

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Original Side Appeal No.81 of 2019

&

C.M.P.No.7482 of 2019

Pooja Ramachandran ...Appellant

-vs-

M/s.Nissan Renault Financial Services
India Private Limited,
AVS Ramana Tower, 5th Floor,
No.52, Venkatanarayana Road, T.Nagar,
Chennai - 600 017. ...Respondent

Prayer: Original Side Appeal filed under Order 36 Rule 1 of the O.S.Rules r/w Clause 15 of the Letters Patent Appeal and Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 to set aside the order in O.P.No.148 of 2017 dated 05.07.2018.

Prayer in O.P.No.148 of 2017:

Petition filed under section 34 of the Arbitration and Conciliation Act 1996, Praying to set aside the award dated 25.10.2016, Passed in Arbitration Case No.NRRS/ARB/031/2016.

For appellant : Mr.Prasoon Agarwal for
Palash Tiwari

For Respondent : Mrs.Balambika for
Mr.Namachivayan

JUDGMENT

(Judgment of the Court was delivered by T.S.Sivagnanam, J.)

This appeal is directed against the order in O.P.No.148 of 2017 dated 05.07.2018.

2. The said petition was filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 ('the Act' for short) to set aside the award dated 25.10.2016 passed in Arbitration Case No.NRFS/AB/031/2016. The undisputed facts are the appellant, who is employed in the Department of Atomic Energy had availed financial services of the respondent company for purchase of a vehicle namely Renault Duster. It is an admitted fact that the appellant had paid the initial amount to the dealer from whom the vehicle was to be purchased and requested to sanction a loan of Rs.8,58,000/- from the respondent/financial company. The respondent being satisfied with the credentials of the appellant, sanctioned loan of Rs.8,58,000/- repayable in 60 equated monthly installments of Rs.17,830/- each. There was hypothecation on the said vehicle. It is also an admitted fact that only four equated monthly installments were paid by the appellant and thereafter she stopped payment. This necessitated the respondent to issue legal notice to the appellant dated 13.04.2016. In the said notice, the respondent mentioned about the loan facility which was sanctioned to the appellant and stated that as on 11.04.2016, the appellant was liable to pay the respondent a sum of Rs.37,943/- which is inclusive of interest and other charges in terms of the loan agreement. The appellant was informed that if they fail to regularize their loan account, immediately the respondent would be constrained to exercise rights and remedies available and also to initiate legal proceedings available both under Civil and Criminal laws including Arbitration under the Act.

3. The appellant through his counsel sent a reply dated 16.05.2016. In the said reply, apart from other things, she has stated about the problems which she faced with the vehicle and the filing of a consumer complaint against the dealer M/s.Gen Next Motors Limited and others in Complaint No.215 of 2016 on the file of the Consumer Disputes Redressal Forum, Mumbai and the pendency of such matter.

4. Furthermore, the appellant admitted in the said reply notice that due to the faulty car delivered to the appellant and due to poor and inefficient after sale

service by the dealer, she has stopped paying her EMIs for the car loan by tendering on ECS debit Mandate Withdrawal Request form to the ICICI Bank dated 16.02.2016 for the reason that there is a dispute in Consumer Court.

5. Further, in the reply notice, the appellant contended that on account of the faulty car delivered to her and that she has initiated proceedings before the Consumer Court, they are not to be termed as a defaulter and she is not liable to make any payment of money or interest or other charges and the respondent may repossess the car and sell the same for the purpose of recovering its dues along with interest at the risk of the respondent. The appellant further stated that she is not in a position to drive the car and if done so it will be at the risk of somebody else's life. Once again it was reiterated that the respondent may sell the car. Further in the reply notice, the appellant contended that she has never received a copy of the loan agreement entered into between her and the respondent and requested them to produce a copy of the loan agreement. It is the appellant's case that on 10.11.2018 she was served with a copy of the award dated 25.10.2016 passed by the Arbitrator appointed by the respondent/company which was sent by the arbitrator on 08.11.2016.

6. The learned counsel appearing for the respondent pointed out that the award was sent to the address of the appellant in the loan agreement. The appellant challenged the award by filing the petition under Section 34(1) of the Act which has been dismissed by the learned Single Bench, on the ground that the appellant has not intimated the change of address and the mentioning of the address in the reply notice dated 16.05.2016 cannot be construed as a valid intimation for change of address.

7. We have heard Mr.Prasoon Agarwal for Mr.Palash Tiwari, learned counsel for the appellant and Mrs.Balambika for Mr.Namachivayan, learned counsel for the respondent.

8. It is true that the appellant, when she availed the loan, was residing at A.17, Nalanda DAE Quarters Anushakti Nagar Mumbai 400 094, Maharashtra State. This address is a Government Quarters as the appellant was employed in the Department of Atomic Energy. In the reply notice dated 16.05.2016, the counsel for the appellant mentioned her address as H6/2/6, Spaghetti, Sector-15, Khargar, Navi Mumbai - 410 210. However, in the reply

notice, there is no specific mention by the appellant that she has changed the address and requested the respondent/company to note the change of address. Furthermore, there is no specific mention as to how they have received the copy of the legal notice sent by the respondent dated 13.04.2016 sent to the official quarters.

9. Thus, the respondent may be justified in contending that there is no valid intimation of change of address as required in the loan agreement. We leave this issue for the present and examine as to whether the learned Arbitrator has followed the proper procedure of service of notice of commencement of arbitral proceedings. This issue has been dealt with in Issue Nos.2 & 3 as framed by the learned Arbitrator and the finding recorded is as follows:

"[2] Whether the service of notice to the respondent is complete? And [3] Whether the matter can be heard in absence?

By my 1st notice dated 02.07.2016 through Registered Post with Acknowledgment card, I directed the parties to appear before me on 21.07.2016 either in person or through any authorized representative/counsel, duly appointed by them, for enquiry into the above mentioned dispute at II Floor 26T Pandu Kliz Plaza, 330 Thambu Street, Chennai - 1.

On the said date, the authorized representative of the Claimant and Claimant's counsel were present. The same was taken by me on record. None was present for the respondent although my notice was duly sent to the respondent, to the address given by the respondent at the time of availing the facility. However, in the interest of Justice, fresh notice was issued by me, to the respondent, by Registered Post with Acknowledgment card to be present on 18.08.2016. It was mentioned in the said notice that if the respondent was not present on the date mentioned, the above matter would be proceeded ex-parte and determined accordingly. But none appeared for the respondent although the said notice was duly sent to the respondent. Till 04.00pm none appeared for the respondent.

For the aforementioned reasons, I hold

that the notice to the respondent was duly served and the matter be proceeded in his absence. Accordingly, the proceedings are held in his absence."

10. From the above, it is clear that the first notice by the learned Arbitrator dated 02.07.2016 was sent through Registered Post with Acknowledgment Card fixing hearing date as 21.07.2016 and the place of hearing was also mentioned. The authorized representative of the respondent was present on the said date, and the arbitrator has recorded that none was present for the appellant, though, notice was duly sent to the appellant to the address given by the appellant at the time of availing loan facility. The Arbitrator would further state that notice was sent by him to the appellant by Registered Post with Acknowledgment Card to be present on 18.08.2016. The date of second notice has not been mentioned but the date on which hearing alone was mentioned.

11. The learned Arbitrator would further record that none appeared for the appellant until 04.00 PM on 18.08.2016 although notice was duly sent to the appellant. What is clear from the above paragraph of the award is that both the notices were sent by the learned Arbitrator by Registered Post with Acknowledgment Card. There is no finding rendered by the Arbitrator that notice which was sent had been served or returned unserved or refused or for any other reasons that may be recorded by the Postal Department.

12. The learned counsel for the respondent would further contend that the service of notice as adopted by the learned Arbitrator is in accordance with Section 3 of the Act. We proceed to test the correctness of the said submission, for this purpose, we quote Section 3 of the Act;

"Receipt of written communications-

(1) Unless otherwise agreed by the parties,-

(a) Any written communication is deemed to have been received to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) If none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing

address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority."

13. In terms of the above provision unless and otherwise agreed by the parties any written communication is deemed to have been received, if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address. What is to be from Sub Section 2 of Section 3 is the term "delivered". Delivered could either be personal or at the last known place of business, habitual residence or mailing address. Thus, learned Arbitrator should have recorded a specific finding as regards the delivery of both of his notices which is conspicuously absent. Clause (b) of Section 3(1) states that none of the places referred to i.e., personal delivery or last known place of business, habitual residence or mailing address could be found after making reasonable inquiry, a written communication deemed to have been received if it is sent to the address last known or last known place of business, habitual residence or mailing address or registered letter or by any other means which provides records for the attempt to deliver it.

14. To adopt the procedure under Clause (b) of Section 3(1), the first requirement is to comply with the procedure under Clause (a) Section 3(1). However, if for any reason delivery could not be effected in terms of Section 3(1) of the Act, then the addressor is required to make a reasonable inquiry and then follow the procedure under Clause (b) of Section 3(1). Sub Section 2 of Section 3 states that communication is deemed to have been received on the day it is so delivered. Therefore, the primary requirement is delivery of notices. We find that the learned Arbitrator has not recorded any finding as to whether two notices sent by him were delivered in terms of Section 3(1). Unless and until that finding was recorded and that reasonable enquiry was made and it is recorded that Section 3(b) procedure was followed, it cannot be taken that the appellant had notice of the arbitral proceedings. Since, we are satisfied that the appellant did not have notice of the arbitral proceedings, we are inclined to set aside the award. Therefore, we do not propose to go into the aspect as to

whether there was valid intimation of change of address made by the appellant to the respondent company. We are of the considered view that the matter requires fresh consideration to enable the appellant to file her counter and contest the matter on merits and in accordance with law. During the course of the argument, the learned counsel for the appellant would submit that they were ready and willing to deposit the amount and all that they plead to be given an opportunity before learned Arbitrator to put forth their contentions.

15. In the result the appeal is allowed. The order passed by the learned Single Bench is set aside, the award of the Arbitrator is set aside and the matter is remanded to the Arbitrator for fresh decision on merits and in accordance with law and after affording opportunity to the authorized representative of the appellant. The address for service of all notices on the appellant by the Arbitrator shall be H-6/2/6, Spaghetti, Sector 15, Khargar, Navi Mumbai - 410 210.

16. In the result, the Original Side Appeal is allowed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrm/ssb

To,

The section registrar, (OSI)
High Court ,Madras

(for necessary Action)

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Original Side Appeal No.81 of 2019
&
C.M.P.No.7482 of 2019

ssv (CO)
A.SK(28/06/2019)