

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.352 OF 2017

Mohan Balkrishna Kadwe

....Petitioner

Vs.

M/s. Shriram City Union Finance Limited and Ors.

....Respondents

Mr. Ajit Anekar a/w. Ms. Urvi Vaidya i/b. Auris Legal for petitioner.

Dr. Saikumar Pathrudu a/w. Mr. Vishal Narkar and Mr. Devendra Navadkar
for respondent no.1.

CORAM : K.R.SHRIRAM, J.

DATE : 27th MARCH 2019

P.C.:

1 This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act) impugning an arbitral award dated 24.10.2015. The Arbitrator has awarded in favour of respondent no.1, who was the claimant an award in the sum of Rs.1,43,48,661/- against respondents. Petitioner was respondent no.4 therein.

2 At the outset, Mr. Anekar submitted and in fairness that petitioner had received notice of the hearing but did not attend any of the hearing because petitioner was based in Nagpur. Mr. Anekar states that petitioner had engaged a lawyer and the lawyer did not appear in the arbitral proceedings. Mr. Anekar also submitted that the dispute was not arbitrable because the claim filed was for enforcement of mortgage of a property. Mr. Anekar submitted that petitioner has not signed as a guarantor anywhere and petitioner only gave his property in mortgage.

3 Going in the reverse order, the ground of arbitrability of dispute has not been raised in the petition at all. The ground that the claim was for mortgage and it is not arbitrable has not been raised in the petition. It is for the first time the counsel is raising it across the bar. Moreover, I have considered the award and the claim in the arbitration is not for enforcement of mortgage. The arbitral proceeding was commenced only to recover the amounts advanced to respondent no.3 in the sum of Rs.90 lakhs. Respondent no.3 had applied to respondent no.1 for sanction of trade finance loan of Rs.90 lakhs. Respondent nos.4 to 7 and petitioner, it is stated, had agreed to discharge the loan to respondent no.3 by signing the loan agreement. In the petition, petitioner has tried to project himself as victim of his employer by stating that he was merely an employee of one Aditi Express Cargo India Private Limited, which is not a party to these proceedings and Aditi was owned by respondent no.4. During the course of employment, respondent no.4 made petitioner sign on various documents and as an employee, petitioner had no option.

4 At no place in the petition has petitioner disclosed that he was also a director of respondent no.3. When Mr. Pathrudu, counsel for respondent no.1 pointed out to the Court that petitioner was also a director of respondent no.3, Mr. Anekar admitted that petitioner was a director of respondent no.3 but he had no answer when the Court asked why that was not disclosed in the petition.

5 In the award, it is expressly provided that the claim was to recover this amount of Rs.90 lakhs together with interest at 13.30% p.a. Respondent no.3 had given 60 post dated cheques to repay the amount advanced with interest and these cheques were dishonoured. It is also mentioned in the award that respondent nos.3 to 7 together with petitioner, in addition to signing all the loan agreements, also provided voluntary mortgage of the property as evidenced by the Deed of Mortgage dated 13th March 2013 which has been registered with the Joint Sub-Registrar, Class-II. The mortgaged property also has been described in the award. But when one reads the entire award, the award only says that respondent no.1 can recover the sum of Rs.1,43,48,661/- alongwith future interest at 10% p.a. on the said amount from the date of reference till date of the award and 18% p.a. from the date of award till date of realisation. The Arbitrator has also awarded cost of the arbitration proceedings. The claim is not for enforcement of mortgage and award also is not for enforcement of mortgage. Even if I accept Mr. Anekar's submissions that a ground of arbitrability can be raised at the stage of arguments even if it is not mentioned in the petition, still the arbitration proceedings was not for enforcement of mortgage.

6 In the award, it is expressly mentioned that none of the respondents, viz., respondent nos.3 to 7 and petitioner appeared even though notice was served. Mr. Anekar also agrees that the advocate

appointed never appeared in the arbitral proceedings but cannot be an excuse. There is nothing in the petition also to indicate that petitioner had questioned the earlier advocate as to why he did not remain present before the Arbitral Tribunal. On the contrary, petitioner is writing to his advocate asking the advocate to apply for certified copy of the award from the Arbitrator. Therefore, I cannot accept the ground that the advocate chose not to appear as a valid ground.

7 As regards the submission of Mr. Anekar that petitioner never signed as a guarantor, it is not one of the grounds in the petition. Moreover, the Arbitrator has come to a factual finding that petitioner alongwith other respondents had executed all necessary documents and are liable either as Directors or as guarantors. Petitioner should have appeared and made submissions before the Arbitrator. Petitioner cannot remain absent though served and raise such defence in a Section 34 petition.

8 Therefore, no case for interference made out.

9 Petition dismissed with costs in the sum of Rs.50,000/-.

(K.R. SHRIRAM, J.)