IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM:
THE HONOURABLE MR. **JUSTICE S.VAIDYANATHAN**

Original Petition No.39 of 2014

1. C.Bhuvaneswari
2. P.Balakrishnan ... Petitioners

vs.

1. M/s.Shriram City Union Finance Ltd.,
rep. By its Authorized Representative,
S.Anandhanatarajan
having their Office at No.6, L.B.Road,
Sorrento Building, II Floor,
Adyar, Chennai 600 020.

2. C.A.Ravichandran
3. N.Murugadoss
4. P.S.Vinod
5. C.Sivakumar ... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 11.11.2013 passed by the Sole Arbitrator in A.C.P.No.(EF/CAR) 627 of 2013.

For Petitioners : Mr.K.Govi Ganesan

For Respondents : Mr.K.V.Ananthakrishnan

O R D E R

Petitioners have approached this Court challenging the Arbitral Award dated 11.11.2013 passed by the Sole Arbitrator in A.C.P.No.(EF/CAR) 627 of 2013 on the ground that no proper notice was served on them and that in the Agreement, the name of the Arbitrator has not been mentioned.

2. Before the Tribunal, it is the case of the 1st Respondent/Claimant viz. M/s.Shriram City Union Finance Limited that they entered into a loan Agreement on 30.04.2011 with the Petitioners and Respondents 3 to 5 herein and lent them a sum of Rs.3,00,000/- as loan. As per the loan Agreement, the Borrowers and the Guarantors have to repay the loan in 24 equal monthly instalments. According to the 1st Respondent/Claimant, the Borrowers have paid Rs.2,51,431/- after giving credit to all the payments made so far and are liable to pay a sum of Rs.2,06,392/- towards outstanding dues. In spite of repeated demands, the Borrowers neglected to pay the dues and hence, the 1st Respondent/Claimant initiated Arbitral proceedings against the Borrowers.

3. On the side of the 1st Respondent/Claimant, seven Exhibits vide Ex.A1 to A7 were marked and the learned Arbitrator allowed the claim of the 1st Respondent/Claimant. The operative portion of the Award under challenge, reads as under:

> "For the foregoing reasons, this Arbitral Tribunal finds that the Claimant has established the case and in the result, it is awarded that the claim is allowed and consequently, the Respondents are directed to pay jointly and severally Rs.2,06,392/- together with interest at 18% per annum from 02.07.2013 till its realization and Rs.5,000/- towards the cost of Arbitration. In non-compliance thereof, the claimant may proceed further by executing this Award for recovery of the amount due from the Respondents."

4. According to the learned counsel for the Petitioners, in terms of Section 24(3) of the Arbitration and Conciliation Act, 1996, the Arbitrator will have to send day-to-day proceedings to the parties, even if they are present in the Court and then proceed with the Arbitration proceedings. He drew the attention of this Court to Section 3 of the Act and stated that notice will have to be served on the Borrowers/Guarantors and it is the duty of the Claimant to search the person and ensure that the notice is served. According to the learned counsel, in the case on hand, barring one notice, no other notice was served on the Borrowers.

5. It is further submitted by the learned counsel for the Petitioners that the consent of the Borrowers is required for appointment of an Arbitrator and sought interference of the Arbitral Award, stating that the Borrowers should be given an opportunity to participate in the Arbitration proceedings.

6. In reply, learned counsel appearing for the 1st Respondent/Claimant contended that the Borrowers were duly informed about the Arbitral proceedings and pre-Arbitrary notice was sent to them and all the Postal covers were returned with the endorsement 'Left'. He further submitted that the Guarantor, viz. Vinod has received the notice and that the Petitioners herein have admitted that they came to know about the Arbitration

proceedings only through the intimation given by the said Vinod and based on the same, the present Original Petition has been filed.

7. It is further submitted by the learned counsel appearing for the 1st Respondent/Claimant that in terms of clauses 11 and 12 of the Agreement, Arbitration proceedings were duly conducted and the Petitioners were issued with notice, which were returned with the endorsement "Left" and that the Borrowers never intimated the Claimant about the change in their address. Learned counsel drew the attention of this Court to the Promissory Note, the Application for entertaining the evidence and Postal covers, wherein, the address of the Borrowers have been mentioned, to which communications have been sent. He contended that even though it has been stated that the Borrowers have intimated the Postal Department about the change in their addresses, there is no plea to that effect. Having not done so, the Petitioners cannot contend that the Arbitral Award is an exparte one.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. A reading of Section 24(3) of the Arbitration and Conciliation Act, 1996 makes it very clear that only after the commencement of the Arbitration

proceedings, documents will have to be handed over to the parties. In case of non-appearance of the Borrowers/Guarantors, it is not the duty of the Arbitrator or the Bank/Finance Company to send documents to them. As per Section 24(3) of the Act, pre-Arbitration notice has to be sent to the other side. Proviso to Section 24(3) is to ensure that proper intimation is given to the Borrowers/Guarantors and nowhere, it stipulates a condition that the defaulter needs to be searched by the Arbitrator and served with notice before commencement of proceedings. If there is deemed service of notice to a party and he/she fails to appear before the Arbitrator, he/she will have to blame his stars and not the Arbitrator or the person, who has initiated the proceedings.

10. At this juncture, it is worth referring to a decision of this Court in the case of **M.Venugopal Munaga vs. Kotak Mahindra Bank Limited** reported in **2017 SCC Online Madras 5897**, relevant portion of which, reads as under:

> "6. ... Thus, the address mentioned in the agreement is the address furnished by the Petitioner. The Petitioner has not furnished any change of address and in the application form signed by the Petitioner while availing the credit card facility, both the addresses given by the Petitioner are one and the same. Therefore, the procedure adopted by the first respondent as well as the Arbitrator would be saved in terms of Section 3(1)(a) of the Act. The contention has been raised that when the first respondent was able to ascertain the correct address and filed the Execution Petition, such attempt should have been made even at the time of initiation of arbitration."

11. Further, in the decision rendered by the Bombay High Court in the case of **Francisco A. D'souza vs. L & T Finance Ltd., Mumbai (2015 SCC OnLine Bom 6864),** it has been categorically held that when notices are sent at the last known addresses of the parties and the same have not been returned by the postal authority, it would amount to a deemed service of such notices. It was further held therein that it is suffice that notice has been sent to the last known address of the party as mentioned in the Agreement, unless and otherwise the party is able to produce a document to the effect that change of address was duly communicated.

12. In view of the above, if the contention of the learned counsel for the Petitioners is accepted, then every day, Finance Companies will have to depute someone to ascertain as to whether the Borrower/Guarantor is residing in the same address or not. Section 24(3) is not meant for chasing a person to serve notice on him. **Hence, in terms of Section 24(3) of the Act, it has to be presumed that there is deemed service, if the Postal Covers are returned with the endorsements, viz. 'Left', 'Door Locked' and 'Intimation given', etc.**

13. The contention of the Petitioners that they have paid the entire loan amount and that a sum of Rs.50,000/- alone is due cannot be gone into the present Original Petition. According to the 1st Respondent/Claimant, a

sum of Rs.2,51,431/- has been paid by the Borrowers and a sum of Rs.2,06,392/- is due to be paid by the Borrowers towards the principal and other heads.

14. Hence, I am of the view that there was proper notice to the Borrowers and the Arbitrator has rightly adjudicated the claim. Whenever, an Agreement is entered into between the parties, the Agreement will not contain the name of the Arbitrator. An Arbitrator is appointed only if necessity arises. If the Petitioners are aggrieved by the appointment of an Arbitrator, at the threshold, they should have approached this Court seeking appointment of a different Arbitrator. After passing of the Arbitral Award and being defaulters, the Petitioners cannot now take shelter on technical grounds. Even the technical grounds raised by the Petitioners in the case on hand, are not helpful to them.

15. With regard to service of notice, even though the decision cited above is very clear that **it has to be presumed that there is deemed service, if the Postal Covers are returned with the endorsements, viz. 'Left', 'Door Locked' and 'Intimation given', etc.** ***there is a need for amendment in the Arbitration Act to the effect that newspaper publication is compulsorily made, in case of non-receipt of notice by the Borrower/Guarantor in***

person, which would ensure reduction of pendency of Original Petitions, on the score that there is no proper notice. Also, a clause may be added in the Contractual Agreement mentioning the name of the Newspaper in which Paper publication would be effected, in case of default by the party.

16. Till such amendment is effected, this Court suggests that once loan is advanced, **the Mobile number of the Borrower/Guarantor should not be changed**, **as intimation about the dues/initiation of Arbitration Proceedings can be given to them via SMS (Short Message Service), so that** they cannot take a stand that they have no knowledge about the communication received from the Bank/Finance Company.

17. In view of the foregoing discussion and since the Arbitral Award is a finding of fact, this Court finds no reason to interfere with the same. **In fine, this Original Petition is dismissed with the above observations.** No costs.

18.12.2018

Index : Yes/No
Speaking Order : Yes/No

(aeb)

S.VAIDYANATHAN,J.

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