IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM

THE HONOURABLE MR.**JUSTICE M.M.SUNDRESH**

O.P.No.497 of 2013

1.M/s Lalitha Enterprises,
Rep., by its Managing Partner
Mr.S.G.Kalaichelvan
No.5, Whannels Road,
Egmore, Chennai-600008.

2.Mr.S.G. Kalaichelvan,
S/o S.Gurusamy,
No.17, Dr. Alagappa Road,
Purasaiwalkkam,
Chennai-600 084. .. Petitioner

Vs.

1.M/s Yes Bak Ltd.,
Rep., by its Authorized Representative,
No.3, 2nd Floor, Dass India Towers,
2nd Line Beach Road, Chennai-600 001.

2.Mr.D.Saravanan, Arbitrator,
"Orient Chambers",
No.90,(Old No.73),
4th Floor, Armenian Street,
Chennai-600 001. .. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award passed by the second respondent dated 17.01.2013.

For Petitioner : M/s Thomas T.Jacob
For 1st Respondent : No appearance

ORDER

The petitioner, being the borrower, obtained loan from the first respondent. A Loan Agreement was entered into on 28.06.2007 and a sum of Rs.7 lakhs was financed to the petitioner. The petitioner did default the payment, resulting in the termination of the loan. Thereafter, a communication has been sent both for repayment of the loan and appointment of Arbitrator. As the petitioner did not respond, an arbitration clause was invoked. Before the Tribunal, the petitioner took over the plea that the entire claim was settled as per the letter dated 29.06.2010 issued by the first respondent. The first respondent contended that there was only an adjustment in the aforesaid amount towards the principal so as to enable the payment to close the loan subsequently. The Tribunal allowed the petition with interest at 18% per annum . Hence, the present original petition.

2. The learned counsel appearing for the petitioner would submit that the entire amount has been paid by way of settlement. Therefore, the very invocation of the arbitration is bad in law.

3. This Court is unable to accept the said contention. As rightly held by the Tribunal, even on a perusal of the letter dated 29.06.2010, the adjustment was towards the principal outstanding so as to enable the petitioner to close the loan subsequently. The petitioner did not dispute the calculation made by the first respondent. On the contrary, the only contention was that the settlement would govern all liabilities. When the Arbitrator has interpreted the document and gives the finding, this Court is not supposed to give a different finding especially, when the finding was that the receipt of amount was only towards "recovery amount" and the receipts do not contain any words "towards full and final settlement". Even otherwise, this Court is of the view that there is no perversity in the finding even the document relied upon merely says that the adjustment is only as against the principal amount. In such view of the matter, this Court does not find any error in the award passed. However, the other contention made by the petitioner is that the interest levied at 18% is excessive. Even the amount claimed is only accrued interest among other heads.

Admittedly, a sum of Rs.1,20,000/- is an offer towards adjustment as against the principal outstanding. In such view of the matter, the interest levied at 18% per annum stands modified to 9% per annum. Accordingly, the original petition stands dismissed modifying the rate of interest awarded by the Tribunal fromt 18% to 9 % per annum. No costs.

27.02.2018

raa

M.M.SUNDRESH,J.

raa

O.P.No.497 of 2013

27.02.2018