IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2018

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THE HONOURABLE Mr.JUSTICE ABDUL QUDDHOSE

O.P.No.631 of 2015

1.Harminder Singh Modi
2.Udham Singh Modi .. Petitioners

Vs

1.M/s.Cholamandalam Investment and
Finance Company Limited,
"Dare House" No.2, N.S.C. Bose Road,
Parrys, Chennai – 600 001.

2.Mr.V.K.Thirunavukkarasu,
Sole Arbitrator .. Respondents

Original Petition filed under Section 37(2B) of the Arbitration and Conciliation Act, 1996 praying to set aside the Award dated 05.09.2013 passed in Arbitration Case No.131 of 2011.

For Petitioners : Mr.R.Babu

For Respondent 1 : Mr.D.Pradeep Kumar

ORDER

The instant petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Arbitral Award dated

05.09.2013 passed against the petitioners.

2. The brief facts leading to the filing of the instant petition are as follows: The petitioners entered into a loan agreement dated 31.05.2008 with the first respondent. Under the loan agreement, the petitioners availed loan to the tune of Rs.5,00,000/- which will have to be paid vide 47 monthly installments, commencing from 01.07.2008 to 01.05.2012. According to the first respondent, the petitioner had committed default in the repayment of loan. In view of the dispute between the parties, the first respondent referred the dispute to the arbitration by appointing the second respondent as sole arbitrator in accordance with the arbitration clause containing in the loan agreement. The sole arbitrator acted upon the reference and after issuing notice to the parties to the dispute and after considering materials available on record, passed an Award in favour of the first respondent directing the petitioner to pay the first respondent a sum of Rs.2,87,980/- together with interest at the rate of 18% p.a. from 28.01.2011 till the date of realisation along with the cost of the proceedings.

3. Aggrieved by the Arbitral Award dated 05.09.2013, the instant petition has been filed by the petitioners.

4. The learned counsel for the petitioners submits that by the letter of the petitioners dated 25.05.2011, the petitioners had intimated the first respondent that they had paid the entire outstanding under the loan

agreement and therefore, no amount is due and payable to the first respondent. Therefore, according to the petitioners, since they have paid the entire award amount, there is no arbitrable dispute and therefore the award passed by the Arbitrator directing them to pay 2,87,980/- together with interest and cost is erroneous and patently illegal.

5. This Court perused the Arbitral Award dated 05.09.2013 which is under challenge. As seen from the Arbitral Award, notice was sent to the petitioners by the Arbitrator, but despite service of notice in the arbitral proceedings, the petitioners failed to appear before the Arbitrator and defend the claim made by the first respondent.

6. Six Exhibits were marked on the side of the first respondent before the sole Arbitrator which included the copy of the loan agreement dated 31.05.2008, Statement of Account dated 24.01.2011 and letter of Arbitral reference to the Arbitrator dated 28.01.2011 together with acknowledgment cards. The arbitrator has considered all these documents and only thereafter, passed the impugned award. Admittedly despite service of notice in the arbitral proceedings, the petitioners have also failed to appear before the arbitrator and defend their claim.

7. This Court is of the considered view that the arbitrator has passed the Award only on the basis of the documents marked as Exhibits before him. He has also given reasons for passing the Award in favour of the

first respondent. This Court does not find any illegality in the award passed by the Arbitral Tribunal. Therefore, this Court is of the Considered view that there is no merit in the instant petition.

8. 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.

9. The petitioners have not satisfied any of the grounds mentioned above to interfere with the Award dated 05.09.2013. Hence, Original Petition shall stand dismissed. However, there shall be no order as to costs.

10.07.2018

Index: Yes/No

Speaking/Non-speaking orders

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ABDUL QUDDHOSE, J.

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