

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

O.P. No.645 OF 2017

1. Senthil Kumar
2. Singaram
3. Vijayakumari
4. S. Venkateswari ..Petitioners

Vs.

1. M/s. Shriram City Union Finance Ltd.
Rep. by their Authorized representative
Having their office at
No.123, Angappa Naicken Street,
Chennai - 600 001.
And its Inter Alia Branch
No.23, IMI Complex,
Udayarkudi, Kattumannarkoil and
Its Regiona Office at
River View Street,
Pudupalayam Street, Cuddalore. ..Respondent

The Original Petition has been filed to set aside the
ex-parte award dated 15.10.2016 passed by the Sole
Arbitrator in A.C.P. (EF/CAR) 515 / 2015.

For Petitioners : Mrs. M.R. Jothimanian

For Respondent : Mr. K.V. Ananthakrishnan

O R D E R

This Original Petition has been filed under Section 34 of Arbitration and Conciliation Act, 1996, to set aside the the ex-parte award dated 15.10.2016 passed by the Sole Arbitrator in A.C.P. (EF/CAR) 515 / 2015.

2. The brief facts of the case are as follows for consideration:

The first petitioner approached the respondent finance company, claimant before the arbitrator, for availing loan facility for a sum of Rs.16,00,000/- (Rupees Sixteen Lakhs Only) along with interest. Accordingly, both had entered into loan agreement on 31.07.2013. The first petitioner is a borrower and other petitioners are family members of the first petitioner and the second petitioner stood as guarantor also entered into simple mortgage with the respondent finance company for the aforesaid loan received by the first petitioner. The petitioners having paid some dues, committed defaults in making balance payments of instalments of the loan amount. As the petitioners neither respond to the reminders of the respondent finance company, nor paid the balance loan amount, the petitioners were called upon for arbitral proceedings for recovery of the loan due amount. In spite of notice served on the petitioners, they did not enter appearance before the arbitral proceedings. Therefore, an Ex-parte award was

passed in A.C.P. (EF/CAR) 515 / 2015 dated 15.10.2016 by the learned Arbitrator allowing the claim petition filed by the claimant/respondent finance company herein and the petitioners are directed to pay jointly and severally the award amount of Rs.17,11,212/- with interest @18%. Being aggrieved by the said award, the petitioners have filed the present original petition for setting aside the aforesaid arbitral award.

3. The learned counsel for the respondent finance company would submit that the second petitioner entered into simple mortgage offering his property as security on behalf of the first petitioner, with the respondent finance company for availing a loan amount for a sum of Rs.16,00,000/- (Rupees Sixteen Lakhs Only). The first petitioner agreed to repay the loan amount along with interest in 36 monthly instalments of Rs.66,480/- (Rupees Sixty Six Thousand Four Hundred and Eighty Only) per month to the respondent finance company. The petitioners having paid a sum of Rs.9,38,240/- (Rupees Nine Lakhs Thirty Eight Thousand Two Hundred and Forty Only), thereafter, the petitioners failed to pay the balance due amount of Rs.14,55,440/- (Rupees Fourteen Lakhs Fifty Five Thousand and Four Hundred and Forty Only) to the respondent finance company as per the terms and conditions of the loan agreement. Therefore, the respondent finance company

approached the arbitrator by filing the claim petition for recovery of the aforesaid balance due amount. Despite notice served to the petitioners with regard to the arbitral proceedings for their appearance before the arbitrator, they were called absent on 12.12.2015. Hence, the arbitrator, upon perusal of the documentary evidence produced before him, passed an ex-parte award directing the petitioners to pay a sum of Rs.17,11,212/- (Rupees Seventeen Lakhs Eleven Thousand Two Hundred and Twelve Only) along with @18% interest from the date of award till 31.10.2018 by which payable amount comes to Rs.23,41,594/- (Rupees Twenty Three Lakhs and Forty One thousand Five Hundred and Ninety Four Only) as on today. Hence, challenging the aforesaid ex-parte award, the present original petition has been filed by the petitioners.

4. The learned Counsel for the petitioners would submit that the summon was served to the petitioners for appearance before the arbitrator on 12.12.2015. Due to heavy flood in Cuddalore District, in the month of December 2015, the petitioners could not appear before the arbitrator and at the same time, the first petitioner has sent a letter to the Arbitrator by communicating the same. Without considering the reasons for non-appearance of the petitioners, before the arbitrator. The arbitrator has erroneously passed the ex-parte award under Section 34 of

Arbitration and Conciliation Act 1996, and the same liable to be set aside.

5. The learned counsel for the respondent would submit that as per the memo of calculation the petitioners are liable to pay the award amount of Rs.17,11,212/- (Rupees Seventeen Lakhs Eleven Thousand Two Hundred and Twelve Only) by calculating interest @18% from 15.10.2016 to 31.10.2018, arrived at Rs.23,41,594/- (Rupees Twenty Three Lakhs and Forty One thousand Five Hundred and Ninety Four Only). Therefore, the respondent finance company initiated arbitral proceedings against the petitioners for recovery of the aforesaid amount. Though notice was served to the petitioners, they did not enter appearance before the Arbitrator on 12.12.2015. Hence, the learned Arbitrator upon considering the facts and circumstances of the case, has rightly passed the ex-parte award.

6. During the course of arguments, the learned counsel for the petitioners has fairly submitted before this Court that to show bonafide of the petitioners, out of the disputed amount, the petitioner is ready to pay Rs.10,00,000/- (Rupees Ten lakhs only) to the respondent finance company by two instalments within a time fixed by this Court.

7. Insofar as the disputed portion of the amount is concerned , the learned counsel for the respondent would submit that if the petitioner in order to show bona-fide by making payment of Rs.10,00,000/- (Rupees Ten Lakhs Only) out of disputed amount as per the direction of this Court, the Court may consider the said request of the petitioner and to proceed further before the arbitrator, for the disputed amount.

8. By considering the submissions made by the learned counsels for the petitioners and the learned counsel for the respondent, this Court is inclined to pass the following orders:

(i).The impugned ex-parte award dated 15.10.2016 made in A.C.P.(EF/CAR) 515 of 2015 is set aside on payment of the amount of Rs.5,00,000/- (Rupees Five Lakhs only) to the respondent finance company within a period of 6 weeks from the date of receipt of a copy of this order and thereafter, the balance amount of Rs.5,00,000/- (Rupees Five Lakhs only) shall be paid to the respondent within six weeks. In default, Liberty to the respondent finance company to proceed in accordance with law for recovery of the outstanding due amount.

and the respondent, to raise all their contention and submissions by way of filing statement before the arbitrator within a period two weeks from the date of receipt of a copy of this order. After issuing fresh notice to the parties, the Arbitrator shall decide afresh and pass appropriate orders on merits in accordance with law within a period of eight weeks from the date of issue of notice to the parties.

(iii). Both the parties undertake before this Court that they will co-operate for disposal of Arbitral proceeding.

9. In the result, impugned award passed by the Arbitrator is set aside and the original petition is allowed with the above direction.

सत्यमेव जयते

Sd./-D.K.K.J
01.11.2018

Certified to be true copy//
Dated at Madras this the day of 2019.

JJ 15/07/2019

COURT OFFICER(O.S.)

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