

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

**ARBITRATION PETITION NO.956 OF 2016**

Amin Harun Shaikh

And Another

... Petitioners

Versus

Mahindra & Mahindra

Finance Service Ltd

And Another

... Respondents

.....

Mr. Samir Kumbhakoni for the Petitioners.

Ms. Neeta Jain I/b Ms. Priya Crasto for Respondent No.1.

.....

**CORAM : S.C. GUPTE, J.**

**DATE : 2 APRIL 2019**

**P. C. :**

. Heard learned Counsel for the Petitioners and the Respondents.

2 This petition challenges an award passed by a sole arbitrator in a reference arising out of an arbitration clause contained in a loan agreement. The submission of the Petitioners is that they had no notice either of the appointment of the arbitrator or of the arbitration proceedings; the award has been passed *ex parte*; and the Petitioners have been denied an opportunity to present their case. The award records that several notices had been addressed by the arbitral tribunal to the Petitioners, despite receipt of which, the Petitioners failed to appear either in person or through authorised representative or file any statement of defence. The award also refers to the last notice addressed by the tribunal, termed as a final notice of arbitration, which, despite its receipt, also

elicited no response from the Petitioner. The learned arbitrator in the impugned award has taken into account documentary evidence produced by Respondent No.1 before her. These documents included the loan agreement, demand promissory note, vehicle documents (RC Book/insurance cover/invoice) and statement of account. Based on this documentary evidence, which was accepted by the learned arbitrator in proof of the debt owed by the Petitioners to Respondent No.1, the learned arbitrator passed an award jointly and severally against the Petitioners for a sum of Rs.4,43,403/- together with interest. Reply filed by Respondent No.1 to the present petition discloses copies of notices addressed by the arbitral tribunal to the Petitioners from time to time. Each of these notices appears to have been sent by registered post with acknowledgment due. Postal receipts/acknowledgments of the notices are also placed on record. Learned Counsel for the Petitioners disputes their signatures on the acknowledgment cards. Learned Counsel submits that none of the signatures belongs to them. It is not disputed that notices were sent to correct address. It is also not disputed that the petitioners live together at the same address. So far as Petitioner No.1 is concerned, his signatures appearing on the acknowledgment cards signed by him and in the pleadings of the present petition, do match. The comparison of the signatures clearly indicates that the signatures on the acknowledgment cards belong to Petitioner No.1. Based on this documentary record, read in light of the statement made by the learned arbitrator in her impugned award, no case is made out under clause (iii) of sub-section (2) of Section 34 of the Arbitration and Conciliation Act, 1996 ("Act"). The Petitioners could not be said to have had no proper notice of appointment of arbitrator or of arbitration proceedings or were otherwise unable to present their

case. Incidentally, it may be noted that the only case which the Petitioners have urged on merits in their defence is that the suit vehicle was transferred by them to Respondent No.2, who, in turn, had agreed to clear the dues of Respondent No.1. This is not even a stateable defence. Any such agreement between the debtor and his assignee could never bind the creditor. Be that as it may, the Petitioners have not made out any case for setting aside the award under Section 34 of the Act. No interference is called for in the impugned award. The arbitration petition is, accordingly, dismissed. No order as to costs.

**(S.C. GUPTE, J.)**