

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHANOriginal Petition No.613 of 2017

Prabhash Chandra Chaturvedi

... Petitioner

vs.

1. M/s.Shriram City Union Finance Limited,
rep. by its Authorized Signatory C.Gracy,
having its Registered Office at
No.123, Angappa Naicken Street,
Chennai 600 001.
2. M/s.P.N.Agencies Pvt. Ltd.,
rep. by its Director Neeraj Chandra Chaturvedi,
34/2-G-1-2, Sanjay Place,
Agra, Uttar Pradesh - 282 002.
3. Neeraj Chandra Chaturvedi,
4/18, Bagh Farzana, Agra,
Uttar Pradesh - 282 002.

... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 29.11.2016 passed by the Sole Arbitrator in Arbitration Case No.107 of 2016.

For Petitioner : Mr.T.Sezhian

For Respondents : Mr.R.Umashankar

ORDER

This Petition is filed to set aside the Arbitral Award dated 29.11.2016 passed by the Sole Arbitrator in Arbitration Case No.107 of 2016.

2. The 1st Respondent herein viz. M/s.Shriram City Union Finance Limited, is the Claimant before the Arbitrator. Before the Arbitrator, it is stated by the 1st Respondent/Claimant that M/s.P.N.Agencies Pvt. Ltd., the 2nd Respondent herein approached them for sanction of enterprise finance loan of Rs.10,00,000/- for its additional line of business. The Petitioner herein and the 3rd Respondent herein stood as Guarantors for the loan availed by the 2nd Respondent. It is the further case of the Claimant that the 2nd Respondent herein paid only 6 instalments, that too belatedly, all amounting to Rs.3,08,316/- only, thereby, the 2nd Respondent herein committed default in repayment of further instalments of loan amount.

3. Hence, the Claimant demanded the amount due under the contract and issued Demand Notice dated 10.03.2016 to the Borrower and Guarantors. On the date of filing the Claim Petition, a total sum of Rs.12,76,244/- was due from the 2nd Respondent and Guarantors. The Claimant invoked the Arbitration Clause in the Agreement, in and by their letter dated 29.04.2016 and sent the letters of reference to the Borrower and the Guarantors, i.e. the Petitioner and the 3rd Respondent herein, which were returned as "Left". Arbitration notice dated 15.06.2016 was issued to the

Borrower and Guarantors directing them to appear for the hearing on 18.07.2016. Notices sent to the 2nd and 3rd Respondents herein were returned as “unclaimed” and notice sent to the Petitioner was unserved as “insufficient address”. On 18.07.2016, Claim Petition was filed and there was no representation for the Respondents. Hence, the Arbitrator issued fresh notice dated 18.07.2016 with copies of Claim Petition to the Borrower and Guarantors, directing them to appear for the hearing on 16.08.2016, but, none appeared. Hence, paper publication was ordered to be effected on the Respondents returnable by 14.10.2016. Even thereafter, none represented the Borrower and the Guarantors.

4. On the side of the Claimant, Exs.A1 to A7 were marked. After perusing the same, the learned Arbitrator proceeded with the matter on merits and passed the following Award:

“(i) The Respondents shall pay a sum of Rs.12,76,244/- (Rupees Twelve Lakhs Seventy Six Thousand Two Hundred and Forty Four only) along with future interest @ 18% per annum from the date of Claim Petition till the date of realization.

(ii) The Claimant is entitled for a sum of Rs.10,000/- towards cost of proceedings.”

5. According to the learned counsel for the Petitioner, the Petitioner

has already submitted his resignation as early as on 31.03.2014 from Full time Directorship and that the Arbitral Award in any event will not bind him. Relying on the decision of the **Apex Court** in the case of **Sachin Gupta vs. K.S.Forge Metal Private Limited, (2013) 10 SCC 540**, learned counsel for the Petitioner submitted that the Apex Court has set aside the Arbitral Award under challenge therein, on the ground that without issuance of any notice and without hearing the party, the Award has been passed. Learned counsel further relied on a judgment of the **Delhi High Court** in the case of **Union of India vs. Daisy Trading Corporation, (2001) SCC Online Del 1180**, wherein also, an exparte Award passed by the Arbitrator was challenged and the same was set aside. Thus, according to the learned counsel for the Petitioner, the Award under challenge in the case on hand is liable to be set aside under Section 34(2)(a)(iii) of the Arbitration and Conciliation Act, 1996.

6. In reply, learned counsel appearing for the Respondents submitted that the address furnished by the Petitioner in the Loan Agreement and in the present Original Petition, is one and the same and that the Petitioner has purposely evaded Arbitration proceedings.

7. Heard the learned counsel for the Petitioner and perused the material documents on record.

8. It is not in dispute that the 2nd Respondent herein has availed loan from M/s.Shriram City Union Finance Limited, the 1st Respondent herein. As the 2nd Respondent/Borrower has paid only six instalments to the 1st Respondent/Claimant that too belatedly and that the 2nd Respondent/Borrower committed default in payment of remaining instalments, the 1st Respondent/Claimant initiated Arbitration Proceedings. Since the notices sent to the 2nd Respondent/Borrower and the Guarantors were returned as 'unclaimed' and 'insufficient address', the Arbitrator issued fresh notice to them asking them to appear on 16.08.2016. Since none appeared on the said date, paper publication was also effected. Despite the same, none represented the Borrower and the Guarantors. Hence, the learned Arbitrator has proceeded to pass the Award under challenge.

9. In **Daisy Trading Corporation** case (cited supra), registered notice sent to the Petitioner therein was not returned by the Postal Authorities. The learned Arbitrator proceeded ex parte against the Petitioner therein by observing that it was a presumed sufficient service. However, in the case on hand, though the Arbitration notice issued to the Borrower and Guarantors were returned as 'Unclaimed' and 'Insufficient Address', the Arbitrator issued

fresh notice to them. As there was no response to the same, the Arbitrator has ordered Paper publication. Only thereafter, the learned Arbitrator has proceeded to pass the Arbitral Award. Hence, the above cited Delhi High Court judgment is not applicable to the case on hand.

10. The decision rendered by the Apex Court in **Sachin Gupta's** case (cited supra) is also not applicable to the present case, as, in that case too, an exparte Award was passed without issuance of any notice and without hearing the Respondent therein. But, in the case on hand, all possible steps have been taken to serve notice on the Borrower and the Guarantors.

11. In the present case, there is no question of presumption of sufficient service by the Arbitrator. Notices served to the Borrower and Guarantors were unserved on the ground 'Unclaimed' and 'Insufficient Address'. But, it is seen from the records, that the address furnished by the Petitioner herein in the Loan Agreement is the same as furnished by him in the present Original Petition.

12. Whether the Petitioner has resigned from the Directorship of the 2nd Respondent Company cannot be gone into in the present proceedings and whether the same has been reflected before the Registrar of Companies is not

known, as the loan was availed during the period when he was one of the Directors of the 2nd Respondent Company. Hence, the Arbitrator has rightly held that the 2nd Respondent Company and the Guarantors are jointly and severally liable to pay the outstanding dues. The Petitioner cannot take a hyper-technical ground to defeat the claim of the 1st Respondent/Claimant and the same cannot be accepted.

13. In view of the above, I find no merit in the contentions of the Petitioner herein and hence, **the Original Petition is dismissed.** However, nothing prevents the Petitioner herein from paying the outstanding dues to the 1st Respondent/Claimant and file appropriate proceedings to recover the same from the 2nd Respondent/Company and the other Guarantor, if he is able to establish his contention before the other forum. No costs.

28.11.2018

Internet : Yes

Speaking Order : Yes

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S.VAIDYANATHAN,J.

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O.P.No.613 of 2017

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