

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.06.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

O.P.NO.596 OF 2013

Mr.S.Partheeban

Petitioner

Vs

1. M/s.Shriram City Union Finance Ltd.,
represented by its Authorised
representative R.Muruganantham
having their office at No.6, L.B. Road,
Sorrento Building, 2nd Floor,
Adyar, Chennai 600 020.
2. Mr.C.A.Ravichandriran,
Sole Arbitrator,
having office at No.90, Peters Road,
New College Shopping Complex,
Chennai 600 014.
3. Mr. Paramanandam,
S/o.K.Permal,
Des Operator Mrf,
Thiruvottiyur, Chennai 600 057.
4. Mr. Edwin GH,
S/o.Hendry AG,
5, Sabapathy Street,
Perambur, Chennai 600 011.
5. Mr. Yuvaraj,
S/o.Lakshmipathy K.
22 Jothi Nagar,
Annanur, Chennai 600 062.
6. Mr. Anandan SP,
S/o.Palanisamy A,
Ah Square Apartment,
18, Srinivasn Nagar Main Road,
Nerkundram, Chennai 600 107.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation

Act, 1996 praying to set aside the Award dated 13.5.2013 passed by the 2nd respondent herein in the Arbitration Case No.A.C.P.No.(EF/CAR) 804/2012.

For Petitioner : Mr.L. Gavaskar

for Respondents : Mr.K.V.Ananthakrishnan for R1
No appearance for R2 to R6

ORDER

The instant petition has been filed by the petitioner/borrower under section 34 of the Arbitration and Conciliation Act challenging the Arbitral Award dated 13.5.2013 passed against the petitioner as well as 4th respondent in the Arbitral proceedings. The petitioner had availed financial facility under loan agreement with the 1st respondent. Since according to the 1st respondent, the petitioner committed default in repayment of the loan, the dispute was referred to arbitration in accordance with the arbitration clause contained in the loan agreement. The Arbitrator acted upon the reference and has passed the impugned Award dated 13.4.2013 against the petitioner as well as other respondents before the arbitration. The petitioner is the borrower and the remaining respondents in the arbitration are the guarantors.

2. The primary ground for challenge to the impugned Award is that the petitioner did not receive notice during the arbitral proceedings and also did not receive notice about the appointment of Arbitrator even prior to the commencement of the Arbitral proceedings. Learned counsel for the petitioner

submits that the notice was sent by the Arbitrator to the office address where the petitioner was not in employment during that time.

3. According to the learned counsel for the petitioner, the residential address of the petitioner was furnished in the loan agreement, but the respondent has chosen to send the notice to the office address where petitioner was not employed at that point of time. Since the notice was not served, the Arbitrator ordered for effecting publication and accordingly publication was also effected, pursuant to which, an ex parte award dated 13.5.2013 came to be passed against the petitioner. The learned counsel for the 1st respondent is also unable to produce any acknowledgment card to prove that notice was served on the petitioner prior to the commencement of arbitration as well as during the arbitration proceedings.

4. The ground raised by the petitioner challenging the Arbitral Award is a valid ground under section 34 of the Arbitration and Conciliation Act since no notice was served either prior to the commencement of the arbitration proceedings or during the arbitration proceedings on the petitioner. Therefore, this Court is of the considered view that the Award passed as against the petitioner will have to be set aside. Accordingly, the award passed by the learned Arbitrator dated 13.5.2013 is hereby set aside and the Original Petition

ABDUL QUDDHOSE, J.

msr

is allowed. No costs.

5. The 1st respondent is entitled to initiate fresh arbitration proceedings against the petitioner as well as the guarantors in accordance with law.

21.06.2018

msr

Speaking Order/non-speaking order

Index:yes/No

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