

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2018

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

O.P. No.655 OF 2015

Mr. S. Ganesan

..Petitioner

Vs.

1. M/s. Hinduja Leyland Finance Ltd.

2. Mr. P. Siva Kumar

3. Poonkuzhali Sundaramurthy
Sole Arbitrator

..Respondents

This Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated A.C.P. No.310 of 2014 on 17.03.2015, passed by the third respondent/Arbitrator.

WEB COPY

For Petitioner

: Mr. L. Rajasekar

For Respondent-1

: Mr. K. Moorthy

For Respondents -2 & 3 : N.A.

ORDER

This Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated A.C.P. No.310 of 2014 on 17.03.2015, passed by the third respondent/Arbitrator.

2. The first respondent herein is a Finance Company, who was the claimant before the Arbitrator and the petitioner herein, being a Guarantor and the second respondent herein, being a borrower of loan, were the respondents before the Arbitrator.

3. The brief facts of the case is as follows:

The petitioner and the Second respondent have approached the first respondent finance company for a loan of Rs.10,00,000/- (Rupees Ten Lakhs Only) for purchase of a vehicle. Both have entered into a loan agreement with the first respondent. It is agreed by the petitioner and the second respondent that the petitioner will repay a sum of Rs.13,90,000/- (Rupees Thirteen Lakhs and Ninty Thousand only) towards entire loan amount along with interest and insurance

charges payable in 36 equated monthly instalments of the rate of Rs.39,714/- (Rupees Thirty Nine Thousand Seven Hundred and Fourteen Only). Due to default in payment of loan instalment, the first respondent has filed a claim petition before the Arbitrator to recover the loan due amount of Rs.5,82,335/- (Rupees Five Lakhs Eighty Two Thousand Three Hundred and Thirty Five Only) with interest against the petitioner and the second respondent herein. Despite the notice served to the petitioner/Guarantor and the second respondent/borrower, none appeared before the arbitrator. Hence, the learned Arbitrator, after perusal of the records placed before her, has passed an ex-parte award in A.C.P. No.310 of 2014 dated 17.03.2015 allowing the claim petition filed by the first respondent/finance company and directed the petitioner/Guarantor and the second respondent/borrower to pay a sum of Rs.5,82,335/- along with interest @ 18% p.a. Being aggrieved by the aforesaid ex-parte award, the present Original Petition has been filed by the petitioner to set aside the ex-parte award.

WEB COPY

4. According to the learned counsel for the petitioner, the claim petition has been filed by the first respondent/finance company for a sum of Rs.5,82,335/- (Rupees Five Lakhs Eighty Two Thousand Three Hundred and Thirty Five Only) being the amount due from the second

respondent as per the agreement bearing No.TNCHAN00240 dated Nil. In the aforesaid claim petition, the Arbitral Tribunal has passed ex-parte award without providing an opportunity to the petitioner and the second respondent herein. It has been further submitted by the learned counsel for the petitioner that while the date of hearing was fixed on 12.03.2015 by the arbitrator, there was no date in the notice sent by the Arbitrator upon which the arbitral proceedings will be held. Therefore, the petitioner and the second respondent were not aware of the arbitral proceedings and the ex-parte award passed by the Arbitrator on 17.08.2015. Hence, the ex-parte award passed by the arbitrator without hearing the petitioner and the second respondent is contrary to law and liable to be quashed. Hence, this Original petition has been filed.

5. Admitting the contention of the learned counsel for the petitioner, after perusal of the letter sent by the learned Arbitrator, the learned counsel for the first respondent would submit that communication was sent to the petitioner and the second respondent stating that the hearing date was fixed on 12.03.2015. Even though the hearing date was fixed on 12.03.2015 for appearance of the petitioner and the second respondent, the hearing notice has been duly served upon the petitioner herein and the second respondent

herein. Despite the notice has been received by the parties, neither the petitioner and nor the second respondent have chosen to appear before the Arbitrator on 12.03.2015. Considering the non-appearance of the petitioner and the second respondent on 12.03.2105 for passing an award, they were set ex-parte and adjourned the case to 17.03.2015. Subsequently, because of the non-appearance of the petitioner and the second respondent the ex-parte award was passed on 17.03.2015 by the Arbitrator after perusing the records and considering the facts and circumstance of the case. Hence, the claim of the first respondent has been properly adjudicated by the Arbitrator and there is no warrant to interfere with the award passed by the Arbitrators.

6. Heard the learned Counsel appearing for the petitioner and the learned counsel appearing for the first respondent and perused the entire documents placed before this Court.

7. On perusal of the available material on record, it is admitted fact that the Arbitrator has served the notice under Section 3 of Arbitration and Conciliation Act, 1996 to the petitioner for appearance of the parties on 12.03.2015. Despite the notice was received by the parties, the petitioner did not appear before the Arbitrator.

Considering the fact that though the notice was served on the petitioner and the second respondent none appeared before the arbitrator, they were set ex-parte. Subsequently, the ex-parte award was passed by the Arbitrator on 17.03.2015. Further, the learned Arbitrator has sent the copy of the Arbitral proceedings by RPD to the parties under Section 34 of the Arbitration and Conciliation Act, 1996.

8. The contention of the learned counsel for the petitioner is that the ex-parte award was passed by the Arbitrator without providing sufficient opportunity to the petitioner, cannot be accepted for the reason that the Arbitrator has served notice to the petitioner as well as to the second respondent herein to appear on 12.03.2015 before the Arbitrator for hearing. Despite the said notice was received by the petitioner, the petitioner has not chosen to enter appearance and file statement contesting the claim petition filed by the first respondent/finance company. Since the petitioner failed to appear before the arbitrator either personally or through counsel, the parties were set ex-parte. Further, the learned counsel for petitioner has not stated proper reason for non appearance of the parties before the Arbitrator. Neither the petitioner has appeared before the arbitrator nor filed statement contesting the claim petition filed by the first respondent Finance Company before the Arbitrator. In the absence of proper

reason for non appearance of the parties, the contention of the petitioner stating that the ex-parte award passed by the Arbitrator is violation of principles of natural justice cannot be accepted and is liable to be rejected.

9. Considering the facts and circumstance of the case and submission made by the learned counsel on either side, this Court is not inclined to interfere with the award passed by the Arbitrator/third respondent herein by exercising the power under Section 34 of the Arbitration and Conciliation Act, 1996. Hence, the Original Petition is liable to be dismissed.

10. In the result, the Original Petition shall stand dismissed. There shall be no order as to costs.

सत्यमेव जयते

24.09.2018

WEB COPY

lbm

D. KRISHNA KUMAR, J.

lbm



O.P. No.655 OF 2015

WEB COPY **24.09.2018**