IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

OP.No.718 of 2014

Mr.Padmanathan R ... Petitioner

Versus

1.M/s.Cholamandalam Investment & Finance Company Limited,
(Formerly known as Cholamandalam DBS Finance Limited)
'Dare House' , No.2,
N.S.C. Bose Road, Parrys,
Chennai - 600 001.

2.Mr.Selvakumar P

3.Mr.V.K.Thirunavukkarasu,
Principal District Judge (Retired),
Sole Arbitrator,
Subiksham Flats, G-Block,
D.No.8/78, 12th street,
Anna Nagar,
Chennai - 600 102. ... Respondents

PRAYER : This Original petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 prayed to set aside the Impugned Award dated 07.03.2014 passed by the 3rd respondent in Arbitration Case No.VKT/CHOLA/6892/10 against the Petitioner.

For Petitioner : Mr.Suresh Sakthi Murugan

For Respondents : Mr.D.Pradeepkumar (for R1)

<u>O R D E R</u>

This petition is filed to set aside the Arbitral award dated 07.03.2014.

2.The petitioner before this Court is the second respondent before the Arbitral Tribunal. The petitioner was arrayed as the second respondent in the capacity of a guarantor in respect of the loan agreement dated 30.04.2008. On account of the non-repayment of the said loan, the first respondent herein initiated the arbitration proceedings against the borrower, the guarantor and the co-borrower. In the said arbitration proceedings, the petitioner filed his statement of objections on 27.01.2011 stating that he did not stand as guarantor for the borrower/first respondent therein and that, in fact, he had not seen the borrower and was not aware as to what type of vehicle was purchased by the first respondent. He further stated that he did not sign the loan application or the loan agreement. In the statement of objections, it is further stated that the petitioner purchased vehicles by availing loans from the first respondent in the year 2006-2007 and the said loans were discharged fully by the petitioner. However, the first respondent did not return the papers relating to the said loan and misused the photographs and forged his signature by copying the said signature from the loan documents of the previous loans.

3.After filing the statement of objections, the petitioner also filed an interim petition under Section 151 of CPC on 16.03.2011 calling for the production of the entire loan papers relating to the purchase of the two vehicles by the petitioner by availing loans from the first respondent in the year 2006-2007. Thereafter, it appears that the impugned arbitral award was pronounced on 07.03.2014, wherein the learned arbitrator recorded that a memo was filed to the effect that the borrower/first respondent therein expired during the pendency of the proceedings. As regards the petitioner/second respondent, it was recorded that the petitioner had not taken any steps to prove that his photograph was misused by the first respondent/claimant and that his signature was forged. On that basis, the Arbitrator awarded the claims of the first respondent herein and the said award is impugned in this petition, under Section 34 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act).

4.I Heard the learned counsel for the petitioner and the learned counsel for the first respondent. The learned counsel for the petitioner made three submissions. His first submission is that the petitioner was not a guarantor in respect of the loan that was availed by the borrower/first respondent in the arbitration proceedings. In this regard, he submitted that the signature in the loan application and the loan agreement are completely different when compared with the signature in the statement of objections filed before the Arbitral Tribunal. His second contention is that, in order to establish that he did not sign the loan agreement as guarantor, he filed an application under Section 151 of CPC in the year 2011 for a direction to the first respondent to produce the entire loan papers, in respect of the earlier loans that were availed by him, so as to ascertain whether the signature in the present loan agreement is genuine or not. In spite of filing the said application, the learned counsel submits that no orders were passed in the application except for the discussion in the impugned award. His third contention is that the borrower is still alive and that he lodged a Police complaint dated 25.02.2019 in this connection. For all these reasons, the learned counsel submits that the impugned arbitral award is liable to be set aside.

5.In response, the learned counsel for the respondent submitted that the petitioner is not a stranger to the borrower. In order to substantiate the submission, the learned counsel referred to the loan application, wherein it is stated that the hirer's friend was taken as a guarantor. He further submitted that the first respondent is a reputed financial institution and certainly did not forge the signature of the petitioner as falsely contended herein and that such practices are not resorted to by the first respondent. He further submitted that the petitioner did not lead any independent evidence so as to establish that he did not sign as a guarantor in the loan agreement.

6.With regard to the application to produce the loan documents in respect of the earlier loans, he submit that the said loan documents are not relevant because the said documents would not prove that the petitioner did not sign as a guarantor in respect of the current loan. Therefore, he submitted that the learned Arbitrator duly considered the evidence on record and concluded that the petitioner did not establish that his photograph was misused or that his signature was forged. On the above basis, the learned counsel for the respondent submitted that interference with the Arbitral award is not warranted under Section 34 of the Arbitration and Conciliation Act, 1996.

7.The oral submissions of both the learned counsel were considered and the records were examined.

8.The Arbitral award proceeds on the basis that the first respondent therein/borrower is dead. This conclusion is based on the memo filed by the learned counsel for the first respondent/claimant therein. During the course of this hearing, the learned counsel for the petitioner contended that the borrower is not actually dead and that there is evidence that he is still alive. However, no definite conclusion can be arrived at, in this regard, in this proceeding.

9.Nevertheless, once the lender opts to proceed both against the borrower and the guarantor, upon the alleged death of the borrower, the first respondent/claimant should have taken steps to bring the legal heirs of the deceased borrower on record. In the instance case, it is the admitted position that steps were not taken to bring the legal heirs on record, although it is to be noted that one of the legal heirs, namely, the third respondent before the Arbitral Tribunal and the second respondent herein is a party to the Arbitration proceedings and to the proceedings before this Court.

10.In addition, it is a matter of record that the petitioner filed an application under Section 151 of CPC in order to call for the loan documents pertaining to the earlier loans so as to establish that his signature in the present loan agreement is forged. The said application was filed on 16.03.2011 shortly after filing the statement of objections before the Arbitral Tribunal. In the facts and circumstances, the said application should have been considered and decided by the Arbitral Tribunal on merits. On the contrary, it is clear that no order was passed in the said application, although there is a reference to the application in the impugned Arbitral award.

11.Keeping in mind the above factors, I am of the view that the petitioner was not provided a reasonable opportunity to present his case thereby violating Section 34(2)(a)(iii) of the Arbitration Act on account of the non-consideration of the interim application filed by the petitioner to bring on record the loan documents relating to the earlier loans. In addition, the petitioner has alleged that the borrower is alive and that the memo filed to the effect that he died during the course of the Arbitration proceedings is false. This aspect cannot be decided in this proceeding, but it would have a material bearing inasmuch as the guarantor would not be liable if the debt is fully discharged by the Principal Debtor and, even otherwise, the guarantor would have recourse to the borrower/Principal Debtor, if he discharges the loan instead of the said borrower. In this case, on account of the fact that the Arbitral Tribunal proceeded on the premise that the borrower died, the petitioner was deprived of such recourse. For all these reasons, the Arbitral award is liable to be and is hereby set aside.

12.Nevertheless, the first respondent is entitled to a decision on its claims, on merits, because the award is not being set aside on merits. Consequently, the first respondent is granted leave to initiate *de-novo* arbitration proceedings in accordance with the contract. If such proceedings are initiated, the first respondent shall be entitled to the benefit of Section 14 of the Limitation Act, 1963, in respect of the time taken both in the Arbitral proceedings and in the proceedings before this Court. As considerable time has elapsed since the loan was availed, the Arbitral Tribunal is directed to dispose of the proceedings expeditiously.

13.In the result, the Original Petition is allowed by setting aside the Arbitral award. No costs.

13.11.2019

Index : Yes/No
Internet : Yes/No
Speaking/Non-Speaking order

klt

SENTHILKUMAR RAMAMOORTHY, J.,

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