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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2018

CORAM

THE HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.S.A.No.66 of 2014

1.V.Balasubramanian
2.B.Prasanth

.. Appellants/
Petitioner in OP.No.857/13
vs

1.M/s.Shriram City Union Finance Ltd.,
rep. by its Authorized representative
Having their office at
No.123, Angappa Naicken Street,
Chennai - 600 001.

2.Radha.S

3.V.Senthilkumar,
Advocate/Sole Arbitrator,
D.No.90, Peters Road,
New College Shopping Complex,
Royapettah.

.. Respondents/
Respondents in OP No.857 of 2013

Appeal filed under Order XXXVI, Rule 1 of Original Side Rules read with Clause 15 of Letters Patent r/w. 37 of Arbitration & conciliation Act against the order dated 28.11.2013 passed in O.P.No.857 of 2013 on the file of this Court.

OP.No.857 OF 2013: Petition under section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award in ACP(EF) No.260/2013 dated 23.07.2013.

For Appellants .. Mr.R.Muniyappa Raj

For Respondents .. Mr.V.Santhanam
for M/s.K.V.Aanantha Krushnan
for respondent No.1

Mr.A.Kripakaran
for respondent No.2



* * * * *

JUDGMENT

(Delivered by Ms.Indira Banerjee, Chief Justice)

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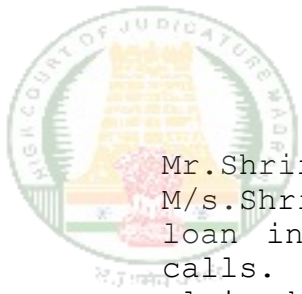
This appeal under Section 37 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as "the 1996 Act" is against a judgment and order dated 28th November 2013, dismissing an application filed by the appellants under Section 34 of the 1996 Act for setting aside the award in ACP (EF) No.260 of 2013 dated 23rd July 2013 passed by the Sole Arbitrator Mr.Senthilkumar V, an Advocate.

2. It appears that the appellants had filed an application under Section 34 of the 1996 Act challenging the above mentioned award, whereby the learned Sole Arbitrator had made an exparte award of Rs.1,56,400/- in favour of the first respondent financier against inter alia the appellants towards balance outstanding loan amount; Rs.9,000/- towards banking charges; Rs.18,756/- towards overdue charges/interest; Rs.2,74,664/- towards future principal and Rs.6,882/- towards legal expenses along with future interest at 18% per annum till the date of realisation and Rs.5,000/- towards costs of the arbitral proceedings.

3. It is not in dispute that the appellants had applied for a loan from the first respondent. It is contended that the loan was not received. Unfortunately, the Court deciding an application under Section 34 of the 1996 Act cannot appraise/re-appraise the evidence and decide whether the cheque had actually been encashed by the appellants or by any other person, as now claimed. Significantly, the award refers to a receipt stated to have been issued by the appellants acknowledging payment to them of the loan amount. The loan amount had been disbursed by cheque.

4. May be the award was exparte, but that was because of the appellants' own laches. Admittedly, notice of appointment of the Arbitrator and of the proceedings before the Arbitrator had been sent to and received by the appellants. The first appellant wrote a letter seeking adjournment of the proceedings. In the aforesaid letter, the first appellant admitted that the appellants had applied for loan on the request of the first appellant's son-in-law's uncle Mr.S.Suresh (Director of AIMS Education).

5. It is the case appellants that they had not received any intimation of the approval of the loan. Admittedly, the first appellant had received phone calls from Ms.Ramya and



Mr. Shriram (Regional Manager) from Mylapore Branch of M/s. Shriram City Union Finance Limited for non-payment of the loan instalments. He apparently did nothing in spite of phone calls. Be that as it may, the first appellant could not have claimed an adjournment of the arbitration proceedings as a matter of right. It was for the appellants to appear before the Arbitrator and make their submissions.

6. The learned Single Bench very rightly found that the appellants had received notice and the request of the first appellant to postpone the hearing had not been acceded to. Before the actual date of hearing, the first appellant wrote another letter reminding the Arbitrator to postpone the hearing. Adjournment cannot be claimed as of right. If adjournment were not granted, it was for the appellants to appear before the Arbitrator and file their pleadings, which they had not done.

7. The learned Single Bench rightly concluded that in the facts of the instant case, it could not be said that the appellants came under the category of applicants who could apply for the setting aside of an award on the ground of inability to present their case before the learned Arbitrator.

8. It is well settled that this Court deciding an application under Section 34 of the 1996 Act for setting aside of an award does not sit in appeal over the award and the award can only be set aside on the grounds enumerated in Section 34 of the 1996 Act, none of which are attracted in the instant case.

9. On a perusal of the award, it appears that there was some evidence before the Arbitrator namely a receipt given by the appellants for the loan amount. It is not for this Court to re-analyse or re-appreciate the evidence or adjudicate the admissibility and/or worth thereof. Furthermore, this Court cannot but take note of the fact that admittedly the appellants had applied for the loan. There was some material before the Arbitrator to show receipt of the loan amount. Whether the receipt had actually been signed by the appellants or by any other person cannot be adjudicated by this Court under Section 34/37 of the 1996 Act.

10. It would also be pertinent to note that on the admission made on behalf of the appellants, no police complaint alleging fraud was ever lodged, until this appeal was filed. Even after the first appellant received a copy of the Award in which reference was made to a receipt signed by him, the first appellant did not lodge any criminal proceedings on the ground of forgery of his signature.



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11. We find no reason at all to interfere with the judgment and order under appeal. The appeal is therefore dismissed. No costs.

Sd/-

Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.R.Muniyappa Raj Advocate, S.R.No. 2454
+1cc to M/s.K.V.Aanantha Krushnan Advocate, S.R.No. 2632
+1cc to Mr.V.S.SENTHILKUMAR, Advocate, S.R.No.2645

O.S.A.No.66 of 2014

TM(CO)
TR(21/03/2018)