

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

O.P.No.580 of 2018

and

A. No.4986 of 2018

M.Vishal Raja

... Petitioner

Vs.

1.Phoenix Asset Reconstruction Company Private Ltd.

Acting in its capacity as the
Trustee of Phoenix Trust FY 115 Scheme C
RARD Card – Zone 1

No.141, 8th Floor, TVH Agnitio Park
Old Mahabalipuram Road,
Kandhanchavadi,
Chennai – 600 096.

2.Mr.P.Ganesan,
Arbitrator,

No.200, Ethiraj Salai,
Shivalaya "A" Block,
No.710, 7th Floor, Egmore,
Chennai – 600 008.

... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned award dated 05.06.2015 passed by the sole Arbitrator in proceedings bearing Arbitration Case No.000326/2015.

For Petitioner : Mr.L.Dhamodaran

For Respondents : No appearance

ORDER

This Original Petition has been filed to set aside the impugned award dated 05.06.2015, passed by the sole Arbitrator in Arbitration Case No.000326 of 2015.

2.The brief facts of the case would run thus :

The 1st respondent, by virtue of Assignment Agreement dated 30.03.2011 with Barclays Bank, got assignment of all debts in respect of Credit Card accounts. It is the case of the 1st respondent that, the petitioner is the holder of Credit Card bearing No.4339486558306424, issued by the Barclays Bank, with credit limit of Rs.55,000/-. The petitioner defaulted in payment of dues. As per the statement of accounts given by the Barclays Bank at the time of assignment, a total sum of Rs.82,547.14 remained unpaid by the petitioner as on 14.02.2015. Despite notices, the amount remained unpaid. Therefore, the matter was referred for Arbitration.

3.The Arbitral Tribunal, constituted of a sole Arbitrator, based on evidence produced by the 1st respondent, passed the impugned award on 05.06.2015, for a sum of Rs.82,547.14 with interest @ 18% p.a., payable by the petitioner.

4. Aggrieved by the award, the petitioner has filed the present Original Petition before this Court.

5. The main contention of the learned counsel for the petitioner is that, no notice, whatsoever, was served on the petitioner in the entire Arbitration proceedings and the notice of invocation of Arbitration proceedings was also not served on the petitioner. The learned counsel contended that the learned Arbitrator, despite having found that no acknowledgment card has been received and service has not been completed, proceeded with the matter *ex-parte*. The learned counsel further contended that the Credit Card was of the year 2007; the assignment was said to have been made in the year 2011; but, the matter was referred for Arbitration in the year 2015, which is clearly barred by limitation. However, this aspect has not been considered by the learned Arbitrator. Hence, the entire award is liable to be set aside.

6. Heard the learned counsel for the petitioner. Despite service of notice and names being printed in the cause list, there is no appearance for the 1st respondent.

7. I have perused the entire award. It is to be noted that, admittedly, the Credit Card was of the year 2007, the assignment was said to have been

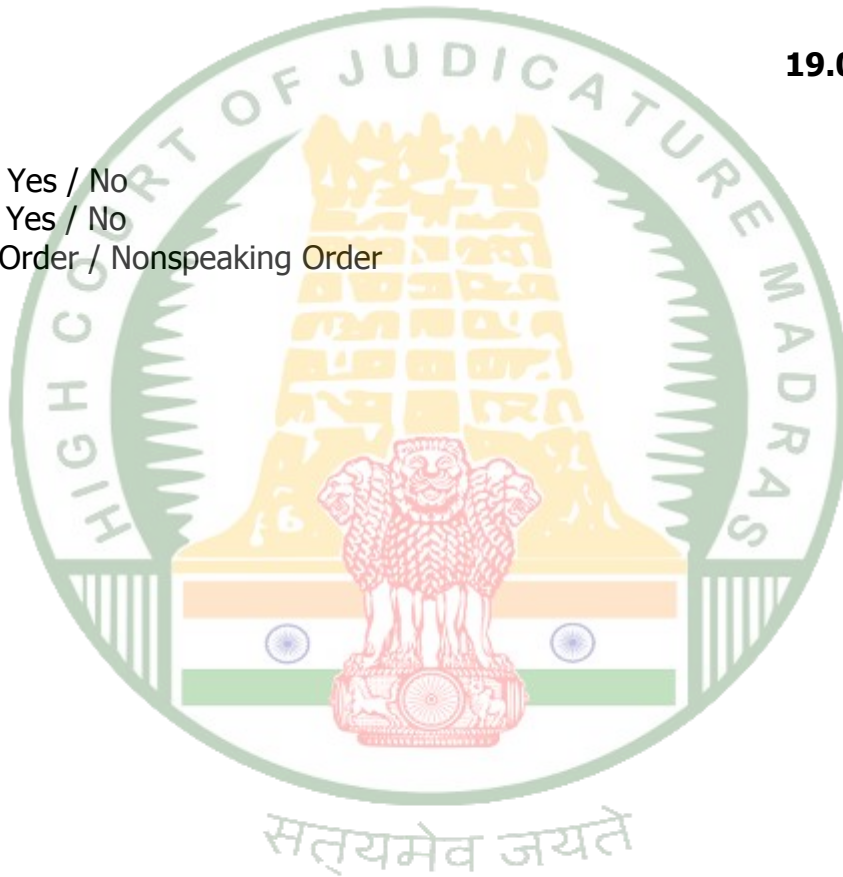
made in favour of the 1st respondent in the year 2011 i.e. on 30.03.2011, which is much after a period of three years from the date of Credit Card. Be that as it may, reference to Arbitration was made in the year 2015, which is also beyond a period of three years from the date of assignment. Even if assumed that there is any debt on the basis of the Credit Card, it is clearly barred by limitation. This aspect has not been looked into by the learned Arbitrator. It is pertinent to note that, unless and until, receipt of notice is acknowledged and the acknowledgment is in writing, the limitation cannot be revived automatically. The learned Arbitrator having found that, there is no proof to show that the notice has been served on the petitioner and that, the acknowledgment card also has not been received, has presumed deemed service. Such act on the part of the learned Arbitrator is also against the well settled procedure. When the claim itself is barred by law, the award passed on such claim, is clearly in violation of the substantive provisions of law and public policy and it also falls within the scope of Section 34 of Arbitration and Conciliation Act, 1996, for being interfered with. Secondly, it is submitted that, no notice whatsoever was served on the petitioner in the entire Arbitration proceedings. Hence, it is explicit that the petitioner has had no opportunity to express his views before the Arbitral Tribunal and the impugned award has been passed *ex-parte*.

In the light of the aforesaid narrative, I am of the view that the impugned award is liable to be set aside. Accordingly, this Original Petition is allowed and the impugned award dated 05.06.2015 is set aside. No costs. Consequently, connected application is closed.

19.08.2019

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Index : Yes / No
Internet : Yes / No
Speaking Order / Nonspeaking Order



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N. SATHISH KUMAR, J.
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