

\$-19

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 20th September, 2018

+ O.M.P. (COMM) 360/2018

MR. V. SARAVANAN Petitioner
Through Mr.Desh Raj and Mr.Shikhar
Kumar,Advs.

versus

M/S. RISHIKESH HIRE PURCHASE AND LEASING
COMPANY PVT. LTD Respondent
Through Mr.Siddharth Khattar, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

I.A. No.11111/2018 (Delay)

This is an application seeking condonation of delay in re-filing of the petition.

For the reasons stated in the application, the delay is condoned and application stands allowed.

O.M.P. (COMM) 360/2018 & I.A. No.11109/2018

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed challenging the Arbitral Award dated 15.03.2018 passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Agreements dated 22.04.2015 and

03.06.2015 executed between the parties.

2. The respondent had granted a loan of Rs.3 crores to the petitioner under the Loan Agreement dated 22.04.2015. In the terms of the said agreement, the loan was to carry interest @ 24% p.a. and was to be repaid on or before 22.06.2015. The Agreement further provided that in case of a default, the interest is to be paid @ 36% p.a.

3. On 03.06.2015, a further loan of Rs.1.50 crores was extended by the respondent to the petitioner. This Agreement specifically provided for the interest to be paid @ 36% p.a. The loan was to be repaid on or before 22.06.2015.

4. The petitioner failed to repay the loan amount and infact, the cheques given by the petitioner were returned back on account of 'insufficient funds'. The respondent issued demand notices on the petitioner dated 22.06.2015 and 23.07.2015 with respect to both the loan amounts. In response thereto, the petitioner vide its reply dated 29.07.2015 admitted its liability.

5. The petitioner further vide its letter dated 10.08.2015 sent a cheque for an amount of Rs.1.75 crores to the respondent towards part payment of the loan amount, however, the same was also returned back with remarks 'funds insufficient'.

6. The respondent thereafter invoked the Arbitration Agreement vide notice dated 16.02.2016 and subsequently on a petition under Section 11 of the Act, being Arb.P.204/2016, this Court vide its order dated 04.04.2016 appointed the Sole Arbitrator for adjudicating the disputes that had arisen between the parties in relation to the

abovementioned Agreements.

7. The Arbitrator vide his Impugned Award has directed as under:

“29. Award in the amount of Rs. 5,28,50,000/- is passed in favour of the claimant and against the respondent. The claimant shall further be entitled to receive interest from the respondent @ 36% per annum on the amount of Rs. 4.50 crore from the date of filing of this petition, i.e., 20.4.2016, to the date of this award. The claimant shall also receive future interest at the rate of 18% p.a. on the amount of the award, i.e., Rs. 5,28,50,000/- from the date of the award to the date of full realization. The claimant shall further be entitled to receive Rs. 1,00,000/- from the respondent as cost of the present proceedings.”

8. Learned counsel for the petitioner submits that the interest awarded by the Arbitrator is highly exorbitant and cannot be sustained. He submits that the said interest would be against the public policy of India and therefore, Impugned Award is liable to be set aside.

9. I find no merit in the contention raised by the learned counsel for the petitioner. As noted above, the first Agreement dated 22.04.2015 clearly stipulates that in case of failure of the petitioner to pay the loan amount in time, it shall be liable to pay interest @ 36% p.a. The second Agreement dated 03.06.2015 also stipulates that the loan shall carry interest @ 36% p.a., therefore, the petitioner has agreed to pay the said rate of interest out of his own free will. This being a commercial transaction where a short term loan facility was

granted by the respondent to the petitioner and there being no allegation of coercion or undue influence exercised on the petitioner, the decision of the Arbitrator to award interest in terms of the Agreement cannot be faulted.

10. The Arbitrator in the Impugned Award has also recorded the following reasons for awarding the interest in favour of the respondent:

“21. Indeed, except making bald allegations and arguing that the interest rates charged by the claimant were in contravention of the Reserve Bank of India Guidelines to the NBFC and the Government of India Guidelines, no such rules, regulations, guidelines or instructions issued by Reserve Bank of India or Government of India have been produced by the respondent to support his contention. Admittedly, Rs. 3 crore were advanced to the respondent as unsecured loan by loan agreement dated 22.4.2015 for a short duration of 60 days. The loan was repayable on 22.6.2015. The second loan of Rs. 1.50 crore was advanced on 3.6.2015 again for a very short duration of 20 days and the same was repayable with interest on 22.6.2015. It was also an unsecured loan. The law does not bar charging of higher rate of interest on unsecured loan of a short duration by NBFC which involved great risk. The rate of interest charged would be governed by the terms of the loan agreement. In this case, the rate of interest has been mentioned in the loan agreement with which the respondent is bound. It may be pertinent to note here that during the pendency of this case, the respondent had been offering to settle the claim by making payment towards the principal amount and the interest accrued but despite taking time and promising to pay the settled amount he has failed to pay the same. Emails of the respondent and the submissions made on his behalf by his counsel are on the file of this case.

22. As per loan agreement dated 22.4.2015 the loan amount of Rs. 3 crore was repayable on 22.6.2015 with interest at the rate of 24% per annum and if there was delay beyond 22.6.2015, the rate of interest chargeable on the loan amount was 36% per annum. The loan amount of Rs. 1.50 crore, as per the loan agreement dated 3.6.2015, was repayable on 22.6.2015 and the rate of interest agreed upon between the parties was 36% per annum. The claimant is claiming interest@ 36% per annum on the amount of Rs. 1.5 crore for the period of loan and also for delay in payment beyond 22.6.2015.

23. The contention of the respondent is that the rate of interest charged on first loan of Rs. 3 crore was 24% p.a. which could not have risen to 36% p.a. when the second loan of Rs. 1.5 crore was given to the respondent barely 40 days after the first amount was sent. But the fact remains that both the loans were unsecured and further unsecured loan of Rs.1.5 crore had further increased the risk of the claimant. It is not the case of the respondent that it had to succumb to the demand of the claimant for increase in rate of interest as he was under pressure to take loan for some pressing need. The second loan was also taken for buying land for investment purposes and not for his residence/ household. The letters sent by the respondent by Email to the claimant show that the claimant had no grievances at least against payment of interest @ 24% p.a. He agreed to pay interest at enhanced rate of 36% p.a. evidence as he wanted more money. He consciously agreed to pay it on second loan taken under the loan agreement dated 3.6 .2015. The rate of interest 24% and/or 36% do not hit Section 23 and 74 of the Contract Act, 1872 as the rate of interest agreed upon cannot be said to be unconscionable in the facts and circumstances of the case and the court do not interfere in such cases generally.

xxxx

25. For the aforesaid reasons, I do not find that the claim of interest made by the claimant in this case is exorbitant or is not in accordance with law. According to the claimant, the interest on the amount of Rs. 3 crore calculated at the rate of 24% per annum from 23.4.2015 to 22.6.2015 was Rs. 12 lakh and at the rate of 36% per annum from 23.6.2015 to 19.4.2015 was Rs. 89.10 lakh aggregating to Rs. 1,01,10,000/-. The respondent has not been able to show that there is some calculation mistake in this amount. Furthermore, the claimant is also claiming amount of Rs. 47,40,000/- as interest @ 36% per annum on the loan amount of Rs. 1.50 crore for the period from 3.6.2015 to 19.4.2016. No mistake in the calculation of this amount, as well, has been pointed out by the respondent. As a result, the claim of the claimant towards interest for Rs.1,01,10,000/- on the loan amount of Rs. 3 crore and the amount of interest amounting to Rs.47,40,000/- on the loan amount of Rs.1.50 crore as claimed by the claimant in clauses no. 3 and 4 respectively is allowed. Both the issues are decided in affirmative in favour of the claimant.”

11. I am in full agreement with the above reasoning of the Arbitrator.

12. As noted by the Arbitrator, the petitioner has been offering settlement of the claim of the respondent, however, in spite of opportunity being granted, the petitioner failed to even honour its own offer. Even in the present proceedings, counsel for the petitioner had taken time to explore the possibility of an amicable settlement, however, has been unable to give any concrete offer of repayment of the awarded amount to the respondent.

13. In ***Syndicate Bank v. West Bengal Cements Ltd. and others*** AIR 1984 Del 107, this Court had held that the grant of interest at the

rate lesser than the contractual rate as a matter of rule, will amount to giving premium to those who trade upon the money of others; the defaulting borrowers cannot be given the benefit by reducing the rate of interest. The Court also took into account the conduct of the defendants therein to hold that there was no exceptional or special circumstance justifying reduction of the rate of interest in that case.

14. Further in ***Deepak Bhatia v. Virender Singh***, MANU/DE/2749/2015, this Court had upheld charging of interest at the rate of 20% per month, observing that where there is extreme/urgent need of money and loan is taken for a short period, it is not unknown in the mercantile world that higher rate of interest is charged.

15. This Court in ***PEL Industries Ltd. & Ors. v. S.E. Investment Ltd.*** 2018 SCC OnLine Del 8746, while relying upon the abovementioned judgments has upheld the grant of *pendente lite* interest @ 18% p.a. compounded monthly, awarded by the Arbitrator relying upon the contractual terms, against the defaulter/borrower.

16. In view of the above, I find no merits in the present petition and the same is accordingly dismissed alongwith pending application, with no order as to cost.

NAVIN CHAWLA, J

SEPTEMBER 20, 2018/Arya