

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

O.P.No.162 of 2015

1.Mrs.Muniyammal
2.Mr.Manikandan

... Petitioners

Vs.

1.M/s.HDFC Bank Limited
No.110, Ceebros Building
4th Floor, Nelson Manickam Road
Aminjikarai, Chennai - 600 029.

2.Mr.V.Manohar
Advocate/Sole Arbitrator
Old No.124, New No.6
P.S.Sivasamy Salai
Mylapore, Chennai - 600 004.

Mr.Niraikulathan (deceased)

... Respondents

Prayer :: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 30.01.2015 passed by the Second Respondent in Arbitration Case No. 961/2014.

For Petitioners : Mr.M.Ganesan

For Respondent No.1 : Mr.D.Sathyaraj

ORDER

This original Petition has been filed by the Petitioners to set aside the award dated 30.01.2015 passed by the Second Respondent/Arbitrator in Arbitration Case No. 961/2014.

2. Learned counsel for the Petitioners submitted that the only issue before this Court is that the Arbitration proceedings ought to have been conducted in Madurai as per terms of Clause No.31 of the Arbitration Agreement, which is extracted as follows:

“The parties hereto expressly agree that all disputes arising out of and/or relating to this Agreement including any Collateral Documents shall be subject to the exclusive jurisdiction of the Court /Tribunal of the city in which the Branch of HDFC Bank Limited which is party to this agreement is situated, provided however that if any dispute arising under this agreement is below the pecuniary jurisdiction limit of the Debt Recovery Tribunals established under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993), then such dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as may be amended, or its re-enactment by a sole arbitrator, appointed by the Bank. The costs of such arbitration shall be borne by the losing Party or

otherwise as determined in the arbitration award. If a party is required to enforce an arbitral award by legal action of any kind, the party against whom such legal action is taken shall pay all reasonable costs and expenses and attorneys fees, including any cost of additional litigation or arbitration taken by the party seeking to enforce the award.”

3. Learned counsel for the Petitioners further submitted that they have raised objections by sending a communication dated 18.11.2014 to the Arbitrator, which have been duly received by him on 22.11.2014. Learned counsel for the Petitioners further submitted that Section 16(2) read with Section 4 may not be applicable, as the parties cannot raise any objection with regard to the plea taken by them. In any event, in terms of Section 34 of the Arbitration and Conciliation Act, 1996, the scope is very wide and they can raise any objection with regard to the appointment of an Arbitrator or with regard to the Arbitration proceedings, which has been effected in a different place.

4. Learned counsel appearing for the First Respondent submitted that in terms of Section 16 (4) of the Arbitration and Conciliation Act, 1996, the Petitioners have not raised any objection before the Arbitrator and they are deemed to have waived their rights and they cannot raise any objection before this Court with regard to the jurisdiction, commencement and conclusion of Arbitration proceedings.

5. Learned counsel appearing for the First Respondent contended that the act of the Petitioners in not paying the loan is illegal. However, he further submitted that the First Respondent had no knowledge about the death of the borrower and in any event, it is only the Guarantor, who is before this Court. It was further submitted that the auction with regard to the possession of the vehicle is scheduled tomorrow i.e. on 18.12.2018.

6. Heard both parties and perused the material documents available on record.

7. It is not in dispute that there was a loan agreement, which was entered into between the parties with regard to the purchase of 'Mahindra 475 Tractor Agri'. It has been stated that the Arbitrator did not receive a copy of the communication dated 18.11.2014 and was not aware of the demise of the borrower. However, this Court is of the view that neither the borrower, nor his legal representatives were aware of the Arbitration proceedings, when he was alive. It is only the Guarantors who are before this Court. Additionally, there is a specific finding by the Arbitrator pertaining to the non-signing of the Arbitration Agreement by the Guarantors, which cannot be found fault with. Consequently, as the vehicle has been seized by the First Respondent herein, the auction that is scheduled to be held on 18.12.2018 shall go

on. It is open to the First Respondent/Company to appropriate the money based on the auction that is going to be conducted.

8. In view of the above, this court is inclined to interfere with the Arbitral Award only on the ground that the Arbitration proceedings should have been held at Madurai. The First Respondent herein is also a signatory to the proceedings and they had initiated the Arbitration proceedings and they are aware of the jurisdiction. That being the case, the First Respondent should have been careful in selecting the seat of arbitration, instead of selecting some other venue that is not been reflected in the Agreement. Hence, on the ground that the Arbitration had taken place in a different venue, in terms of Clause 31 of the Arbitration Agreement, the Arbitral Award dated 30.01.2015 is set aside.

9. With the above observation, this Original Petition is allowed. No costs.

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Index : Yes/No
Speaking Order : Yes/No

maya/aeb

S.VAIDYANATHAN, J.

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