 25.03.2013, to appear and defend the claim, the petitioners or their Counsel failed to appear and defend the claim by filing a counter disputing their liability. The letter dated 21.05.2013 was sent by the petitioner to the learned Arbitrator after two months

after the date of last hearing on 25.03.2013 requesting the learned Arbitrator to inform the next date of hearing. The Arbitral Award was passed on 20.03.2014, almost eight months after the letter dated 21.05.2013, sent by the petitioner to the learned Arbitrator, requesting for intimation about the next date of hearing.

11. Under the impugned Award, the learned Arbitrator has recorded the fact that the petitioners appeared before the learned Arbitrator and took time to settle the dues of the first respondent. Having given such an undertaking, this Court cannot give credence to a letter dated 21.05.2013, sent by the petitioners to the learned Arbitrator, requesting for the next date of hearing. Further, the Award was passed only on 20.03.2014 i.e., one year after the last date of hearing and after eight months from the date of receipt of the letter from the petitioner. Therefore, the petitioners had sufficient opportunity between the last date of hearing on 25.03.2013 and the date of Award i.e. On 20.03.2014 to get the *ex parte* order set aside.

12. The Hon'ble Supreme Court in a Catena of decisions starting from ***Renusagar Power Company Ltd vs. General***

Electric Company 1994 Supp (1) SCC 644 to the recent Associated Builders Vs DDA (2015) 3 SCC 49 has held only under the following grounds the Arbitral Award can be challenged under Section 34 of the Arbitration and Conciliation Act:

(a) Procedure contemplated under Arbitration and Conciliation Act was not followed by the Arbitrator.

(b) The Arbitral Award is a non speaking Award.

(c) The Arbitrator has transgressed his jurisdiction.

(d) The Arbitral Award is in conflict with the public policy of India.

(iii) An award would be regarded as conflicting with the public policy of India if:-

(a) it is contrary to the fundamental policy of Indian law, or

(b) it is contrary to the interests of India,

(c) it is contrary to justice or morality,

(d) it is patently illegal, or

(e) it is so perverse, irrational, unfair or unreasonable that it shocks the conscience of the court.

(iv) An award would be liable to be regarded as contrary to the fundamental policy of Indian law, for example, if

(a) it disregards orders passed by superior courts, or the binding effect thereof, or

(b) it is patently violative of statutory provisions, or

(c) it is not in public interest, or

(d) the arbitrator has not adopted a "judicial approach", i.e. has not acted in a fair, reasonable and objective approach, or

has acted arbitrarily, capriciously or whimsically, or

(e) the arbitrator has failed to draw an inference which, on the face of the facts, ought to have been drawn, or

(f) the arbitrator has drawn an inference, from the facts, which, on the face of it, is unreasonable, or

(g) the principles of natural justice have been violated.

(v) Insofar the "patent illegality" has to go to the root of the matter. Trivial illegalities are inconsequential.

(vi) Additionally, an award could be set aside if

(a) either party was under some incapacity, or

(b) the arbitration agreement is invalid under the law,

Or

(c) the applicant was not given proper notice of appointment of the arbitrator, or of the arbitral proceedings, or was otherwise unable to present his case, or

(d) the award deals with a dispute not submitted to arbitration, or decides issues outside the scope of the dispute submitted to arbitration, or

(e) the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(f) the arbitral procedure was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(g) the award contravenes the Act, or

(h) the award is contrary to the contract between the parties.

(vii) "Perversity", as a ground for setting aside an arbitral award, has to be examined on the touchstone of the

Wednesbury principle of reasonableness. It would include a case in which

- (a) the findings, in the award, are based on no evidence, or*
- (b) the Arbitral Tribunal takes into account something irrelevant to the decision arrived at, or*
- (c) the Arbitral Tribunal ignores vital evidence in arriving at its decision.*

(viii) At the same time,

- (a) a decision which is founded on some evidence, which could be relied upon, howsoever compendious, cannot be treated as "perverse",*
- (b) if the view adopted by the arbitrator is a plausible view, it has to pass muster,*
- (c) neither quantity, nor quality, of evidence is open to re-assessment in judicial review over the award.*

(ix) "Morality" would imply enforceability, of the agreement, given the prevailing mores of the day. "Immorality", however, can constitute a ground for interfering with an arbitral award only if it shocks the judicial conscience.

13. Considering all these facts and circumstances, this Court is of the considered view that sufficient opportunities were given to the petitioner to defend his claim before the Arbitral Tribunal. In spite of having sufficient opportunities, the petitioner has failed to appear and contest his case before the learned Arbitrator. There is no patent illegality in the Award passed by the learned Arbitrator and

the petitioner has not satisfied any of the grounds mentioned above to interfere with the Award dated 20.03.2014.

14. Accordingly, the Original Petition shall stand dismissed. However, there shall be no order as to costs.

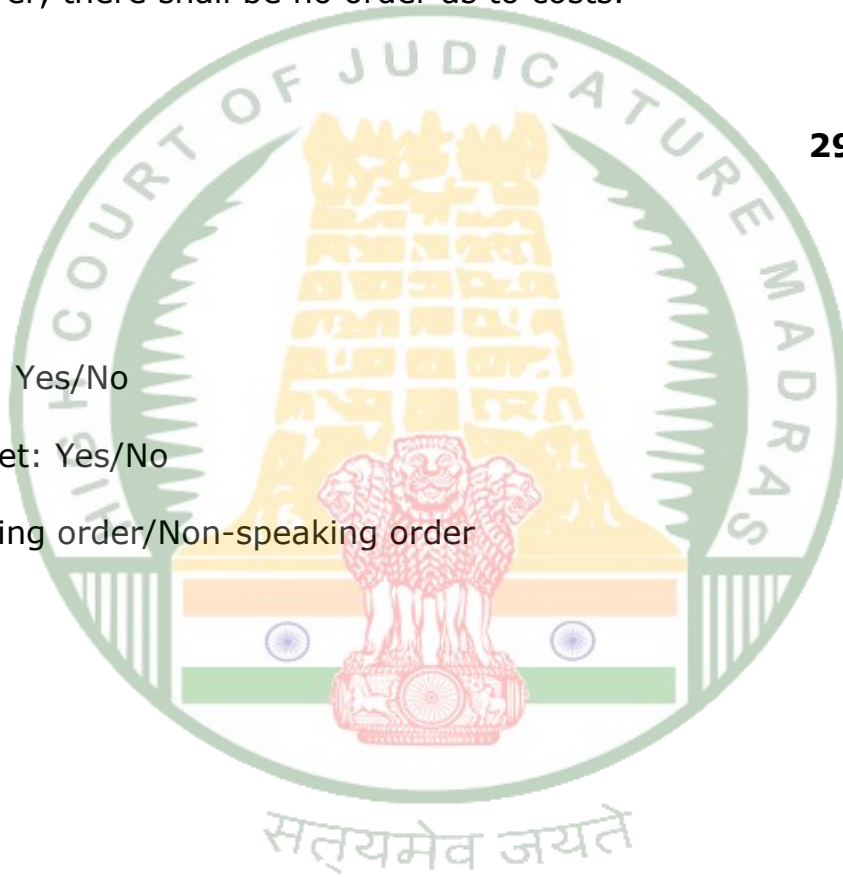
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Speaking order/Non-speaking order



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