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

ARBITRATION PETITION NO.1590 OF 2014

Vivek Prabhakar Jadhav … Petitioner
Versus
Shriram Transport Finance Co. Ltd.
And Another … Respondents

…..

Mr. P.C. Kansara I/b Kansara and Thanekar for the Petitioner.
Mr. Deepika Motagi I/b Res Juris For Respondent No.1.

…..

CORAM : S.C. GUPTE, J.

DATE : 17 JANUARY 2019

P. C. :

. Heard learned counsel for the parties.

2 This arbitration petition challenges an award passed by a sole arbitrator in a reference arising out of a loan-cum-hypothecation agreement. It is the case of Respondent No.1 herein (claimant before the arbitral forum) that it had given transport finance to Respondent No.2 herein (Respondent No.1 in the reference), for which the Petitioner herein (Respondent No.2 in the reference), was a guarantor. Since the loan was not repaid, Respondent No.1 invoked the arbitration agreement forming part of the loan agreement and appointed a sole arbitrator in terms thereof. The arbitrator has passed an *ex parte* award jointly and severally against Respondent No.2 and the Petitioner. It is the case of the Petitioner that the intimation of pendency of the arbitration reference was received by him

for the first time in November 2013. It is submitted that this intimation was by a letter dated 11 November 2013. The letter was said to be served along with the claim petition, but without any enclosure or exhibit. The date of hearing mentioned in the intimation was 30 November 2013. On that date, the Petitioner went to the venue, the office of the learned arbitrator, but it was found locked. It is the case of the Petitioner that upon enquiry on the cell number of the arbitrator, he was informed that there was no arbitration fixed on that date and a fresh date would be communicated to the Petitioner. It is claimed that thereafter a letter dated 2 December 2013 was received by the Petitioner from the arbitrator's office fixing 17 December 2013 as the date of hearing. It is claimed that this letter was received by the Petitioner on 13 December 2013. (The Petitioner has relied on the packet of service received by him.) The Petitioner submits that the letter of 2 December 2013 indicates that the claim was filed as far back as on 5 March 2013 and that several dates had been fixed for the hearing of the reference. The Petitioner submits that he had no notice of any of these hearings. The Petitioner submits that he could not attend the last date of hearing, namely, 17 December 2013, as the intimation was received by him late and he was not in town during that period. It is submitted that thereafter no intimation was received by the Petitioner and he straightway received a copy of the award. It is submitted, in the premises, that the Petitioner did not have proper notice of the appointment of the arbitrator and the arbitral proceedings and was unable to present his case.

3 There is much substance in the case set up by the Petitioner. There is no proof of receipt of any intimation by the Petitioner prior to the letter

of 11 November 2013. Several hearings appear to have been held before that date. The impugned award notes that a communication was issued by the arbitrator to all parties on 12 April 2013 fixing a preliminary date of hearing of the reference. Though a purported postal receipt signed by the Petitioner is annexed to the affidavit in reply filed by Respondent No.1 in this behalf, there is noting to indicate that this postal receipt pertains to the original communication issued by the learned arbitrator of the first date of hearing of the reference, i.e. the notice of 12 April 2013. The records produced by the Petitioner broadly indicate that he has an arguable case for contesting the reference on merits and since, as indicated above, he had no proper notice of the reference or proceedings, and in the premises, could not present his case before the arbitral forum, the award is liable to be set aside on the ground of clause (ii) of sub-section (2) of Section 34 of the Arbitration and Conciliation Act, 1996.

4 The impugned award dated 26 February 2014 is, accordingly, set aside as against the Petitioner herein. By consent of parties, the reference is remanded as against the Petitioner herein to the same sole arbitrator, i.e. Mr. M.H. Belosay, District & Sessions Judge (Retired), for a fresh hearing in accordance with law. The learned arbitrator shall allow the Petitioner to file his reply to the statement of claim and also produce evidence in support of his case.

(S.C. GUPTE, J.)