

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE ABDUL QUDDHOSE

O.P.No.515 of 2013

Abid Hussain

.. Petitioner

Vs

1.M/s.Indus Ind Bank Ltd.

Rep by its Manager/Executive-Legal,
New No.34, Old No.115 & 116,
G.N.Chetty Road,
T.Nagar,
Chennai - 600 017.

2.Digamber Singh

3.D.Saravanan
Sole Arbitrator

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Ex-parte Arbitral Award dated 19.02.2009 passed in Arbitration case No.564 of 2008 by the third respondent.

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For Petitioner

: Mr.Karthik Raja

For Respondent 1

: Mr.K.Moorthy

For Respondents 2 & 3

: No appearance

ORDER

The instant petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award dated 19.02.2009 passed against the petitioner by the third respondent/Arbitrator.

2. The petitioner was a borrower under the loan agreement, entered into with the first respondent. The petitioner committed default in the repayment of the loan to the first respondent. The dispute was referred to the arbitration by the first respondent in accordance with the arbitration clause. The third respondent was appointed as an Arbitrator by the first respondent. The third respondent acted upon the reference and after issuing notice to the parties, passed an Award dated 19.02.2009 against the petitioner which is the subject matter of challenge in the instant Original Petition.

3. The learned counsel for the petitioner submits that the primary ground raised by the petitioner for challenging the Award is that no notice was served on the petitioner in the Arbitration. This Court by its earlier order dated 20.06.2018 directed the learned Arbitrator to place his file before this Court in order to enable this Court to find out whether notice was served on the petitioner or not.

4. Today when the matter was called, the learned counsel for the respondent has placed the arbitrator's file before this Court.

5. On a perusal of the file, it is found that notice was served on the petitioner and acknowledgment card is also available in the Arbitrator's file. Therefore, the primary ground raised by the petitioner that no notice was served on him in the arbitral proceedings will have to fail.

6. The other ground raised by the petitioner is that the first respondent/claimant has claimed excess interest than what was agreed upon under the agreement.

7. The first respondent in the arbitral proceedings has filed the documents namely Exs.A1 to A7, which were marked before the Arbitral Tribunal on the side of the first respondent, to establish his claim. Apart from that the first respondent has also filed the statement of account which is a computer generated one. After having satisfied with the claim made by the first respondent, the Arbitrator has passed the impugned Award.

8. 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 illegalities are 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.*

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

22.06.2018

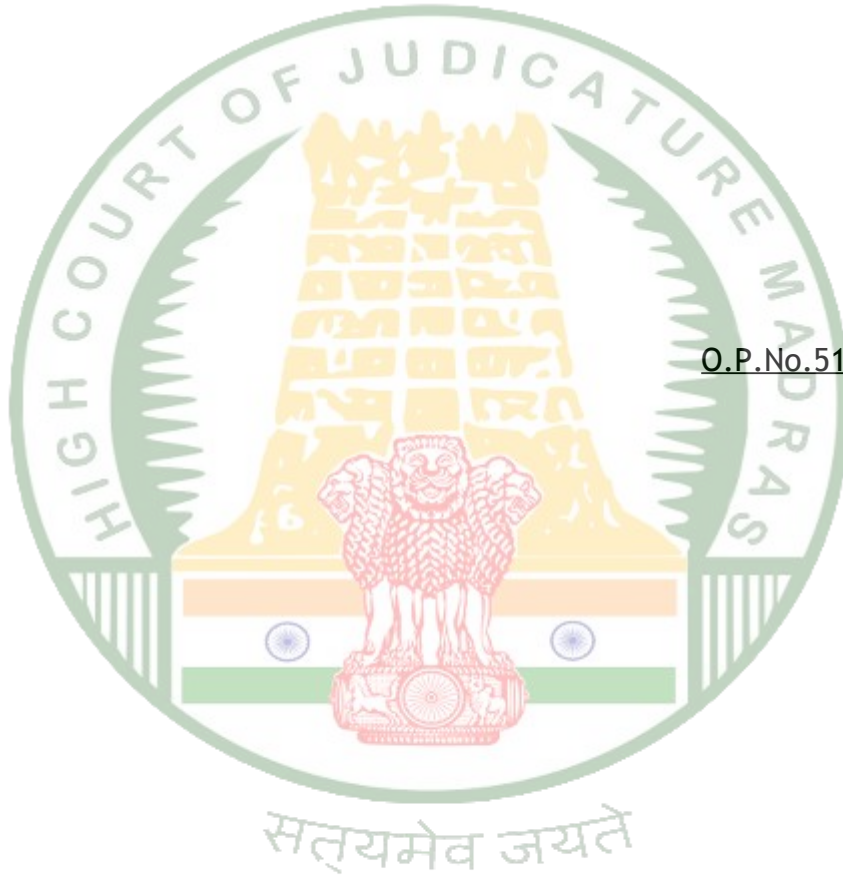
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ABDUL QUDDHOSE, J.

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