

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

COMMERCIAL ARBITRATION PETITION NO.3 OF 2017

Hitesh Harilal Desai)...Petitioner

V/s.

The Kapol Co-op. Bank Ltd. & Ors.)....Respondents

Mr.Karan Halai a/w Mr.Pratyush Ranjan and Mr.Yash Jain I/by Halai
& Co. for petitioner.

None for respondents.

CORAM : K.R.SHRIRAM,J

DATE : 28.3.2019

P.C.:-

1. This petition is filed under Section 34 of the Arbitration & Conciliation Act, 1996 impugning an award dated 1.7.2016 passed by the sole Arbitrator appointed under Section 84 of the Multi State Co-operative Societies Act, 2002 (hereinafter called 'the Act'). Petitioner was respondent no.4 before the Arbitrator.

2. Respondent no.1, the original claimant, is a co-operative bank registered under the provisions of Co-operative Societies Act 1960. Respondent no.2 was carrying on business as sole proprietor of one M/s.Janavi Enterprise. Respondent no.2 applied to respondent no.1 bank for grant of loan and credit facility and as the principal

borrower was sanctioned cash credit hypothecation facility of Rs.7 crores and an adhoc cash credit hypothecation facility of Rs.50,00,000/- for furthering the business of respondent no.2. The facility was sanctioned against guarantee given by respondent nos.3, 4 and petitioner. Petitioner and respondent nos.2 to 4 executed various documents. Petitioner as guarantor also executed letter of surety in favour of respondent no.1-bank. Respondent no.2 failed to repay the loan amounts as per the terms and conditions and despite repeated request of respondent no.1, failed and neglected to pay. Account of respondent no.2 became Non Performing Asset (NPA) on 21.11.2011. I must note, this was within one year of getting the loan facility. Respondent nos.3, 4 and petitioner being guarantors, were jointly and severally liable with respondent no.2 to pay the loan amount. The amount was to be paid with interest @ 14% p.a. and in case of default, additional 2.5% as penal interest. As on 31.10.2011 an amount of Rs.7,50,00,000/- plus Rs.19,35,975/- towards interest was payable to respondent no.1.

3. For securing the loan, petitioner and respondent nos.2 to 4 had offered collateral by way of equitable mortgage of a flat no.701, 7th floor of Gulmohar Heights, Mumbai and another flat no.101, 1st floor, Vile Parle (West), Mumbai. Due to default by petitioner and

respondent nos.2 to 4, notice was issued and despite receiving the notice, petitioner and respondent nos.2 to 4 failed and neglected to pay the amounts and hence the dispute was referred to arbitration under Section 84 of the Act.

4. Mr.Halai for petitioner conceded that petitioner as well as respondent nos.2 to 4 had notice of arbitration proceedings and also had engaged an advocate but no written statement or statement of defence was filed. The excuse for non appearing as given by Mr.Halai is petitioner was not a member of the family of respondent nos.2 to 4 and relied on respondent nos.2 to 4 to take care of petitioner's interest as well. Mr.Halai submitted that a common advocate was appointed to represent petitioner and respondent nos.2 to 4 and petitioner's mistake was he relied totally on the said advocate to take care of his interest as well. I find it very difficult to accept this submission. The amount involved was in excess of Rs.7.5 crores and certainly a person who signs as a guarantor for such large amount, which account has become NPA within one year, would be so careless that he would depend and trust on somebody for whom he stood as guarantor when that somebody has failed and neglected to repay such a large sum. Moreover, this is not even a ground raised in the petition.

5. Mr.Halai thereafter submitted that Arbitral Tribunal had no jurisdiction. Mr.Halai submitted that petitioner was not even a member of respondent no.1 bank. It is rather strange that petitioner had no qualms in signing the documents of guarantee despite being a non member. I do not find that is a ground in the petition. It is not stated anywhere that petitioner was not even a member. Moreover, petitioner has not raised any ground of defence before the Arbitral Tribunal.

6. Respondent no.2 had filed a reply cum statement of defence to the interim application that respondent no.1 had filed under Section 17 of the Arbitration & Conciliation Act, 1996. Mr.Halai states that though the award mentions only respondent no.2, the written arguments given at the time of interim application, has been filed on behalf of petitioner also. No statement of defence however, as stated earlier, was filed by respondent nos.2 to 4 or petitioner.

7. The arbitrator has come to a conclusion that the Arbitral Tribunal has jurisdiction under Section 84 of the Act. As noted earlier, at no place even in this petition, has petitioner stated that he was not a member of respondent no.1. Even in the written submissions filed in response to the interim application, at paragraph-13 it is only stated

that respondent no.1 is not a member of the claimant/applicant bank. Nowhere it has been stated that petitioner was also not a member. A false ground in the written arguments given to the interim application has been taken that petitioner and respondent nos.3 & 4 have not signed as guarantors but today Mr.Halai in fairness submitted that petitioner signed as guarantor.

8. Under Section 84 of the Act it is provided that notwithstanding anything contained in any other law for the time being in force, if any dispute touching the constitution, management or business of Multi State Co-operative Society arises among members, past members and persons claiming through members, past members and deceased members, such dispute shall be referred to arbitration. Petitioner has not denied anywhere or stated anywhere that he was not even a member. Therefore, certainly the arbitral Tribunal will have jurisdiction. Further under Sub-section 3 of Section 84 it is provided that if any question arises under Section 84 is or is not a dispute touching the constitution, management or business of a multi-State Co-operative society, the decision thereon of the Arbitrator shall be final and shall not be called in question in any Court. Arbitral Tribunal has held that it has jurisdiction for reasons as mentioned in the award.

9. In view of the above, I see no reason why this Court should interfere in the award. Petition dismissed with costs in the sum of Rs.2,00,000/- to be paid within 4 weeks from today.

Registry is directed to forward a copy of this order to respondent no.1.

(K.R.SHRIRAM,J)