

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.383 of 2013

Mr.Rajan N Modi

.. Petitioner

Vs

1.M/s.Indusind Bank Ltd,
Rep. by its Power of Attorney Holder,
Mr.T.Bala Venkata Giri,
Having its Consumer Finance Division at
No.115 & 116, G.N.Chetty Road,
T.Nagar, Chennai - 600 018.

2.Ms.Rajeni Ramadass
Arbitrator

3.M/s.Shree Sai Dwarka Logistics
Mrs. Rupa N.Modi,
Flat no.103 & 104, A-Wing, 1st floor,
Mount Everest, Bhakti Park,
Near Imax Cinema, Wadala East,
Mumbai - 400 037.

4.Mrs.Rupa N. Modi

.. Respondents

Original Petition filed under Section 34 (2) (a) (iii) & b (ii) of the Arbitration and Conciliation Act, 1996 praying to set aside the Arbitral Award passed by the second respondent in SRR/ACP No.374/2009 dated 27.01.10.

For Petitioner

: Mr.S.Sivasubramanian

For Respondent 1

: Mr.K.Moorthy

ORDER

The instant petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Arbitral Award dated 27.01.2010 passed against the petitioner.

2. The brief facts leading to the filing of the instant petition is that the petitioner had availed loan from the first respondent for the purchase of the vehicle i.e., Ashok Leyland 2516 bearing Engine No.DPE433730, Chassis No.DPH117537 and Registration No.MH-04-DD-3929, under a loan agreement dated 22.05.2007. According to the first respondent, the petitioner had committed default in the repayment of the loan. In view of the dispute between the parties, the dispute was referred to the Arbitration by the first respondent in accordance with the Arbitration clause contained under the loan agreement dated 22.05.2007. The first respondent appointed the second respondent as the sole arbitrator to decide the dispute between the parties.

3. The second respondent/sole arbitrator acted upon the reference and after issuing notice to both the parties and after considering the materials available on record and after hearing the submissions of the parties, passed the Award dated 27.01.2010 directing the petitioner to pay

the first respondent a sum of Rs.1,37,547.14/- along with interest and cost.

4. Aggrieved by the Award dated 27.01.2010, the instant petition has been filed by the petitioner.

5. The learned counsel for the petitioner submitted that the primary ground raised for challenge in the instant petition is that no notice was served in the arbitral proceedings by the Arbitrator.

6. This Court by its earlier order directed the Arbitrator to place the record pertaining to the arbitration. As directed by this Court, the Arbitrator has also produced the records pertaining to the arbitration. As seen from the records, it is made clear that the notice was sent by the Arbitrator to the correct address of the petitioner. But the said notice was returned by the postal authorities with an endorsement in Marathi language. The address mentioned in the notice sent by the Arbitrator is the same address which is also disclosed in the instant petition filed under section 34 of the Arbitration and Conciliation Act, 1996 by the petitioner. The address to which the notice was sent to the petitioner by the Arbitrator is also the same address as disclosed in the loan agreement dated 22.05.2007.

7. The findings of the Arbitrator with regard to the service of notice on the petitioner is found at paragraph 3 of the arbitral award which reads as follows:

“3.a) This Tribunal held that the Arbitral proceedings on 30.10.2009, 11.12.2009 and 22.01.2010. On behalf of the Claimant, its authorised representative Mr.Balavenkata Giri, Executive Legal, appeared. The Respondents herein , despite granting sufficient opportunities, neither appeared in person nor through any authorised representative.

b) The Claim statement and the supporting documents filed by the Claimant were sent to the Respondents 1 & 2 along with the Notice of hearing dated 25.09.09 by fixing the date of hearing as 30.10.09. On the said date, the authorised representative of the Claimant appeared. The notice sent to the Respondents was returned. This Tribunal with a view to give further opportunity to the Respondents sent the copy of its proceedings dated 30.10.09 to the Respondents and fixed the date of hearing on 11.12.09. But the same was returned from the Respondents. In order to give another opportunity to the Respondents, the Proceedings dated 11.12.09 was sent to the Respondents and they were specifically intimated that the matter stands posted for their appearance finally on 22.01.2010 failing which the matter will be heard in their absence. But the same was again returned from the Respondents. The Claimant

submitted that the notice has been sent to the last known address of the Respondents.

*c) This Tribunal finds that as per Section 3 of the Arbitration & Conciliation Act, 1996, it is deemed to be a service, if the notice is sent to the last known address of the party. Further Section 25(C) of the said Act reads as follows: “ a party fails to appear at an oral hearing or to produce documentary evidence the Arbitral Tribunal may continue the proceedings and make the Arbitral Award on the evidence before it”. This Tribunal was therefore constrained to set the Respondents *ex parte* on 22.01.2010.”*

8. As seen from the findings of the Arbitrator, the petitioner was given sufficient opportunities by the Arbitrator and only thereafter, he was set *ex parte* on 22.01.2010. The Arbitrator has also referred to Section 3 of the Arbitration and Conciliation Act and held that since the notice was sent to the last known address of the petitioner, it amounts to deemed service of notice on the petitioner.

9. Admittedly, the petitioner committed default in the repayment of the loan under the loan agreement. The Arbitrator has also passed the Award based on Exhibits which were marked by the first respondent before him which included the loan agreement dated 22.05.2007 and statement of

account.

10. This Court is of the considered view that the Award passed by the Arbitrator is a well reasoned Award which does not call for any interference under Section 34 of the Arbitration and Conciliation Act, 1996. This Court is also of the view that the Award does not suffer any patent illegality and there is no merit in the instant petition.

11. 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 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.

ABDUL QUDDHOSE, J.

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12. The petitioner has not satisfied any of the grounds mentioned above to interfere with the Award dated 27.01.2010. Hence, Original Petition shall stand dismissed. However, there shall be no order as to costs.

Index: Yes/No
Speaking/Non-speaking orders
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