IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1232 OF 2013

Prakash Harishchandra Kurmi ....Petitioner
vs
Reliance Capital Limited ...Respondent

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Mr. Swapnil Ambure, a/w. Mr. Mikhail Dey, i/b. Dinesh Tiwari & Associates, for the Petitioner.

Mr. Karl Tamboly, a/w. Mr. Malcom Siganporia and Mr. Ashish Gabhale, i/b. Ajay Misar & Co., for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: 29 JANUARY, 2019

P.C.:

. This arbitration petition challenges an award passed by a sole arbitrator in a reference arising out of a loan agreement.

2. The case of the Respondent Finance Company, who was the claimant before the arbitrator, was that the Petitioner had availed of a personal loan from it on execution of various documents. These included a loan application form, most important documents, general terms and conditions governing the personal loan and demand promissory note. It was the case of the Respondent that in pursuance of the sanction of the personal loan on the basis of the documents submitted by the Petitioner, a sum of Rs.9,77,500/- was disbursed by the Respondent to the Petitioner. It was submitted that in repayment of the

loan amount, two cheques were given to the Respondent towards EMI. It was submitted that after giving the credit for these two cheques, a sum of Rs.11,26,049/-, being the balance principal amount, together with interest, was due and payable by the Respondent to the Petitioner.

3. The Petitioner denied having executed any of the documents relied upon by the Respondent. The Respondent's case was of forgery. It was submitted that one Kapil Thakkar, who is claimed to be an agent of the Respondent, had taken two blank cheques from the Petitioner for obtaining loan from ABN Amro Bank. It was submitted that these cheques were illegally forwarded by Kapil Thakkar to the Respondent and were appropriated by the latter towards two EMIs of the loan. It was submitted that the originals of all documents, purportedly executed by the Petitioner, were in the custody of police in connection with a criminal case against Kapil Thakkar. It was submitted that the Petitioner was not able to procure these documents from the police and produce them, as they were forwarded by the police to a handwriting expert.

4. The learned arbitrator considered the circumstances in which the original documents, purportedly executed by the Petitioner, could not be produced before him. The learned arbitrator held that both parties were requested by the tribunal to take necessary steps as may be permissible in law to produce these original documents before the arbitrator but the parties had showed inability to do so. The learned arbitrator, in the premises, allowed secondary evidence of the documents, which were office photo-copies certified as true by the Respondent's concerned officer. The learned arbitrator compared the

Petitioner's signatures on the documents with admitted signatures of the Petitioner and held that there was no merit in the Petitioner's contention that these documents were not signed by him. The learned arbitrator held that the loan documents were executed by the Petitioner voluntarily for availing a loan facility from the Respondent. The learned arbitrator noted the Petitioner's own statement that a sum of Rs.9,77,500/- was credited to his account. The learned arbitrator also considered the Petitioner's case that the amount was immediately transferred to the account of one Jain Traders unauthorizedly. The learned arbitrator did not find substance in this case of the Petitioner. The learned arbitrator observed that two installments of EMIs were deducted from the Petitioner's account towards refund of the loan. The learned arbitrator did not accept the Petitioner's case that the cheques, purportedly used for payment of EMIs, were unauthorizedly presented by Kapil Thakkar to the Respondent. The learned arbitrator noted that the Petitioner was operating the account from which the cheques were issued and the Petitioner's case that he was not aware either that the cheques were wrongfully credited to the account of the Respondent or that the amount of Rs.9,77,500/- credited to his account towards subject loan was unauthorizedly transferred from his account only some time in May 2008, was not found to be believable. The arbitrator thought it to be improbable and difficult to believe that the Petitioner would not have gone through his bank account for four months or noticed the so-called unauthorised entries for a period of nearly four months. The learned arbitrator also considered various other circumstances and held that there was no case made out by the Petitioner that Kapil Thakkar was operating as Direct Sales Agent ('DSA') of the Respondent or that there was any evidence of fraud or forgery. The learned arbitrator, in the premises, accepted the Respondent's claim and passed an award in the sum of Rs.11,26,049.10 in its favour.

5. Each of the conclusions of the learned arbitrator, referred to above, is a possible view of the material placed by the parties before the learned arbitrator. Each of the conclusions is supported by evidence. The award cannot be described as an award with no evidence, nor can it be said that it exhibits a view, which no fair or judiciously minded person would take or which would shock the conscience of the Court. The award, accordingly, does not merit any interference under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act').

6. Learned Counsel for the Petitioner submits that the arbitrator could not have passed the impugned award without having seen the original documents, which were said to be executed by the Petitioner. Learned Counsel submits that at that stage, the documents were in the custody of the police and were temporarily transferred to a handwriting expert. Learned Counsel submits that he has no information on whether a report is submitted by the handwriting expert. Learned Counsel, however, submits that based on the allegations made by the complainant in the criminal case, a charge-sheet has been filed against Kapil Thakkar and further investigation in the matter is on. Based on this, learned Counsel submits that his client was not in a position to present his case properly; the matter was under an active investigation of the police. Learned Counsel, accordingly, frames his challenge of the award on two grounds. Firstly, he submits that vital piece of evidence,

namely, the original documents on which the Respondent's claim was passed, were disregarded or not considered by the learned arbitrator, and therefore, the award is in conflict with the public policy of India. Learned Counsel, secondly, submits that his client, in the circumstances referred to above, was unable to present his case to the arbitrator. Learned Counsel, accordingly, prays for setting aside the award in accordance with clauses (a)(iii) and (b)(ii) of sub-section (2) of Section 34 of the Act.

7. There is no substance in either of the two challenges. So far as challenge under clause (a)(ii) of sub-section (2) of Section 34 is concerned, nothing could have prevented the Petitioner from presenting his case to the arbitrator. In fact, the award discloses that several opportunities were given to the Petitioner to lead oral evidence. The award notes that despite taking time on numerous occasions, the Petitioner had not availed of the opportunity by filing any affidavit of evidence. The award notes that, finally, one last opportunity was given to the Petitioner for filing an affidavit of evidence; it was with a specific understanding that if no affidavit was filed by the next date of hearing, the matter would proceed for final hearing on oral submissions. The award notes that even this last opportunity was not availed of by the Petitioner. The Petitioner cannot say that he was prevented from presenting his case because, at that stage, the matter was under investigation and all facts of the case were not brought to light. When the matter is in Court, the parties have to produce their best evidence in support of their respective cases. They cannot possibly seek time on the ground that some aspects of the case were being investigated by police,

or other investigating agency. In any event, apart from the charge-sheet, nothing is sought to be produced even before this Court in support of the Petitioner's case that he was not aware of any particular important piece of evidence, when the matter was argued before the learned arbitrator. There is, accordingly, no substance in the Petitioner's case under clause (a) (ii) of sub-section (2) of Section 34.

8. Insofar as non-production of original documents before the tribunal, purportedly executed by the Petitioner is concerned, it is pertinent to note, firstly, that strict technical rules of evidence are not applicable to an arbitration reference. The arbitrator, firstly, noted that he had no access to the original loan documents, since they were in police custody and said to be handed over to a handwriting expert for examination. The arbitrator also noted that he had requested both parties to take necessary steps, as may be permissible in law, to produce the originals before him but that both parties had shown their inability to do so. The arbitrator, in the premises, had no option but to proceed with secondary evidence of these documents. Acceptance of the secondary evidence cannot *per se* be faulted in the circumstances. The Arbitration Act provides for the remedy of seeking court assistance in taking evidence. The arbitral tribunal, or any party with approval of the arbitral tribunal, could apply to the Court for its assistance in taking evidence. No doubt, the arbitrator himself could have followed this process, but then the arbitrator required the parties to take steps, as may be permissible in law, for production of original documents. That, obviously, included seeking assistance of the Court under Section 27 of the Act. The parties, including the Petitioner herein, admittedly failed to

take any such steps. In the premises, the arbitrator was perfectly justified in placing reliance on secondary evidence of copies made from the originals, which were produced as true copies under the signatures of the concerned Officer of the Respondent. After permitting secondary evidence of these documents, the arbitrator had to consider whether the signatures appearing on the documents were of the Petitioner. Section 73 of the Indian Evidence Act, 1872 allows the Court to compare any signature, writing or seal, which has been admitted or proved to the satisfaction of the Court to have been written or made by the person concerned. The arbitrator appears to have followed that course and compared the signatures on the disputed documents with admitted signatures of the Petitioner. Based on such comparison, the arbitrator rendered a categorical finding that the signatures were true signatures of the Petitioner. No fault can be found with this assessment of the learned arbitrator within the parameters of law of challenge to an arbitral award under Section 34 of the Act.

9. Besides these considerations, the learned arbitrator relied on several other circumstances, some of which have been noted above, to come to his findings. The assessment of evidence placed before him by the learned arbitrator appears to be reasonable and his conclusions based on such assessment seem to be possible. There is, accordingly, no infirmity with the impugned award.

10. The arbitration petition is, accordingly, dismissed. No order as to costs.

(S.C. GUPTE, J.)