

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

APPEAL (L) NO.296 OF 2019
IN
ARBITRATION PETITION NO.927 OF 2015

Mahindra And Mahindra Financial
Services Limited

..Appellant

Versus

Nuruddin Latif Naik & Anr.

..Respondent

Ms. Priya Crasto, Advocate for the Appellant.

Mr. Pradip Kadam, Advocate for Respondent No.1.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 20th NOVEMBER, 2019

P.C.

1] Heard learned counsel for the parties in the Appeal for final disposal thereof at the stage of admission.

2] The Respondent obtained finance from the Appellant to purchase a motor vehicle : Mahindra Scorpio VLX 2.2 HAWK. Unfortunately for him the vehicle got stolen on 3rd January 2009. The finance was obtained on 12th January 2008. The loan together with interest was to be repaid in 57 equated monthly installments. The Respondent honestly paid 17 installments till when he could earn from plying the vehicle but was handicapped to pay the remainder on account of the vehicle being stolen.

3] Unfortunately for the Respondent claim before the Insurance Company for loss of the vehicle on account of theft has yet not been finalized by the Insurance Company. As regards the Appellant, the indenture was having an arbitration clause and arbitrator was appointed. Ex-parte Award was published by the learned Arbitrator and challenge to the Award before the learned Single Judge has succeeded on the premise that learned Arbitrator did not serve the Respondent before proceeding ex-parte.

4] Impugned order shows that one notice sent by the learned Arbitrator was received by a person namely Haroon, who as per the Respondent was not a family member. Another notice sent was returned by the postal authorities with the remark 'unclaimed'.

5] The Appellant has relied upon the legal principle emanating from the judgment of the learned Single Judge of this Court that if a docket was returned unclaimed by the postal authority, it mean that intimation was given by the Postman that a docket was to be delivered and that the noticee should come and receive the docket from the Post Office concerned.

6] The learned Single Judge has reason that the said legal principle would be applicable if there is proof that the postal authorities sent an intimation to the noticee that a docket was lying with the postal authorities unclaimed.

7] We find no infirmity in the view taken by the learned Single Judge and dismiss the Appeal.

8] We suggest to the learned counsel for the parties to put their heads together and resolve the issue by diligently prosecuting the insurance claim before the Insurance Company for theft of the vehicle. Learned counsel for the Respondent No.1 states that said Respondent would issue the necessary documents required by the Appellant for assigning the insurance claim so that the Appellant can prosecute the insurance claim with the Insurance Company and directly receive the sum assured under the policy of insurance.

**Balaji G.
Panchal**

Digitally signed by
Balaji G. Panchal
Date: 2019.11.21
10:30:17 +0530

SMT. BHARATI DANGRE, J

CHIEF JUSTICE