IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2018

CORAM

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

O.P. No.259 OF 2016

1. Mr. Rajeshkumar. C.
2. Mr. Chelladurai. S. ..Petitioners

Vs.

1. M/s. Kotak Mahindra Bank Ltd.
2. Mr. D. Saravanan Arbitrator. ..Respondents

The Original Petition under Section 34 of the Arbitration and Conciliation Act, 1996, has been filed to set aside the Award dated 21.12.2015 in A.C.P. (KOTAK) No.917 of 2015 on 21.12.2015, passed by the Second respondent.

For Petitioners : Mr. N. Elayaraja

For Respondent-1 : Mr. R. Imayavaramban (M/s.Ramalingam Associates)

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O R D E R

This Original Petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioners to set aside the Award dated 21.12.2015 passed by the Second respondent/Arbitrator in A.C.P. No. (KOTAK) No.917 / 2015.

2. <u>The brief facts of the case for consideration:</u>

(i) The first and second petitioners have approached the first respondent bank for availing a loan facility for a sum of Rs.16,00,000/- (Rupees Sixteen Lakhs Only) to purchase JCB Machine. Accordingly, the loan agreement was entered into between the petitioners and the first respondent bank. The petitioners have also executed Demand Promissory note in favour of the first respondent bank for the aforesaid loan amount. The petitioners have agreed to pay the aforesaid loan amount in 47 equated monthly instalments along with interest at Rs.42,400/- (Rupees Forty Two Thousand and Four Hundred Only) per month commencing from 01.08.2010 to 01.06.2014. As the petitioners committed default in making payment of monthly instalments, within the stipulated period, the first respondent bank charged over-due interest as per the terms and conditions of loan agreement. Since the first petitioner failed to pay overdue interest, the first respondent bank has approached the learned Arbitrator/Second respondent herein claiming over-due interest. The learned Arbitrator/Second respondent has passed an award in A.C.P. (KOTAK).No.917 of 2015 dated 21.12.2015 allowing the claim petition filed by the first respondent bank and directed the petitioners to pay over-due interest as per the terms and conditions of the loan agreement. Aggrieved by the aforesaid award passed by the

Arbitrator/Second respondent, the petitioners herein have preferred the present Original petition under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the aforesaid award.

3. The learned counsel for the petitioners would submit that the first petitioner has paid the entire loan amount of Rs.16,00,000/- (Rupees Sixteen Lakhs Only) with interest by 47 equated monthly instalments as per the terms and conditions of the loan agreement. However, there is a delay in making payment of three monthly instalments. i.e. One during the month of September 2014, another in October 2014 and the final instalment amount had been paid only on 28.02.2015. At the time of availing loan, the first respondent bank has not stated about over-due interest for the belated payment, and while calculating the E.M.I. and fixing the schedule for repayment of loan amount, the first respondent bank has stated the rate of interest only 49 paise per month. Accordingly, the first petitioner has paid the entire loan amount by way of 47 equated monthly instalments. However, the first respondent bank has served a notice claiming over-due-interest at the rate of 3% compounded monthly for belated payment of instalments, even though the alleged over-due interest was not mentioned in the loan agreement.

4. The learned Counsel for the petitioners would submit that the rate of interest mentioned in the release order is at the rate of 12% per annum whereas it has been stated as at the rate of 11.39% per annum in the promissory note. It clearly shows that these documents are created for the purpose of cheating the petitioners herein. Further, the first respondent bank/claimant has also received an additional amount of Rs.15,000/- (Rupees Fifteen Thousand Only) apart from monthly instalments after having paid all the instalments as per the terms and conditions of the loan agreement. Thereafter, the first respondent claiming over-due interest of Rs.2,60,765/- is unsustainable in law. Without considering the above aspect, the Arbitrator has passed the erroneous award, dated 21.12.2015 in A.C.P. No.917 of 2015 by allowing the claim of the first respondent bank. Hence, the Arbitral award is against public policy and the same is liable to set aside.

5. On contrary, the learned Counsel appearing for the first respondent would submit that the first petitioner has committed default in making payment within the due date. In this regard, the first petitioner, by letter dated 16.07.2015, had accepted the delayed payments made by him and in view of that he agreed to pay a sum of Rs.15,000/- (Rupees Fifteen Thousand Only) additionally as full and

final settlement for issuing "No objection Certificate" by the first respondent bank. As the petitioners did not pay the monthly instalments to the first respondent bank, within the stipulated period, recall due notice served to the petitioners, claiming over-due interest. Despite recall notice has been served, the petitioners have not responded to it. Hence, the first respondent bank has initiated arbitral proceedings against the petitioners claiming the over-due interest. Upon perusal of documentary evidence, the learned Arbitrator/second respondent allowed the claim petition filed by the first respondent bank and directed the petitioners to pay a sum of Rs.2,68,390/- along with interest.

6. The learned counsel for the petitioners would contend that the first respondent bank has claimed over-due interest, after receipt of the entire loan amount along with interest, by way of 47 equated monthly instalments, as per the agreement. Further, the petitioners have not signed a page in the agreement wherein over-due interest clause has been mentioned. Further, the contention of the petitioner is that while the rate of interest charged by the first respondent bank on the principal amount is at the rate of 11.39 % per annum, claiming of over-due interest at the rate of 36% per annum on the belated payment is excess and it is against public policy.

7. On the other hand, the learned counsel for the

first respondent bank would submit that the rate of interest of 11.39% p.a. has been calculated for the principal amount and the contract period commenced from 01.08.2010 to 01.06.2014. However, the over-due interest has to be calculated from 01.06.2014 to 28.02.2015, since the first petitioner has paid the monthly instalments belatedly during the later period.

8. The learned Counsel for the first respondent bank would further submit that the petitioners were already informed about the over-due interest on the belated payment, before execution of the loan agreement, between the parties and the petitioners have agreed to all the terms and conditions to repay the loan amount of Rs.16,00,000/-(Rupees Sixteen Lakhs Only) along with interest by way of 47 equated monthly instalments to the first respondent bank. The aforesaid loan amount ought to have been settled on or before 01.06.2014 as per the agreement. But, the petitioners have not settled the loan amount within the stipulated period and paid the instalments beyond the stipulated time. i.e. during the period from 01.06.2014 to 28.02.2015. Hence, over-due interest has been charged for the delayed payment of instalments, as stated in Clause 2.7 of the loan agreement. In clause 2.7 of the agreement, it has been clearly stated

that the unpaid loan amount shall carry interest at the rate specified in the schedule (Over-due interest). Having considered the said relevant clause, the learned Arbitrator/Second respondent has correctly passed the award by allowing the claim petition.

9. Heard the learned counsel for the petitioners, the learned counsel for the first respondent bank and perused the entire materials available on record.

10. Under Section 34 of the Arbitration and Conciliation Act, 1996, the scope of interference in the award passed by the Arbitrator is very limited.

11. Pursuant to the direction issued by this Court, the first respondent bank has filed the statement of Accounts/calculation sheet with regard to over-due interest claimed by the first respondent bank to decide the matter on merits, as no settlement was arrived at between the parties.

12. It is admitted fact that the first petitioner has paid the entire instalments, towards principle amount, along with interest thereon, as per the terms and conditions of the loan agreement. However, on perusal of the statement of accounts, the last payment of loan instalment was paid on 28.02.2015, which is beyond the

contract period, expired on 01.06.2014.

13. In so far as the statement of accounts is concerned, the first respondent bank has claimed a sum of Rs.2,68,390/- (Rupees Two Lakhs Sixty Eight Thousand Three Hundred and Ninety Only) as penal charges for belated payment of instalments payable to the first respondent bank. As the monthly instalment amount has not been paid by the petitioners on or before the due date, the first respondent bank has charged over-due interest as per the terms and conditions of the loan agreement. After several reminders served on the petitioners regarding over-due interest for the belated payment of instalments, there was no response from the petitioners. Therefore, the first respondent bank has filed a claim petition before the Arbitrator for recovery of the aforesaid amount. After perusing the documents placed before the Arbitrator, the Arbitrator has passed the award, dated 21.12.2015 in A.C.P. (KOTAK) No.917 of 2015 allowing the claim petition filed by the first respondent bank.

14. The learned counsel for the petitioners has relied upon page no.15 of typed set of papers, wherein the first page of agreement schedule, both parties have signed. But, the parties have not signed in the overleaf of first page

of the agreement, wherein it has been specifically stated that over-due interest at the rate of 3% compounded monthly interest. On perusal of the typed set of papers, the petitioner have signed the agreement papers in the appropriate place after having accepted the terms and conditions of the agreement entered into between the parties. The contention of the learned counsel for the petitioner that in a page where the specific clause of over-due interest is not signed by the petitioners cannot be accepted. After having agreed to all the terms and conditions of the agreement, the petitioners are liable to pay over-due interest on the belated payment of loan instalments to the first respondent bank as specified in the Schedule. Due to belated payment of monthly instalments by the first petitioner, the first respondent bank charged over-due interest in terms of Clause 2.7 of the loan agreement. Resultantly, a sum of Rs.2,60,765/- (Rupees Two Lakhs Sixty Thousand Seven Hundred and Sixty Five Only) was directed to be paid by the petitioners herein.

15. On perusal of the documentary evidence placed before this Court, if any delayed payment of the E.M.I. or any pay thereof is not made, it shall carry over-due interest. It is useful to extract the Clause 2.7 of agreement as follows:

"2.7. over-due Interest":

> If, on any Due Date(s), payment of the Loan Balance or any part thereof is not made, the unpaid amount shall carry interest at the rate specified in Agreement Schedule ("over-due Interest") and shall be computed from the respective due date/s for payment and shall become payable upon the footing of compound interest with monthly rests. The Borrower, the Co-Borrower and / or the Guarantor shall also be liable to pay collection Charges of an amount equivalent to one third of the over-due interest and cheque dishonour Charges."

Therefore it cannot be disputed by the petitioners that there is no provision in the agreement to charge over-due interest for the delayed payment. It is also specifically stated in the agreement schedule, the petitioner/borrower is liable to pay over-due interest. On reading the aforesaid clause, the petitioner is liable to pay over-due interest for belated payment at the rate of 3% compounded monthly interest as stated in the schedule, enclosed with the typed set of papers. In this regard, the first respondent bank has filed the statement of accounts for the delayed payment of the instalments due to the first respondent bank. Therefore, the contention of the petitioner cannot be accepted and the same is liable to be rejected. Hence, there is no scope to interfere with the award passed by the Arbitrator.

16. With regard to the scope of interference, the Division Bench of this Court in O.S. A.No.301 of 2017 and C.M.P. No.18730 of 2017 held as follows:

> 20. The scope for interference to an Arbitration award is very limited. Unless and until the applicant satisfies the requirements of Section 34 of the Act, the Arbitration Award cannot be set aside by this Court.
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> 21. The scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996, to an Arbitral Award is covered by the decision of Hon'ble Supreme Court in
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> (a) Oil & Natural Gas Corporation Ltd., Vs. Saw Pipes Limited reported in (2003) 5 SCC 705, wherein it was held that the Court can set aside the award, if -
>
> 1) It is contrary to:-
>
> (a) fundamental policy of Indian Law; (or)
>
> (b) Interest of India; (or)
>
> (c) Justice and morality.
>
> 2) It is patently illegal
>
> 3) It is so unfair and unreasonable that it shocks the conscience of the Court.

17. The petitioner has not satisfied the requirements under Section 34 of the Arbitration and Conciliation Act, 1996 and therefore, the original petition is liable to be dismissed.

18. Considering the facts and circumstances of the case and in the light of the decision cited supra, this Court is not inclined to interfere with the award passed by the Arbitrator/Second respondent herein under Section 34 of the Arbitration and Conciliation Act 1996.

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

Sd./-D.K.K.J
24.08.2018

//Certified to be true copy//

Dated at Madras this the day of 2019.

JJ 27/06/2019

COURT OFFICER(O.S.)

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