

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.12.2019

CORAM

The Honourable Ms.JUSTICE P.T.ASHA

O.P.No.718 of 2018

and

A.No.6185 of 2018

C. Sheetal

..Petitioner

Vs

M/s. Kotak Mahindra Bank Limited,
1st Floor Ceebrose Centre, 39 Montieth Road
Egmore, Chennai- 600 008.

Respondent

Prayer : Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside Arbitration Award dated 13.04.2018 on the file of Deepa Vasumitran Advocate and Sole Arbitrator.

For Petitioner : Ms. B. Ramaratnam
For Respondent : Mr. M. Arunachalam

सत्यमेव जयते

ORDER

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The above petition is filed by the respondent in an arbitration proceedings challenging the award passed by the learned Arbitrator.

2. The brief facts which are necessary for disposing of the above Petition are as follows: The respondent bank had advanced a loan to the petitioner herein under the personal loan cum Guarantee Agreement dated 30.03.2016. The principal borrower was the petitioner herein and the guarantor was her father PN.Purna Chandra. Since the account had fallen into default by virtue of the fact that the repayment of the loan was not regularised by the borrower; notice was issued to the petitioner and the guarantor under Loan Recall Notice dated 17.06.2017 as on that date a sum of Rs.15,47,667.02 was outstanding.

3. The petitioner was also put on notice that in the event of her failing to pay the said amount, the bank would constrained to invoke the arbitration clause under the said loan agreement. By letter dated 29.06.2017, the respondent bank expressed its intent to appoint one Ms.Deepa Vasumitran, Advocate, as the sole arbitrator and sent copies to the petitioner and her father. Thereafter, by a letter dated 06.07.2017, the respondent bank had informed the petitioner and the guarantor that they have appointed the sole arbitrator to adjudicate the dispute. The notice to the petitioner has been sent to her in law's

address at Plot No. 191, New Vasavi Nagar Saiba, Temple Karkhana, Thirumalgiri, Hyderabad 15. The address to which the notice has been sent to her father is Plot No.30, 1st Floor, Sreenagar Colony, Trimulgherry Nagar, Punjab National Bank, Hyderabad 50. The notice which is sent to the petitioner and the father by the respondent, were received on her behalf and for self by him respectively. Thereafter the Arbitrator has issued notice dated 10.07.2017 to the petitioner and her father with a direction to appear before her on 25.07.2017

4. Thereafter by letter dated 03.07.2017 one J. Jeevan babu and two others advocates, informed the Arbitrator that the letter dated 03.07.2017 which was sent by them to the addresses of the petitioner and her father were received by her father and her father had given instructions to them to inform the Arbitrator that they have filed Insolvency Petition and also a Writ Petition in W.P.No.18363 of 2017 on the file of the High Court of Hyderabad and along with the said Writ Petition WPMP.No.22417 of 2017 had also been filed for staying the proceedings before the Arbitrator, wherein stay was granted. On receipt of the same, the Arbitrator by letter dated 14.07.2017 had requested the concerned Advocate to forward a copy of the stay order. From the records forwarded by the Arbitrator to this Court, it is seen

that the said notice of the Arbitrator has also been received by the counsel for the petitioner. However there was no response to the said letter and the petitioner and her father had also not participated in the arbitral proceedings and therefore they were set ex parte on 12.04.2018 and after recording the ex parte evidence, the Arbitrator passed an award directing the petitioner and her father to pay a sum of Rs.16,23,037.54 together with interest at the rate of 18 % per annum from 17.06.2017 till the date of realisation.

5. The copy of the Award was also forwarded by registered post to the petitioner at her address at Thirumalgiri, Hyderabad. After receiving the Award, the petitioner has come forward with the present Petition under Section 34 of the Arbitration and Conciliation Act, 1996, contending that she had not signed and entered into an agreement with the respondent bank and that she has been living in Bangalore since August 2008, that she has not been properly served and therefore the ex parte Award has given a surprise to her. The ground on which the Award has been challenged is that the petitioner did not have any intimation about the proceedings and the Award has been passed behind her back.

6. Mr. B. Ramaratnan, learned counsel appearing on behalf of the petitioner would contend that the signature found in the agreement is not that of the petitioner and the same to be sent for forensic examination. The learned counsel reiterated the grounds raised by the petitioner that there has not been proper service on her about the proceedings. Per contra, counsel for the respondent argued that notice has been served and that intimation about the proceedings has been given to the petitioner properly. The learned counsel for the respondent further argued that the petitioner was very much aware about the entire proceedings and she has been deliberately getting away from the case and has now come forward with the present application when she has no case on merits.

7. Heard the learned counsel and perused the original records of the arbitral proceedings. From the records, it is seen that the agreement in question has been signed both by the petitioner as well as her father. The petitioner in the application has been described as the proprietor of Sree Venkateswara General Merchants and her husband's address has been given as Plot No. 191, New Vasavi Nagar, Saibaba Temple Karkhana, Thirumalagiri which is the address of the

petitioner as well. The loan appears to have been taken after the petitioner had got married. Hence her spouse's name is also mentioned in the application form. Details of her pan number, Aadhar number have also been provided. The father is shown as the guarantor and his address at that relevant point of time is shown as 22/1, Nanuram Colony, Lal Bazar, Trimulghery, Secundrabad, Hyderabad. The total amount of Rs.20,00,000/- has been sought as a loan and the tenure for repaying has been shown as 36 months. The notices of the respondent-bank as well as the notices of the Arbitrator have all been issued to the addresses given in the loan application. The notices have also been received on behalf of the petitioner but however she has not deemed it fit to participate in the arbitration proceedings and put forward her case, but she now seeks protection from this Court. In fact, after Arbitrator was appointed, there was a communication from her advocate stating that insolvency proceedings had been initiated and a Writ Petition in W.P.No.18363 of 2017 has been filed, wherein protection under 96 of the code has been granted. Then, the Arbitrator had requested for a copy of the stay order and the said request which was sent by registered post was also received by the counsel. However, the said stay order, as requested by the Arbitrator was not produced. Therefore, the Arbitrator proceeded with

the arbitration proceedings. The Arbitrator was constrained to call the petitioner absent and set her ex parte since she has failed to appear despite notice having been served. The petitioner cannot now seek to re-agitate the claim which she had failed to defend despite several opportunities being given to her. No case has been made out by the petitioner under Section 34 of the Arbitration and Conciliation Act and accordingly the Original Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

04.12.2019

Index:Yes / No

mrn

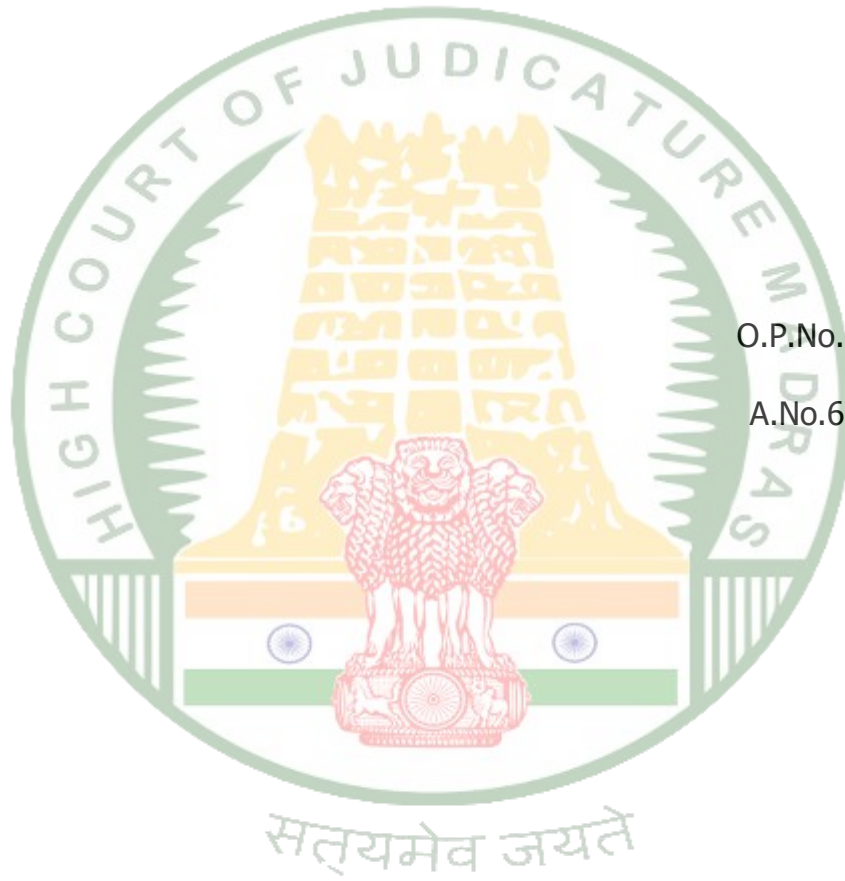


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