IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No.468 of 2015

1. Venkata Narayana Mannam
2. Adi Lakshmi Mannam ... Petitioners

vs.

1. HDB Financial Services Limited,
having its registered office
at 'Radhika', 2nd Floor,
Law Garden Road, Navrangpura,
Ahmedabad - 380 009.

2. Anis Ahmed,
Sole Arbitrator,
1st Floor, Old No.150, Pycrofts Road,
Royapettah,
Chennai 600 014. ... Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 09.09.0213 in Arbitration case No.2099 of 2013 passed by the Sole Arbitrator.

For Petitioners : Ms.Vasudha Thiagarajan

For 1st Respondent : Mr.N.K.Vanan

O R D E R

Challenging the Arbitral Award dated 09.09.2013 made in Arbitration Case No.2099 of 2013, Petitioners are before this Court with the above Original Petition.

2. It is seen that the 1st Petitioner herein availed loan for a sum of Rs.20,20,000/- from the 1st Respondent/Finance Company vide Loan Agreement dated 23.03.2011 towards purchase of a commercial vehicle Truck TATA LPT 3118 TC 56 WB BSIII. The 2nd Petitioner herein stood as a Guarantor to the said loan. The Petitioners herein agreed to pay the said loan in 57 monthly instalments of Rs.46,088/- and in case of default in payment of monthly instalments to the 1st Respondent/Finance Company, they agreed to pay late payment charges at 24% per annum.

3. It is the case of the 1st Respondent/Finance Company that the 1st Petitioner paid only four instalments in time and thereafter, defaulted in paying the remaining instalments. The 1st Respondent/Finance Company issued notices to the Petitioners regarding outstanding dues, but the Petitioners neither made the payment nor responded to the communications. According to the 1st Respondent/Finance Company, a sum of Rs.16,48,904/- is outstanding against the Petitioners towards loan as on 13.06.2013, and that the 1st Respondent is also entitled to interest at 24% per annum on the outstanding amount, from 13.06.2013 till the date of realization of the amount.

4. Hence, the 1st Respondent/Finance Company initiated Arbitration proceedings against the Petitioners and notice dated 20.06.2013 was sent to the Petitioners through Registered Post Acknowledgement Due. However, neither the Registered envelopes nor the Acknowledgement Cards returned. Thereafter, notice dated 18.07.2013 was again sent to the Petitioners through Registered Post Acknowledgement Due and the said notice was served on them.

5. However, the Petitioners failed to appear before the Arbitrator and hence, they were set exparte before the Arbitral Tribunal. After examining the oral and documentary evidence available on record, the Arbitrator passed the following Award:

> "(i) The Respondents do pay, jointly and severally, to the Claimant-Company, a sum of Rs.15,46,991/- (Rupees Fifteen Lakhs Forty Six Thousand Nine Hundred and Ninety One only) together with interest calculated on this outstanding due amount Rs.15,46,991/- @ 18% per annum from the date of Award till the payment by the Respondents or realization thereof by the Claimant.
>
> (ii) The Respondents shall give the possession of the commercial vehicle in question Truck TATA LPT 3118 TC 56 WB BSIII bearing Registration No.AP16TC3769 and Engine No.11C63103348 & Chassis

No.MAT466412B2C05435 to the Claimant-Company and in that event, the Claimant-Company shall sell the commercial vehicle and first appropriate the sale proceeds towards any reasonable expenses incurred by it for seizing and selling the commercial vehicle and the balance amount should then be appropriated against the outstanding dues. If the commercial vehicle is not handed over to the claimant-Company, the claimant-Company shall be entitled to recover the possession of the commercial vehicle in question from the Respondents or from any person claiming under them and from any building premises or place where the commercial vehicle in question may be kept or may be parted, in accordance with law.

(iii) If there is any shortfall between the sale proceeds and the amount found due to this Tribunal, the claimant-Company shall recover the balance of the outstanding dues from the Respondents by enforcing this Award u/s 36 of the 1996 Act. In case of any surplus amount, the same shall be refunded to the Respondents.

(iv) The Claimant can recover the outstanding dues from the Respondents by appropriating the monies, securities, assets or deposits of the Respondents, which are in possession of the Claimant under any other account, scheme and agreement and can exercise all or any of its rights under any of the Borrower's or the Co-Borrower's or the Guarantor's Agreement (including this Agreement) with the Claimant at the sole discretion of the Claimant.

(v) The Respondents, in the first instance, do pay to the Claimant, the costs of Arbitral proceedings including the fee of Arbitrator quantified at Rs.1000/- and an amount of Rs.150/- towards expenses incurred in Stamp Duty imposed on this Award, as the same has been received from the Claimant. The Claimant is further directed to deduct the amount from the Award amount, if any, paid by the Respondents, during the Arbitration proceedings i.e. from the date of commencement till date of Award."

6. Learned counsel for the Petitioners contended that the notice dated 20.06.2013 said to have been served on the Petitioners has not at all been received by them, as, neither the Returned envelopes nor the Acknowledgement Cards were produced by the 1st Respondent/Finance Company before the Arbitrator. As regards the second notice dated 18.07.2013 fixing the date of hearing of the Arbitration Case No.2099 of 2013 as 19.08.2013, issued to the Petitioners, learned counsel contended that the Postal Acknowledgement Cards does not bear the signature of either the 1st Petitioner/Borrower or the 2nd Petitioner/Guarantor and that the signature found therein differs. According to the learned counsel, as the Arbitration proceedings itself are vitiated in view of the non-compliance of the mandatory procedure required under the Arbitration and Conciliation Act, 1996, the same needs to be interfered with.

7. In reply, learned counsel appearing for the 1st Respondent/Finance Company submitted that in spite of sending notices dated 20.06.2013 and 18.07.2013 to the Petitioners herein, they did not respond to any of the notices and as there was no appearance of the Petitioners before the Arbitrator, they were set exparte.

8. According to the learned counsel appearing for the 1st Respondent/Finance Company, the contention of the learned counsel for the Petitioners that the signature found in the Postal Acknowledgement Cards is not that of the Petitioners, cannot be acceptable and it cannot be construed that the Petitioners have not received any notice at all, when there is no dispute about the service of a copy of the Arbitral Award dated 09.09.2013 on the Petitioners on 16.09.2013, that too to the same address of the Petitioners as mentioned in the Loan Agreement. It is his further contention that the present Original Petition has been filed on 23.06.2015, beyond 120 days of the passing of the Arbitral Award. Hence, he prayed for dismissal of the Original Petition, at the threshold.

9. Heard the learned counsel on either side and perused the material documents available on record.

10. It is not in dispute that the 1st Petitioner availed loan for a sum of Rs.20,20,000/- from the 1st Respondent/Finance Company towards purchase of a Commercial vehicle and the 2nd Petitioner herein stood as a Guarantor to the said loan. Admittedly, the 1st Petitioner has paid only four instalments within the time stipulated and has paid a substantial portion of the outstanding amount at a later point of time. A careful scrutiny of the Arbitral Award would make it clear that the notices dated 20.06.2013 and 18.07.2013 were served on the last known addresses of the Petitioners and it cannot be termed as improper service.

11. The Registry has taken note of the statement made by the Petitioners that based on the Execution Proceedings in E.P.No.26 of 2015, the Petitioners came to know about the Arbitration Award, and numbered the present Original Petition. It is further seen that the Petitioners herein did not file any Petition seeking to condone the delay in filing the present Original Petition, though, it has been filed beyond 120 days from the passing of the Arbitral Award.

12. In the present case on hand, the 1st Respondent/Finance Company has produced documents to show that the Arbitral Award dated 09.09.2013 has been served on the Petitioners on 16.09.2013 and the present Original Petition

has been filed after 18 months. As pre-Arbitration Notices as well as the copy of the Arbitral Award have been duly served on the Petitioners to their last known address, this Court is of the view that at no stretch of imagination, the Arbitral Award can be termed to be an exparte Award, as the same has been passed only on merits. Hence, the Petitioners, either jointly or severally are liable to pay the outstanding amount to the 1st Respondent/Finance Company.

13. When this Court posed a question to the learned counsel appearing for the 1st Respondent/Finance Company as to whether the 1st Respondent could reduce the rate of interest payable by the Petitioners, he submitted that if the Petitioners agree to pay the outstanding amount as a lumpsum, the 1st Respondent/Finance Company may agree for reduction in the rate of interest.

14. At this stage, it is represented by the learned counsel for the Petitioners that after passing of the Arbitral Award, the vehicle in question was re-possessed by the 1st Respondent/Finance Company and sold for a sum of Rs.8 lakhs and odd on 18.03.2014. Learned counsel further submitted that the sale proceeds of the vehicle shall be credited to the Petitioner's Loan Account.

15. In view of the above, this Court directs the 1st Respondent/Finance Company to appropriate the sale proceeds of the vehicle in question to the 1st

Petitioner's Loan Account. The Petitioners are directed to pay the outstanding amount together with the reduced rate of interest at 9% per annum to the 1st Respondent/Finance Company in twelve (12) equal monthly instalments. The first instalment shall commence on the last working day of March 2019. In case, there is default in payment of the outstanding amount by the Petitioners, the original Award will revive.

16. It is needless to mention that it is open to the Petitioners to approach the 1st Respondent/Finance Company for further reduction in the rate of interest. However, this Court is not expressing any opinion on the same.

This Original Petition is disposed of with the above direction and observation. No costs.

24.01.2019

Index : Yes/No
Speaking order : Yes/No

Note to Registry:
Issue copy of this order on or before 20.03.2019

(aeb)

S.VAIDYANATHAN,J.

(aeb)

O.P.No.468 of 2015

24.01.2019