

by the Petitioner to Respondent No.2, though there was no acknowledgment from the latter of this cheque. The cheque, however, was not deposited in the bank; Respondent No.2 had in the meanwhile closed its office. Correspondence in this behalf, addressed by the Petitioner to Respondent No.2, is placed on record. Finally, by cash payment, various sums aggregating to Rs.1,40,000 were paid by the Petitioner to Respondent No.2. Receipts issued by Respondent No.2 bank acknowledging these payments have been placed on record. There appears to be a claim of some minor balance, i.e. shortfall of Rs.10,000, in the loan account. A communication in that behalf issued by Respondent No.2 to the Petitioner on 28 June 2011 is also on record. It appears that the security assets and book debts of Respondent No.2 bank were taken over by Respondent No.1, who is an asset reconstruction company. Respondent No.1 appears to have issued a notice of an arbitration reference to the Petitioner in pursuance of such takeover. The notice was dated 29 June 2013; it gave intimation of an arbitration meeting scheduled to be held on 13 July 2013. The postal record, however, shows that this notice was served by Respondent No.1 on the Petitioner on 25 July 2013, i.e. after the date of the first meeting. The Petitioner has also relied on another notice purportedly issued on 31 July 2013, in respect of a hearing scheduled to be held on 17 August 2013. The Petitioner has produced postal record to show that even this notice was issued to the Petitioner after the date of hearing. It is the case of the Petitioner that the Petitioner had no notice of invocation of arbitration clause and had not given consent for appointment of any arbitrator. The learned arbitrator proceeded *ex parte* and passed an award in favour of Respondent No.1 decreeing a sum of Rs.3,83,591.93 (claimed to be due as on 20 June 2013) together with interest at the rate of 12 per cent per

annum from 20 June 2013 till realization. The facts of the case placed on record are not controverted by any reply or through oral submissions of the Respondents. These clearly establish that the Petitioner did not have proper opportunity to contest the arbitration reference despite having a good case on merits to do so. Accordingly, the award cannot be sustained. The petition is, in the premises, allowed by setting aside the impugned award dated 10 October 2013.

(S.C. GUPTE, J.)