

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

O.P.No.255 of 2014

1. M.S.Ashok Kumar
2. M.Saravanan
3. A.Parthiban
4. S.K.Ganesan

... Petitioners

Vs.

1. Shriram City Union Finance Ltd.
Rep. by its Authorized
Representative Mr.S.Anandhanatarajan
2. Mr.C.A.Ravichandran
Advocate/Arbitrator.

... Respondents

Prayer:- Original Petition is filed under Section 34 of Arbitration and Conciliation Act, 1996 to set aside the Arbitral award, passed by the second respondent/ Arbitrator in A.C.P. No.248 of 2013 dated 24.12.2013.

For Petitioner : Mr.P.Balamurugan
For Respondent No.1 : Mr.Arochiadoss for
Mr.K.V.Ananthakrishnan

ORDER

Challenging the award, dated 24.12.2013, passed by the second respondent/Arbitrator, the present original petition has been filed.

2. Brief facts leading to filing of this petition are as follows:

The case of the claimant/first respondent is that the petitioners herein have entered into loan agreement on 30.3.2011 and borrowed a sum of Rs.5,00,000/-. As per the loan agreement, the respondents/petitioners herein have agreed to repay the said amount in 36 equated monthly instalments of Rs.20,800/- each commencing from 10.5.2011 and failure to pay the E.M.I. the petitioners are liable to pay 3% interest apart from late payment. According to the claimant/first respondent, as on date, the respondents/petitioners herein have paid Rs.4,40,186/-. After giving credit to all the payments made so far, the respondents still having due and liable to pay a sum of Rs.73,814/- towards the principal and Rs.32,868/- towards overdue charges, Rs.2,17,049/- towards future principal, Rs.4,000/- towards banking charges and Rs.4,900/- towards legal expenses and totally, the petitioners are liable to pay Rs.3,32,631/- In view of the dispute over non payment of dues, the matter was referred to arbitration.

3 The Arbitrator recorded a finding that the claimant/first respondent herein established the case and passed an award in favour of the claimant/first respondent by directing the respondents/petitioners herein to pay jointly and severally a sum of Rs.3,32,631/- together with interest at the rate of 18% p.a. from 22.4.2013 till realisation and Rs.5,000/- towards the cost.

4. Heard the learned Counsel appearing for the petitioners and the learned counsel for the first respondent and I perused the materials available on record.

5. The main grievance of the petitioners is that no notice was served to them and no opportunity was given to them to defend the proceedings. The learned counsel appearing for the first respondent submits that the summons sent to the petitioners returned as left. Therefore, publication has been effected. A perusal of the award makes it clear that absolutely there is no detail whatsoever mentioned in the award as to the invocation of arbitration under Section 21 of the Act. Besides, when the date of hearing was fixed on 22.4.2013, the respondents/petitioners were not present. Therefore, the matter was adjourned to 3.5.2013. On 3.5.2013 also so called notice not returned. However, publication has been ordered on the same day. On the basis of publication, the Arbitrator proceeded exparte and award has been passed in favour of the claimant/first respondent herein.

6. The very object of the arbitration proceedings is to give fair opportunities to the parties. On every hearing, there must be sufficient opportunities to both sides. The award itself indicates that there is no notice served on the respondents/petitioners herein. The publication cannot be considered as notice has been properly served. Hence, I have no hesitation to hold that no proper notice has been served on the respondents/petitioners herein.

Therefore, the entire award is liable to be set aside.

N.SATHISH KUMAR, J.

vaan

7. In view of the above, the award passed by the Arbitrator in A.C.P.No.248 of 2013, dated 24.12.2013 is set aside. However, liberty is given to the first respondent to appoint a fresh Arbitrator after issuing notice to the petitioners herein.

With the above observations, the Original petition is allowed. No costs.

Speaking/Non Speaking order
Index: Yes/No
vaan

6.08.2019

O.P.No.255 of 2014

सत्यमेव जयते

WEB COPY

Dated: 6.08.2019



WEB COPY