$~19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **O.M.P. 694/2011**

SURINDER SINGH TIRTH SINGH CHANDOK & 2 OTHERS ..... Petitioners

Through: Mr. Himanshu Jawa, Advocate for the LR of the Petitioner (Gurucharan Singh Chandhok).

versus

M/S CITIFINANCIAL CONSUMER FINANCE INDIA LTD ..... Respondent

Through: Mr. Kaushik Mishra, Advocate (M-8800149595) along with Mr. Anil Kumar Verma, Sr. Manager (Legal) (M-8800149595).
Mr. Pankaj Rai, Chief Manager (M-7768003567).

CORAM:
JUSTICE PRATHIBA M. SINGH

O R D E R

% **28.09.2018**

I.A.__________/2018 (to be numbered)

1. This is an application seeking condonation of delay of 182 days in filing and 205 days in re- filing. For the reasons stated in the application, the same is condoned. I.A. is disposed of.

I.A. ___________/2018 (U/O XXII Rule 4 CPC) (to be numbered)

2. The counsel for the Petitioners has put in appearance. He submits that the Petitioner No.2 had passed away and hence he has filed an application for impleadment of his legal heirs. Original application under Order XXII

Rule 4 is taken on record. It is accompanied with the death certificate of Petitioner No.2 along with the amended memo of parties. Counsel for the Petitioner submits that he was informed of the details of the legal heirs by the brother of the deceased. Accordingly, Mrs. Kanwaljeet Kaur Chandhok – wife of the Petitioner No.2 and Mr. Kabbir Chandhok – son of Petitioner No.2 and Ms. Navleen Chandhok – daughter of Petitioner No.2 are impleaded as Petitioners No.2 (a), (b) and (c), respectively. The amended memo of parties is taken on record.

3. I.A. is disposed of.

O.M.P. 694/2011

4. The objections in the present case are against the award dated 28th March, 2011, passed by the Ld. Sole Arbitrator.

5. The Petitioners had availed of a loan facility of Rs.41 lakhs and Rs.34 lakhs under separate agreements nos.14932524 and 14932644. The loan was re-payable in equal monthly instalments. Default was committed by the Petitioner, in view of which the matter was referred to arbitration. The arbitration proceedings, thereafter, commenced before the Learned Sole Arbitrator. The Respondent/Claimant filed its claim. The Petitioners, however, did not file any response to the claim and they were proceeded ex-parte. The award was finally passed ex-parte after referring to the various clauses in the agreement. The operative portion of the award reads as under:

> *"After due consideration of the aforesaid facts and circumstances and evidence adduced, I now make my award as follows:*
>
> *1. That the opposite parties 1,2 & 3 shall jointly and severally pay to the claimant a sum of Rs.73,01,005/- (Rupees seventy three lakh one thousand and five only) with future interest @18%*

per annum from 23.05.2009 till its realization.
2. The claimant shall pay a sum of Rs.6,000/- towards arbitrator's fee and Rs.950 as expenses of the proceedings to the arbitrator. The claimant is entitled to recover half of the said amount from the opposite parties jointly and severally and personally.
3. The claimant shall be entitled to recover all costs and expenses that may be incurred in seeking recovery of the amount awarded from the opposite parties jointly and severally."

6. Objections filed in the present case show that out of Rs.75 lakhs which was to be sanctioned, only Rs.60,50,000/- was in fact disbursed. The remaining Rs.14,50,000/- was not disbursed and accordingly the Petitioners submit that they suffered a huge loss, due to non-disbursal of the remaining amount, the instalments were not paid. The Petitioners admit in the proceedings that an equitable mortgage was created on the flat no.303/304, Natasha Tower, 1310, Juhu Versova Link Road, Andheri (W), Mumbai-400061. Three cheques were also issued by the Petitioner to the Respondents from Indian Overseas Bank, Mumbai which was kept as security. In the arbitration, the claim petition however claimed recovery of a sum of Rs.75 lakhs. Upon a query, the Ld. Counsel for the Respondent wished to seek instructions as to the status of the complaint under Section 138 of the Negotiable Instruments Act.

7. According to the Petitioners, they were not given an opportunity to contest the arbitration and hence there is legal misconduct.

8. Today, it is submitted by the counsel for the Petitioner that the basic grievance that the Petitioner have against the award is that it was passed ex-parte. In fact he submits that the notice in the arbitration proceedings was

received in respect of some other case and not the case which was filed against the Petitioner. Be that as it may, when asked as to whether the Petitioners have availed the loan facility, he submits that the loan which was disbursed to the Petitioners was Rs.60,50,000/- and not Rs.75 lakhs which was the sanctioned amount and Rs.73 lakhs as awarded by the Arbitrator. He submits that out of the Rs.60,50,000/- which was in fact disbursed, some instalments were actually paid by the Petitioners.

9. In this view of the matter, there is no major dispute which exists between the parties. The objection petition is disposed of by restricting the award. The Respondent is awarded a sum of Rs.60,50,000/- *minus* the total amount of instalments which may have already been paid by the Petitioners. On the balance amount, interest @ 8% per annum from the date of payment of last instalment would begin to run. The payment of the final amount of Principal along with interest shall be made within three months. Beyond the period of three months, interest @ 10% per annum would be liable to be paid.

10. In order to facilitate the calculations of the principal amount and the interest as also to ensure that due credit is given to the instalments already paid, the Petitioners are directed to meet the official of Kotak Mahindra Bank in Mumbai and show the proof of the payment of instalments. Upon the principal amount being calculated and the interest amount duly communicated, the period of three months for making payment would commence.

11. The meeting between the Petitioners and officials from Kotak Mahindra Bank shall be held on 15th October, 2018 at 11:30 AM in Kotak Mahindra Bank's Mumbai Branch at Samsung Building, Mezzanine floor,

Amar Brass, Vinay Bhava Complex, 159-A C.S.T. Road, Kalina, Santa Cruz (E), Mumbai - 98. The name of the officer who is to meet the Petitioners is Ms. Nikki Kumar, Port Folio Resolution Manager (M-7045900551).

12. With the above directions, the OMP is disposed of. A copy of this order be sent by the Registry to the newly impleaded Petitioners 2 (a), (b) and (c) at the address given in the Amended memo of parties.

PRATHIBA M. SINGH, J

SEPTEMBER 28, 2018
Rahul