

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

ARBITRATION PETITION NO.1620 OF 2015

Mr. Nivrutti Mukund Kathore

And Another

... Petitioners

Versus

Shriram Equipment Finance

Company Limited

... Respondent

.....

Mr. Vivek V. Salunke a/w Mr. D.R. Shinde for the Petitioners.

Mr. Padmakar S. Garad I/b S.G. Legal & Associates for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 12 FEBRUARY 2019

P. C. :

. Heard learned Counsel for the parties.

2 This petition challenges an *ex parte* award by a Sole Arbitrator against the Petitioners. The disputes between the parties arise out of a vehicle loan agreement. The main grievance of the Petitioners (paragraph 8) is that the Petitioners had no proper notice of the arbitration proceedings and were unable to present their case. The Petitioners' case in their petition is that they received notice of appointment of the arbitrator and the date of the preliminary meeting. The preliminary meeting was to be held on 6 January 2015. The Petitioners have averred on oath that on that day, Petitioner No.1 went to the venue of arbitration. The Respondent's representative, one Vijay Dhavale, was also present at the venue. It is the Petitioners' case that the learned arbitrator was not

available at the venue around the appointed time and no hearing therefore could take place on that day. The Respondent's representative informed Petitioner No.1 that the next date of hearing would be communicated as and when fixed by the learned arbitrator. The Petitioners have also named another party by the name of Pramod Patil, who was also present in the office of the learned arbitrator in connection with another arbitration against the same Respondent. The Petitioners' case is that after this date, i.e. 6 January 2015, no notice of further hearing was received by the Petitioners and straightway in the last week of May 2015, the Petitioners learnt about the learned arbitrator having passed an award on 14 May 2015 in the reference. In its reply to the arbitration petition, the Respondent has not specifically dealt with the case set up by the Petitioners in paragraph -8 of the petition. The Respondent has merely made a sweeping denial, saying that the allegations in paragraph -8 of the petition are "false and baseless and the Petitioners created fictitious story which is an afterthought". The averments in the Respondent's reply do not indicate the case now set up by the Respondent at the hearing before this court. What is submitted now at the hearing is that the preliminary meeting was held on 6 January 2015, when none appeared for the Respondent. It is submitted that the Respondent (original Claimant) filed its statement of claim and was directed to serve a copy on the Petitioners herein and the matter was thereafter adjourned to 10 February 2015. Learned Counsel for the Respondent relies on a photocopy of roznama maintained by the learned arbitrator. This case, as we have noted above, is not reflected in the Respondent's reply. The Respondent's reply instead is on the basis that the notice of further hearing to be held on 10 February 2015 was duly served on the Petitioners. The Respondent relies on a copy of

communication along with a postal acknowledgment. The postal acknowledgment does not suggest that the so called packet of service was received by either of the two Petitioners. The Petitioners have specifically set up a case that they did not receive any notice of arbitration proceedings after the date of the preliminary meeting, i.e. 6 January 2015. In the face of this case, the onus really was on the Respondent to show that the service was duly effected on the Petitioners. There is nothing in the affidavit of service filed by the Respondent in this behalf before the arbitrators to indicate that the notice was either received by any of the Petitioners or by any authorized representative of the theirs. Learned Counsel for the Respondent is unable to establish the identity of the person who appears to have signed the acknowledgment card or his/her relationship with the Petitioners. The roznama indicates that after two dates in quick succession of the preliminary meeting, i.e. on 10 February 2015 and 4 March 2015, the reference was posted before the learned arbitrator and since none appeared for the Petitioners, the matter was heard *ex parte* and posted for award.

3 The record of the case accordingly is consistent with the Petitioners' case that they had no proper notice of the arbitral proceedings and were unable to present their case.

4 Accordingly, the arbitration petition is allowed and the impugned award dated 14 May 2015 is set aside.

(S.C. GUPTE, J.)