

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2019

CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

ORIGINAL PETITION No.39 OF 2016

1. Amarnath
2. Divya ... Petitioners

vs.

1. HDB Financial Services Ltd.,
Registrered Office at Radhika,
2nd Floor, Law Garden Road,
Navarangpura,
Ahmedabad 380 009.
2. Anis Ahmed,
Advocate, Sole Arbitrator,
No.313, 3rd Floor, D Wing,
Kanakia Zillion,
LBS Marg Junction CST Road,
Near Kurla Depot West,
BKC Annexe, Kurla (West),
Mumbai 400 070.

... Respondents

Original Petition filed under Section 34(2)(a) of the Arbitration and Conciliation Act, 1996 to set aside the exparte Arbitral Award dated 17.12.2015 made in Arbitration Case No.4156 of 2015 passed by the sole Arbitrator.

For Petitioners : Mr.V.R.Kamalanathan

For 1st Respondent : Mr.Yusuf
for M/s.Nathan & Associates

* * * * *

ORDER

Respondents before the Arbitrator are Petitioners before this Court seeking to set aside the Arbitral Award dated 17.12.2015 passed by the Sole Arbitrator vide Arbitration Case No.4156/2015.

2. From the pleadings, it is seen that the 1st Petitioner availed loan against property facility for a sum of Rs.1,90,00,000/- from the 1st Respondent/Finance Company vide Loan Agreement dated 20.11.2012 as per Loan Agreement Account No.310361. The 2nd Petitioner is the co-borrower. Both the Petitioners agreed to pay to the 1st Respondent/Finance Company, a sum of Rs.2,93,80,080/- in total 85 equated monthly instalments of Rs.3,45,648/-. As the Petitioners defaulted in payment of monthly instalments, despite several requests, the 1st Respondent/Finance Company initiated Arbitral proceedings against them.

3. It is further seen that notice dated 09.10.2015 were sent to the Petitioners through Registered Post Acknowledgement Due. However, neither the Acknowledgement Cards nor the Registered Envelope returned. Thereafter, notice dated 27.10.2015 were again sent to the Petitioners herein through Registered Post Acknowledgement Due and the said notices were properly served on them. After taking into account the oral and documentary evidence available on record, the

Arbitrator passed the following Award:

“(i) The Respondents do pay to the Claimant a sum of Rs.1,49,30,125/- (Rupees One Crore Forty Nine Lakhs Thirty Thousand One Hundred Twenty Five only) together with interest calculated on this outstanding due amount Rs.1,49,30,125/- @ 18% per annum from the date of Award till the payment by the Respondents or realization thereof by the Claimant. Besides this, the Claimant has their right to lien over the mortgaged immovable property situated at New No.25, 5th Main Road, Jay Chandra Nagar, Medavakkam, Chennai 600 100, Tamil Nadu until the payment of decretal amount has been made by the Respondents in full.

(ii) 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.

(iii) The Respondents, in the first instance, do pay to the Claimant the costs of arbitral proceedings including the fee of Arbitrator quantified at Rs.1,000/- and an amount of Rs.500/- 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 the date of Award.”

4. Learned counsel for the Petitioners contended that an exparte Award has been passed without serving notice on the Petitioners as contemplated under Section 21 of the Arbitration and Conciliation Act, 1996. He went on to state that the Arbitration Agreement was signed at Chennai and the Petitioners are residing at

Chennai and their property against which loan was sanctioned, is also situated at Chennai. Hence, according to the learned counsel, the cause of action has arisen at Chennai and this Court is empowered to entertain the present Original Petition.

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

6. It is seen that the Registry has numbered the Original Petition without posting it for hearing under the caption 'for maintainability'. Though, it is the stand of the learned counsel for the Petitioner that apart from a Court having jurisdiction to entertain the proceedings under the Act, within whose jurisdiction, the cause of action to sue arises, the court within the local limits of whose jurisdiction the defendant at the time of the commencement of the suit, actually and voluntarily resides, or carries on business or personally works for gain, will also have jurisdiction to entertain the proceedings under the Act in terms of Section 20(a) and (b) of the Code of Civil Procedure, the said submission can be acceptable, provided, only when the provisions of Section 20 C.P.C. is made applicable. Furthermore, Section 19(1) of the Arbitration and Conciliation Act, 1996 makes it very clear that the Tribunal shall not be bound by the Code of Civil Procedure, 1908.

7. In view of the above and in view of the Loan Agreement entered into

between the parties, wherein, the place of Arbitration and place of Jurisdiction was clearly mentioned as 'Mumbai', this Court cannot entertain the present Original Petition. Even though no counter has been filed by the 1st Respondent/Finance Company, as a legal plea has been raised by the learned counsel appearing for the 1st Respondent/Finance Company, this Court rejects the Original Petition on the ground of maintainability, as the parties have agreed that Mumbai would be the seat of Arbitration. However, it is open to the Petitioners to raise all the grounds available to them, in case, they file any Original Petition before the Court at Mumbai, well within time, as the seat of Arbitration agreed by the parties is at Mumbai.

This Original Petition is dismissed with the above observations. No costs.

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25.01.2019

Index : Yes

Speaking Order : Yes

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S.VAIDYANATHAN,J.

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