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

ARBITRATION PETITION NO.873 OF 2018
WITH
NOTICE OF MOTION (L.) NO.2400 OF 2018

Ram Bihari Prasad Singh ..Petitioner
Vs.
HDB Financial Services Ltd. ..Respondent

Mr.Subir Sarkar for Petitioner.
Mr.Viraj Kandpile for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 4th MARCH, 2019

P.C.:

Learned Counsel for the petitioner states that he has handed over a Demand Draft of Rs.5,80,855.33 to the learned Advocate for the respondent being the principal amount as per the award. Learned Counsel for the respondent submits that his clients are ready and agreeable to accept the said amount in full and final settlement provided that the petitioner withdraws the criminal case filed before the Criminal Court at Bokaro, Jharkhand and a consumer complaint case filed at Bokaro, Jharkhand. Learned Counsel for the petitioner submits that he has no instructions to withdraw the said proceedings.

2. Heard learned Counsel for the petitioner and learned Counsel for the respondent.

3. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, "the ACA") whereby the petitioner challenges an award dated 19 May 2018 passed by the learned sole arbitrator whereby the claims as made by the respondent for recovery of amounts due and payable under the loan agreement dated 24 August 2017 came to be allowed in terms of the following award:-

> "a. The Respondent(s) shall jointly and severally pay the Claimant a sum of Rs.580855.33/- as on 17.03.2018 on account of the total outstanding amount which include a principal loan amount, contractual interest and other charges, subject to adjustment of payment made by the Respondent/s, if any after 17.03.2018;
> b. The Respondent(s) shall jointly and severally pay the Claimant a simple interest @ 18% p.a. on the outstanding amount from the date of filing of the Claim Petition i.e. 29.03.2018 till the passing of the award;
> c. The Respondent(s) shall jointly and severally pay the Claimant a simple interest @ 18% p.a. on the amount awarded from the date of award till realizatin of the amount.
> d. The Respondent(s) shall jointly and severally pay the Claimant a sum of Rs.5000/- (Rupees Five Thousand Only) as costs towards the present proceedings."

4. In brief the facts are:-

The petitioner, who is a resident of Bokaro, Jharkhand, approached the respondent for a loan of Rs.5 Lakhs. The case of the petitioner is that the loan was to be obtained for educational purpose and therefore, the loan was an education loan. However, this fact is not borne out by the loan agreement (being page no.35 of the paper book) and the agreement clearly states that it is a personal borrowing. Clause 13 of the said loan agreement pertaining to insurance needs to be noted which reads thus:-

> "13. At the request of the Borrower, the Company may at its own discretion also finance the insurance premium of an insurance policy insuring the Borrower against the risks of personal accident, accidental hospitalization, outstanding amount of loan to the Company and/or critical illness provided that such insurance policy has been taken out by the Company on behalf of the Borrower from an insurance company approved by the Company with a specific instruction and authority by the Borrower to such insurance company that in case of any loss reported under the section of 'outstanding amount of loan to the company', the loss will be paid to the Company by such insurance company. Such insurance premium paid by the Company on behalf of the Borrower shall be added as the principal amount to the Loan granted herein and shall form part of the Loan. The Borrower shall pay to the Company the amounts towards insurance premium as mentioned above which may be loaded to the installments. The insurance premium being a prt of Loan may be disbursed by the Company directly to such an insurance company approved by the Company and such disbursement shall be deemed to be disbursement to the Borrower. Wherever the Borrower agrees for the insurance coverage, all expenses, charges, fees, service tax and other taxes etc as applicable shall be incurred and paid by the borrower. In the even the said charges are paid by the Company on borrowers behalf, the borrower shall reimburse the same to the Company within 24 hours of the Company demand."

5. The term of the loan was for 48 months. The interest rate was 18% p.a. to be repaid in monthly installments. The first installment was due and payable on 4 October 2017 and thereafter every month the installment was to be paid on 4^{th} day of every month. Following is the

communication of the respondent to the petitioner qua the disbursement of the said loan amount:-

> "We are pleased to inform you that your loan has been disbursed and your PERSONAL LOAN account number is 2976144. The details are given below:

Loan Amount:	500,000.00
Amount Disbursed (net of charges):	463,428.00
Installment Amount:	14,687.00
Repayment Start Date:	04/10/2017
Charges applied to your account are as follows (if any)	
Type of Charge	Charge Amount (INR)
Broken Period Interest	2,750.00
Hdfc Slic Credit Protect Plus	22,002.00
Processing Fees From Customer	11,800.00
Stamp Duty Paid To Bank	20.00

> We will present the installment Cheque/ECS/ACH/SI on the 4th of every month. Please ensure that your bank account is adequately funded. This will avoid levy of additional charges for non-receipt of payment.
>
> If you require any further details on your Loan account 2976144, please contact us at the telephone number given below or send us an email at customer.support@hdbfs.com. We are now available on mobile. Download "HDB On the GO" app from Google play store to view and manage your loan account on the move.
>
> We value your relationship with us an assure you of our best services always."

6. It is not in dispute that the amount under the loan was received by the petitioner on 26 August 2017.

7. A perusal of the record indicates that the petitioner was not satisfied with the services of the respondent and the terms and conditions of the loan and hence, the petitioner addressed a letter dated

25 September 2017 to the respondent (Exhibit-E, page 46 of the paper-book) requesting the respondent to cancel the said loan. Similar letters were addressed by the petitioner on 13 October 2017 and thereafter on 17 November 2017. However, what is peculiar of the said letter is that although there was a request for cancellation of the loan, these letters did not disclose the willingness for repayment of the amounts to the respondent. Admittedly, the amount was retained by the petitioner and there was presumption that the amount was utilized, the interest clock naturally progressed. It needs to be noted that the respondent by its letter dated 22 November 2017 responding to the petitioner's said letters informed the petitioner that they are willing to cancel the loan and settle the issues and requested the petitioner to pay an amount of Rs.4,63,428/- by Demand Draft to be drawn in the name of respondent payable at Bokaro before 28 November 2017. From the correspondence, it appears that the petitioner however chose to retain the said amount and in fact, on 4 December 2017 the petitioner instituted a criminal complaint against the respondent before the Criminal Court at Bokaro, Jharkhand.

8. The petitioner also defaulted in making payment of the installments. It is stated that the petitioner has also filed a consumer complaint case against the respondent. The criminal proceedings and

the consumer case as initiated by the petitioner are pending adjudication.

9. As there was a default on the part of petitioner in making payment of the installments, the respondent invoked the arbitration agreement by its letter dated 18 December 2017, as also recalled the loan. In terms of the arbitration agreement, the arbitral tribunal came to be appointed. The learned sole arbitrator issued a notice to the petitioner to appear in the arbitral proceedings. The statement of claim was also served on the petitioner. It is clear that the petitioner is not disputing the receipt of statement of claim as also the notices as issued by the learned sole arbitrator. In regard to the service of the statement of claim and the arbitral proceedings, the learned arbitrator has made observations in the award that despite service of the notices the petitioner has remained unrepresented. The following are the relevant observations whereby the learned arbitrator decided to proceed ex-parte:-

> "After considering the relevant provision under section 3 of the Arbitration and Conciliation Act 1996, the provision of the General Clauses Act and settled of principles referred to above beside the conduct of the Respondent/s of deliberately avoiding the present proceeding, the matter is proceeded ex-parte vide order dated 21.04.2018 and was fixed for passing of award on 19.05.2018. The Respondent/s was accordingly informed. The post department has given the postal report for the same as 'Item delivery attempted Missent. A speed post list and postal report in this regard are also placed on record and perused."

10. Moreover, on receipt of the notice from the learned sole arbitrator, the petitioner has addressed a letter dated 8 April 2018 to the learned sole arbitrator inter-alia making several grievances in respect of the manner in which the loan was granted to the petitioner and that there was a violation of the terms and conditions of the initial offer made as also terms and conditions of the loan agreement. The petitioner also alleged that there was a criminal conspiracy on the part of the officers of the respondent in granting the said loan and in respect of which he had already instituted criminal proceedings before the Court of the Chief Judicial Magistrate at Bokaro (Jharkhand). However, what is pertinent, is that instead of agreeing to appear before the arbitral tribunal so constituted, the petitioner insisted that the arbitral tribunal holds its sitting at Bokaro and then he would appear before the arbitral tribunal at Bokaro. Similar letters were addressed by the petitioner being letters dated 26 April 2018 and 7 May 2018. Thus, what can be seen from the letter dated 20 April 2018 as addressed by the petitioner is that the petitioner had requested for a further time of four weeks to respond, however, the petitioner did not appear before the arbitral tribunal and also did not submit a statement of defence. It is accordingly clear that the petitioner had sufficient and proper opportunity of appearing before the arbtiral tribunal and defending the

claim as made by the respondent. It is seen from the said correspondence that the petitioner was only interested to prosecute the criminal case as also consumer case against the officers of the respondent and not interested to contest the arbitral proceedings and it was his condition that the arbitration proceedings be held at Bokaro and not at Mumbai. In the above situation, the arbitral tribunal was constrained to proceed against the petitioner ex-parte as the petitioner did not appear before the arbitral tribunal, though there was sufficient opportunity for the petitioner to appear before the arbitral tribunal.

11. Learned Counsel for the petitioner in assailing the impugned award would make the following submissions:-

(i) In fact, there was only one effective meeting on 21 April 2018 and thereafter the arbitral tribunal proceeded to close the proceedings and pronounced the impugned award.

(ii) The petitioner was not given an opportunity to defend the proceedings. It is submitted that the petitioner time and again informed the respondent to cancel the loan account and that the petitioner was willing to make the payment, however, the respondent did not respond to these two letters of the petitioner and having not cancelled the loan account, the respondent could not have made a claim in the arbitral proceedings against the petitioner.

(iii) It is next submitted that the disbursement of the loan was itself illegal in as much as an amount of Rs.22,002/- was never part and parcel of initial agreement between the parties and the same amount ought not to have been deducted.

12. There is no other submission as advanced on behalf of the petitioner.

13. On the other hand, learned Counsel for the respondent at the outset would submit that the agreement which was entered between the parties, was not an educational loan as labelled by the petitioner. It was a personal loan and disbursed on an application which was made by the petitioner and on the terms and conditions as clearly set out in the loan agreement entered between the parties. It is submitted that as regards the insurance, clause 13 of the agreement was very clear and that there was no protest whatsoever in that regard. It is submitted that in any event, the petitioner has executed a loan agreement, accepted the loan amounts under the said loan agreement and thereafter has made a grievance about the terms and conditions of the agreement. Learned Counsel for the respondent by referring to the letter dated 22 November 2017 of the respondent submits that the petitioner was categorically

called upon by the respondent to make payment of Rs.4,63,428/- before 28 November 2017 so that the entire issue in regard to the loan stands resolved. However, such payment was not made by the petitioner and that the petitioner never intended to return the amount. It is submitted that the petitioner has in fact admitted the liability of principal amount of Rs.5,80,855.33 as recorded in the orders passed by this Court, in this petition and has deposited with respondent an amount of Rs.5,80,855.33 by Demand Draft dated 11 February 2019 drawn on State Bank of India, which was received by the respondent. Learned Counsel for the respondent would submit that the learned arbitrator considering the entire material placed on record, has passed the impugned award. It is therefore submitted that the petitioner has no defence whatsoever in the present proceedings and the petition accordingly deserves to be dismissed.

14. Having heard learned Counsel for the parties and having perused the record, at the outset, it needs to be noted that there is no dispute as regards the amount as received by the petitioner under the loan agreement in question. It is not in dispute that there was a default on the part of the petitioner in making repayment of the loan installments. The petitioner in fact wanted to cancel the agreement as informed to the respondent by his letter dated 17 November 2017 and in response

thereto, the respondent called upon the petitioner to pay an amount of Rs.4,63,428/- however, the said amount was not paid. It also appears that the petitioner was more interested to prosecute the criminal case as also consumer case initiated by the petitioner against the respondent and to this effect, it is clearly informed by the petitioner to the respondent by letter dated 24 November 2017. Thus, in my opinion, the respondent was justified in approaching the arbitral tribunal and making a claim of the amounts due and payable under the said agreement. As regards the contention as urged on behalf of the petitioner that sufficient opportunity to defend the arbitral proceedings was not given to the petitioner, this submission appears to be totally untenable. Perusal of the record indicates that the petitioner was in due receipt of the notices issued by the arbitral tribunal before the proceedings were taken up for hearing. The petitioner acknowledged these letters however, by his letters noted above, intended to raise issues and insisted that proceedings be conducted at Bokaro instead of Mumbai. The petitioner for these reasons failed to appear before the arbitral tribunal and submit his statement of defence. It is thus clear that the petitioner was not interested to defend the arbitral proceedings despite receipt of notice. Thus, no fault can be found in the observations as made by the arbitral tribunal in this regard. It can certainly be not said that the petitioner had no opportunity to defend the proceedings.

15. In regard to the contention as regards the insurance amount, clause 13 of the loan agreement was clear and accordingly, an amount of Rs.22,002/- was shown as insurance amount in the disbursal/loan letter dated 9 September, 2017 of the respondent. The correspondence immediately entered after receipt of the said letter shows, that if the petitioner had any grievance for deduction of such amount then the same would have been agitated by the petitioner. This was clearly not done. The contention that the amount of Rs.22,002/- was illegally incorporated, cannot be accepted, and in any case cannot be a ground to challenge the award.

16. Next contention as urged on behalf of the petitioner that the petitioner had cancelled the loan agreement and had requested the respondent to issue NOC and thus, a claim for the said amounts before the arbitral tribunal was not tenable, also cannot be accepted. This for the reason that the petitioner kept on writing that the loan be cancelled, and despite the respondent's letter dated 27 September 2017 to make payment of an amount of Rs.4,63,428/- the amount was never offered. The petitioner retained the loan amount. The correspondence indicates that the petitioner never had the intention to return the amount to the respondent and had only intention to institute different proceedings against the respondent. Learned Counsel for the respondent is thus

correct in his contention that at the relevant time, the petitioner had no real intention to make repayment of the loan amount.

17. Having perused the impugned award, I am not persuaded to accept any of the submissions as made on behalf of the petitioner. The petition is wholly devoid of merits to exercise the limited jurisdiction under Section 34 of the Act. It is accordingly dismissed. No costs.

18. In view of dismissal of petition, notice of motion would not survive. It is accordingly disposed of.

[G.S. KULKARNI, J.]