IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.7.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

O.S.A.No.164 of 2019
and
C.M.P.No.14373 of 2019

M/s.Kotak Mahindra Pvt. Ltd.,
rep. by its Authorised Signatory,
Mr.T.Chinnamuthu,
CEEBROS Centre, 1st Floor,
No.45, Montieth Road,
Egmore, Chennai 600 008. Appellant

Versus

1. Mr.Karansingh Narsingh Hajaraq
2. Mrs.Kanimozhi Lakshmanan (Arbitrator) Respondents

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Section 15 of Letters Patent against the order of this court dated 23.7.2018 in O.P.No.502 of 2015.

For Appellant : Ms.Revathi Manivannan for M/s.AAV Partners

For R1 : Mr.Adinarayana Rao

JUDGMENT
(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Appellant, M/s.Kotak Mahindra Private Limited has filed the present intra-court Appeal under Section 37 of the Arbitration Act, 1996 aggrieved by the order passed by the learned Single Judge dated 23.7.2018 allowing the O.P.No.502 of 2015 (Karansingh Narsingh Hajarq v. M/s.Kotak Mahindra Private Limited and another) filed under Section 34 of the Act and setting aside the ex parte Arbitral Award dated 27.12.2010 directing the present Respondent borrower to pay a sum of Rs.3,24,660.44 together with interest and cost.

2. The relevant portion of the order passed by the learned Single Judge containing reasons for setting aside the ex parte Arbitral Award is quoted below for ready reference:-

"16. This Court after considering the materials available on record as well as the Arbitral Award dated 27.12.2010 and after hearing the submissions of the respective counsels observes the following:

(a) The loan agreement dated 07.03.2008 does not reveal that the loan was granted to the petitioner by the first respondent for the purchase of a vehicle. Heading of the agreement itself describes that the agreement is a personal loan agreement. There are several blanks found in the schedule to the agreement. Even the loan amount is left as blank. Only the rate of interest and the tenure is mentioned in the schedule to the loan agreement.

(b) The value mentioned in the promissory note is Rs.4,26,182/-, whereas according to the first respondent, the loan availed by the petitioner was only Rs.3,14,716/-. Even though the learned counsel for the first respondent submits that the value mentioned in the promissory note includes the interest payable by the petitioner, there is no pleading made by the first respondent to that effect, in the claim statement filed by the first respondent before the Arbitrator

(c) In the notice dated 01.11.2010 sent by the first respondent's counsel, the amount claimed from the petitioner by the first respondent was Rs.3,24,660.44 which was due as on 12.10.2010 and this amount included the interest also. Therefore, the contention of the learned counsel for the first respondent that the promissory note for Rs.4,26,132/- includes interest cannot be accepted, since even according to the first respondent only a sum of Rs.3,24,660.44 was due as on 12.10.2010.

17. As seen from the claim statement filed by the first respondent before the Arbitrator, the first respondent has stated that the loan was availed by the petitioner for the purchase of the vehicle Ford Car bearing registration No.AP 27 M 5555. As observed earlier, there is no mention about any vehicle under the loan agreement dated 07.03.2008. The learned counsel for the first respondent had produced a certificate issued by the Regional Transport Authority, Hyderabad which discloses that the vehicle, for which the first respondent claimed to have advanced money to the

petitioner, belongs to the person Mr.Narasimha Rao G whereas the name of the petitioner is Karansingh Narsingh Hajraq.

18. According to the first respondent, the loan recall notice dated 01.11.2010 allegedly addressed to the petitioner was received by the petitioner, but the signature in the acknowledgement card is signed in Telugu whereas according to the learned counsel for the petitioner, the petitioner does not know Telugu.

19. As seen from the Arbitral Award, the Arbitrator has not considered all these vital factors before passing the award against the petitioner. The Arbitrator has totally believed the statement of the first respondent as alleged by them in the claim statement, without verifying the same with the supporting documents. There is total non-application of mind by the learned Arbitrator.

20. Therefore, this Court is of the considered view that the findings of the Arbitrator are arbitrary, perverse, irrational and illogical and the Arbitral Award which is under challenge is patently illegal shocking the judicial conscience of this Court.

21. In the result, the Award dated 27.12.2010 passed by the Arbitrator against the petitioner is set aside and the petition is allowed. However, there shall be no order as to costs."

3. The learned counsel for the Appellant-Bank, Ms.Revathi Manivannan has urged that none of the grounds raised in the petition filed under Section 34 of the Act has been established by the Borrower for invoking Section 34 of the Act and there was no breach of principles of natural justice and notice of arbitration was duly served upon the Respondent-borrower and there were no blanks in the Loan Agreement as noted by the learned Single Judge in the impugned order. She has further submitted that the notice was duly served and the acknowledgment duly signed by the Respondent-borrower was on record and therefore, the learned Arbitral Tribunal found that there was no breach of principles of natural justice.

4. Learned counsel for the Respondent-Borrower, Mr.Adinarayana Rao submitted that no notice was served upon the Respondent-Borrower and the alleged signature in the acknowledgment card is in Telugu which is not the the signature

of the Borrower as the he did not even know that language. He pointed out that there were several blanks in the Loan Agreement as well as the Promissory Note including the amount of loan itself.

5. Be that as it may, having heard the learned counsel for the parties, we are satisfied that breach of principles of natural justice is one of the specified grounds in the petition filed under Section 34 of the Act. The learned Single Judge assigned proper reasons after noticing the evidence and materials available on record that not only notice of Arbitration was not properly served on the Respondent-Borrower, but also the Loan Agreement in question produced before the Tribunal had several blanks and even the basic column of 'Loan Amount' was also left blank.

6. We are, therefore, satisfied that the reasons assigned by the learned Single Judge while allowing the Petition under Section 34 of the Act are sufficient and the order passed by the learned Single Judge setting aside the ex parte Arbitral Award does not require any interference or reversal under Section 37 of the Act. The Appeal filed by Kotak Mahindra Bank is, therefore, liable to be dismissed. Accordingly, it is dismissed. No costs. The connected Miscellaneous Petition is also dismissed and the proceedings are referred before Arbitral Tribunal.

7. In view of the long pendency of the lis, the fresh Arbitral Award, after giving opportunity to the Respondent-Borrower, may be passed within a period of 6 months from today. Both the parties, without any further notice, may appear before the Arbitral Tribunal at the first instance on Tuesday, 6th August 2019 at 11.00 am.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

ssk.

To:

1.The Sub Assistant Registrar,
Original Side,
High Court, Madras

2. Mrs.Mrs.Kanimozhi Lakshmanan
Arbitrator/Advocate
No.14, Ambadi Road,
Kotturpuram,
Chennai-600 085.

+1cc to M/s.AAV Partners, Advocate SR.No.63312

O.S.A.No.164 of 2019

MP(CO)
GMY(27/08/2019)