

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2018

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

O.P.NO.790 of 2018

and

A.Nos.6761 & 7713 of 2018

1. Mr.Bheraram Babulal Marvadi

2. Mr.Babuji Mulji Marvadi ...Petitioners

Vs.

M/s. Indus Indian Bank Limited

rep. By Mr.Bala Venkatagiri,

No.34, GN Chetty Road,

T.Nagar, Chennai - 600 017. ... Respondent

PRAYER : The Original Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the ex-parte award passed by learned Arbitrator dated 13.03.2017 in the Arbitration Case No.KKS 02/2017.

For Petitioners : Ms.Pooja

for Mr.Giridhar & Sai

For Respondent : Mr.K.Moorthy

ORDER

This Original Application has been filed to set aside the Award dated 13.03.2017 passed by the Arbitrator in Arbitration Case No. KKS 02/2017.

2. The learned counsel for the petitioners would submit that the Arbitrator served notice on the respondents in the claim petition, who are the petitioners herein, directing them to appear for hearing on 03.02.2017. On that date, counsel appeared on behalf of the respondents/ petitioners and sought time for filing reply statement. Hence, the case was posted on 03.03.2017. Since he was unable to get instructions, learned counsel requested further time. The Arbitrator refused to grant further time and set the respondents/ petitioners ex-parte and the case was posted on 10.03.2017 at 2.45 p.m. On that date, when the matter was taken up for hearing in the office of the Arbitrator, the respondents/ petitioners were not able to appear at 2.45 p.m. Mr. Jai Bharath, an Associate Lawyer was assigned to appear for the matter on that date. Since he was on leave to attend his ML Classes, another counsel Ms.Pooja was asked to represent before the Arbitrator and file a petition to set

aside the ex-parte order dated 03.03.2017. Due to shortage of time, the respondents/ petitioners were unable to prepare the counter affidavit by then. The aforesaid counsel Ms.Pooja was held up in this Court upto 2.45 p.m and thereafter rushed to the office of the Arbitrator. Since, she found it difficult to locate the premises of the Arbitrator, she could not reach in time. Since there was no appearance on behalf of the respondents/ petitioners, the Arbitrator reserved orders. However, the counsel represented before the Arbitrator at about 3.30 p.m., on the said date. But, she was informed that already orders have been reserved and refused to accept the petition to set aside the ex-parte order dated 03.03.2017. Therefore, the learned counsel sent an e-mail to the Arbitrator and also filed an application to re-open the Arbitration proceedings and to the set aside the ex-parte order dated 03.03.2017. The said application was refused stating that the Arbitrator has become 'functus officio', to entertain the said petitions. Challenging the ex-parte awards passed by the Arbitrator, the present Original Petitions have been filed before this Court.

3. The learned counsel for the respondent Bank would submit that the ex-parte award was passed by the Arbitrator after giving sufficient opportunity to the respondents to appear and defend their case. Thereafter, the learned Arbitrator has become 'functus officio' and therefore could not consider the petitions of the respondents. However, in view of the reasons stated in the affidavit, the petitioners may be provided an opportunity to put forth their case and then the Arbitrator shall decide the issue on merits.

4. Admittedly, learned counsel for the respondents/ petitioners have not appeared before the Arbitrator on 10.03.2017 at 2.45 p.m. However, she has given proper reasoning in the present petition, such as the absence of another junior counsel and the difficulty faced by her for locating the premises of the Official Liquidator, for her non-appearance before the Arbitrator in time. Taking into consideration the above submission of the learned counsel, this Court is inclined to grant one more opportunity to the respondents/ petitioners to put forth their case, to be decided on merits and in accordance with law, by the Arbitrator. Hence, the impugned ex-parte award dated 13.03.2017 passed by the Arbitrator is liable to be quashed, by imposing heavy cost on the respondents/ petitioners, for the delay of more than two years caused in concluding the proceedings.

5. In view of the above findings, with the consent of both the parties, this Court is inclined to pass the following orders :

1.The impugned award in Arbitration Case No.KKS 02/2017 dated 13.03.2017 is set aside on payment of cost of Rs.15,000/-, within a period of two weeks from the date of receipt of a copy of this order. Out of Rs.15,000/-, the petitioners shall pay a sum of Rs.10,000/- to the respondent and Rs.5000/- to the Member Secretary, Legal Services Authority, Chennai under the head "Environment Fund".

2.As consented by both the parties, Mr.Kushal Kumar Sancheti learned Arbitrator shall proceed with the Arbitral proceedings.

3.On compliance of the payment of cost, the petitioners are directed to file the reply statement, within two weeks thereafter.

4.On receipt of such reply statement, the Arbitrator is directed to pass orders, on merits and in accordance with law, as expeditiously as possible preferably within a period of twelve weeks, after giving opportunity to both the parties.

5.On instructions, learned counsel for both the parties undertake to co-operate with the proceedings.

6.It is made clear that in the event of non-compliance of the above conditional order, this O.P shall stand dismissed, without further reference to this Court.

6. The Original Petition is allowed on the above terms. No costs.

10.10.2018

avr/vkr

D. KRISHNA KUMAR, J.

avr

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