IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.69 OF 2016

Vijay V. Angane ....Petitioner
vs
The Shamrao Vitthal Co-Op. Bank Ltd. And 3 Ors. ...Respondents

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Mr. M.S. Bhandari, i/b. Ms. Pranjali Bhandari, for the Petitioner.

Mr. Nikhil Rajani, a/w. Ms. Jyoti Sanap, i/b. V. Deshpande & Co., for Respondent Nos. 1 and 2.

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CORAM : S.C. GUPTE, J.

DATED: 2 MAY, 2019

P.C.:

. Heard learned Counsel for the parties. This arbitration petition challenges an award passed by a sole arbitrator in a reference under Section 84 of the Multi-State Cooperative Societies Act. The award considers two aspects. Firstly, there is a money decree against the Petitioner, who was Opponent No.1 before the sole arbitrator and, secondly, there is a direction to attach a certain property purportedly on the basis that it was a mortgaged property. So far as the first aspect is concerned, learned Counsel for the Petitioner is unable to contest the quantum of the amount of claim on merits. Learned Counsel submits that from the day the amount has become NPA, reduction of interest should be considered by the Court. There is no such law requiring the sole arbitrator to alter the contract between the parties so far as the interest on the loan amount is concerned. The matter was considered by the sole arbitrator as a contested claim for recovery of a loan amount. The arbitrator has, accordingly, calculated interest forming part of the award having regard to the agreement for loan and security documents executed by the Petitioner and others. There is no infirmity to be found in the impugned award so far as the quantum of claim awarded is concerned.

2. As regards the second aspect, namely, the order to attach the land and factory premises of the Petitioner as mortgaged property, the impugned award obviously cannot be sustained. The award is not a mortgage decree. The award is simply a money decree. In case of a money decree, the arbitrator cannot dictate the manner in which such money decree should be executed by the decree holder. There is no provision of law, which empowers the arbitrator to do so. Hence, this part of the award clearly denotes an impossible view and cannot be sustained.

3. The arbitration petition is, accordingly, partly allowed by setting aside the impugned award dated 20 October 2010, so far as it directs attachment of mortgaged property being land and factory premises bearing R.S. No.91, Hissa No. 1/1, Highway No.17, Near Government Guest House, Village Rajapur, Taluka Rajapur in District Ratnagiri, Pin No. 416 702 and any other property of the opponent and sale of the same as per law and adjustment of sale proceeds towards the awarded amount.

4. It is clarified that steps, if any, taken by the first Respondent bank either in execution of the award of money decree or in pursuance of any securitisation proceedings under the SARFAESI Act shall not be affected by the present order; this order shall also not come in the way of any proceedings taken out in that behalf by the first Respondent. The Petitioner's grievance is that the property of the Petitioner, which was sold by the first Respondent bank after the passing of the award, was not a secured asset of Respondent No.1 and also that it was sold at an under valuation. These arguments have no place in a challenge to the award. If the Petitioner has any grievance in this behalf, he must raise it before an appropriate forum. All rights and contentions of the parties in that behalf are kept open.

(S.C. GUPTE, J.)