

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE ABDUL QUDDHOSE

O.P.No.795 of 2015

Manoharan

.. Petitioner

Vs

1.Shriram City Union Finance Ltd.,
Represented by its authorised,
Representative Senthil Kumar,
4/289, I Floor, Pycrofts Road,
Triplicane, Chennai - 600 005.

2.Mr.C.M.Seetharaman,
Sole Arbitrator.

3.Dhandapani

4.Vidhya

5.Shanthi

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the award dated 16.07.2014 passed by the second respondent herein in A.C.P.No.(EF/CMS) 128/2013.

For Petitioner : Mr.R.N.Amarnath

For Respondents : No appearance

ORDER

The instant petition has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Award dated 16.07.2014 passed by the learned Arbitrator against him.

2. The petitioner has entered into a loan agreement with the first respondent and availed a loan. According to the first respondent, the petitioner committed default in the repayment of the loan. There arose disputes under the loan agreement and the dispute was referred to arbitration and the second respondent was appointed as the sole Arbitrator. The second respondent acted upon the reference and after giving notice to both the parties has passed the impugned Award dated 16.07.2014, directing the petitioner as well as the guarantor jointly and separately to pay the first respondent a sum of Rs.5,78,021/- together with interest of Rs.2,54,250/- at 18% per annum from 19.02.2013 till its realization and Rs.5,000/- towards the cost of Arbitration.

3. Aggrieved by the Award, the petitioner has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996.

4. Mr.R.N.Amarnath, learned counsel appearing on behalf of the petitioner submits that the primary ground for challenge in this petition is

that no sufficient opportunity was given to the petitioner by the Arbitrator to defend his claim. He drew the attention of this Court to the proceedings of the learned Arbitrator which is found in page No.5 of the Arbitral Award. The relevant proceedings are proceedings dated 11.07.2013, 03.09.2013, 11.10.2013, 07.01.2014, 11.02.2014 and 22.03.2014.

5. The learned counsel emphasised his submission mainly on the proceedings dated 11.07.2013 of the Arbitrator which reads as follows:

" Claimant's Representative Present. R1, R2, R3 R4
Counsel Presents. Counsel requested time for settlement.
Time granted. Call on 03.09.2013."

and the proceedings dated 03.09.2013 which reads as follows:

"Claimant's Representative Present. R1, R2, R3 R4
called absent. No Representation for R1, R2, R3, R4. R1,
R2, R3, R4 Set Exparte, Evidence by 11.10.2013".

6. According to the learned counsel for the petitioner, in the subsequent hearings namely, on 11.10.2013, 07.01.2014 & 11.02.2014, the first respondent was granted opportunity to file the proof of affidavit. According to the learned counsel, even though sufficient opportunity was given to the first respondent to file the proof of affidavit, no similar opportunity was given to the petitioner to defend the claim. As seen from

the proceedings on 11.07.2013, only at the request of the petitioner, the hearing was adjourned to 03.09.2013. On 03.09.2013, it was found that neither the petitioner nor the petitioner's counsel was present before the learned Arbitrator. The progress of settlement was also not reported to the learned Arbitrator by the petitioner nor by his counsel during the hearing on 03.09.2013. The learned Arbitrator has rightly set the petitioner as well as the other respondent in the Arbitral proceeding ex-parte on 03.09.2013.

7. Further, learned counsel for the petitioner would submit that after the petitioner was set ex parte, the petitioner was not informed about the subsequent hearing dates by the Arbitrator. The petitioner has also not produced any letter of request sent to the learned Arbitrator requesting for the next hearing date, subsequent to the hearing on 03.09.2013 when the petitioner was set ex parte by the Arbitrator. Since the progress of settlement was also not disclosed, the Arbitrator has rightly passed the award in favour of the first respondent.

8. The Scope of Section 34 of the Arbitration and Conciliation Act, 1996 is very limited. As seen from the arbitral Award, sufficient opportunity was given to the petitioner to defend the claim made by the first respondent. Despite those opportunities, the petitioner has failed to defend the claim before the learned Arbitrator nor has he made efforts to settle the claim undertaken by him during the proceedings dated 11.07.2013.

9. 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 Arbitrator 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 illegality is 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.

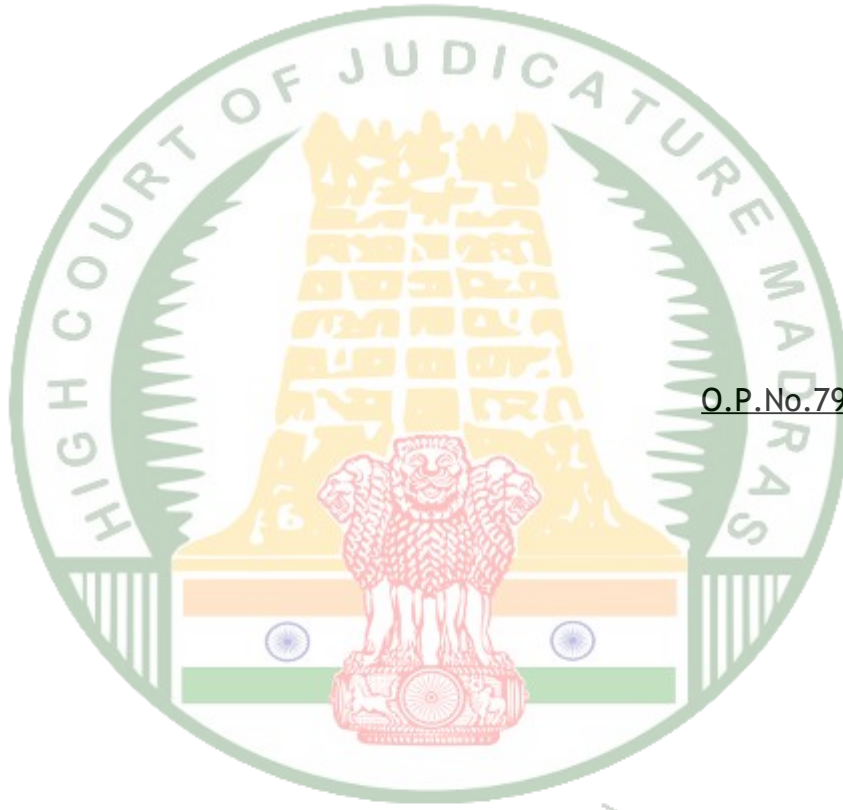
(ix) “Morality” would imply enforceability, of the agreement, given the prevailing mores of the day. “Immorality”, however, can constitute a ground for interfering with an arbitral award only if it shocks the judicial conscience.

10. The petitioner has not satisfied any of the grounds mentioned above to interfere with the Award dated 19.02.2009. Hence, Original Petition shall stand dismissed. However, there shall be no order as to costs.

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