

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **02.03.2020**

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

O.P.No.207 of 2020

and

A.No.923 of 2020

1. Mr.V.M.Bijili

2. Mrs.Souda Bijili

.. Petitioners

Vs.

Sundaram Finance Limited,
Rep. by its Manager (Legal)
No.21, Patullos Road,
Chennai-600 002.

.. Respondent

This Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to set aside the award passed in the Arbitration Case No.KB/SF/275 of 2018 on the file of the Sole Arbitrator Sri.K.Balasubramanian, Chennai dated 20.11.2019, which was communicated to the petitioners on 25.11.2019.

For Petitioners : Mr.V.K.Sethukumar

ORDER

Instant 'Original Petition' (hereinafter 'OP' for the sake of brevity) has been filed under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for brevity and clarity. Instant OP has been presented in this Court on 12.02.2020.

2. Instant OP has been filed assailing an Arbitral award dated 20.11.2019 made by an Arbitral Tribunal constituted by a former District Judge vide Arbitration Case No.KB/SF/275 of 2018 with regard to disputes arising out of a Loan Agreement dated 27.06.2017. In instant OP, the cause title refers to Loan Agreement No.L005300617 dated 16.03.2017. Learned counsel submits at the hearing that this is an inadvertent secretarial error, that instant OP does not relate to Loan Agreement dated 16.03.2017 and it pertains to Loan Agreement dated 27.06.2017. This submission is recorded.

3. Challenge to an Arbitral award shall be by way of an 'application' under Section 34 of A and C Act, but such applications are given the nomenclature 'Original Petition' in this Court.

4. Be that as it may, a challenge to an Arbitral award under Section 34 of A and C Act is neither an appeal nor a revision, but it is a limited judicial review within the contours and confines of Section 34 of A and C Act. By contours and confines of Section 34 of A and C Act, this Court refers to eight pigeon holes adumbrated in Section 34 of A and C Act. It was pointed out at the hearing that instant OP has been filed under Section 34 of A and C Act. It has not been mentioned with specificity in instant OP, as to which of the pigeon hole/s instant OP is predicated on. Learned counsel for petitioner, notwithstanding very many averments and pleas in OP, submitted at the hearing that instant OP is predicated solely on a plea that turns on Section 34 (2) (a) (ii) of A and C Act. Section 34(2)(a)(ii) of A and C Act reads as follows:

'34.Application for setting aside arbitral award-

(1)

(2) *An arbitral award may be set aside by the Court only*

if -

(a) the party making the application furnishes proof that-

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or'

5. Furthering his submission in this direction, learned counsel for petitioner referred to aforesaid Loan Agreement dated 27.06.2017. Referring to the First Schedule thereto, learned counsel submits that the first schedule has not been signed by both parties. It is also submitted that the first schedule mentions about the interest component. In this regard, it was also submitted that interest can be levied only at the rate of 9% per annum and judgment rendered by Hon'ble Supreme Court in **C.K.Sasankan Vs. The Dhanalakshmi Bank Ltd.**, reported in **2009 (2) CTC 381** was pressed into service in this regard. A perusal of **Sasankan's** case reveals that it arose out of proceedings in 'Debts Recovery Tribunal' ('DRT' for brevity) under 'Recovery of Banks and Financial Institutions Act, 1993' ('RBI Act' for brevity). It was a case where DRT has granted interest at the rate of 25% from the date of suit and 19.4% future interest. It is in this context that Section 34 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) was

applied. It has also been categorically held in **Sasankan's case** that 9% *pendente lite* and future interest found to be just, proper and reasonable in the circumstances of the case. This is articulated in Paragraph 10 of **Sasankan's case**, which is as follows:

'10. Considering the facts and circumstances of the present case, we find that the rate of interest as awarded for pendente lite and future interest is exorbitant and thus, we direct that pendente lite and future interest at the rate of 9% shall be paid which is found to be just, proper and reasonable.'

6. Responding to the question whether the aforesaid point that first schedule was not signed by both parties was raised before Arbitral Tribunal, learned counsel submitted that Interlocutory Application was moved with a prayer to cross-examine the individual, who deposed as PW-1 on behalf of claimant before Arbitral Tribunal (respondent before this Court).

7. A perusal of the aforesaid Interlocutory Application reveals that it does not talk anything about interest and cross-examination of PW-1 has not

been sought either with regard to interest component or with regard to the first schedule.

8. An attempt was also made to place reliance on Section 18 of A and C Act and it was said that the parties have to be treated equally. In the instant case, as the Interlocutory Application said to have been moved by the petitioner does not mention anything about the interest component on the first schedule, Section 18 of A and C Act does not come to the aid of the parties. It is well settled that vide Section 19 of A and C Act, the Arbitral Tribunal is not bound either by Code of Civil Procedure, 1908, or by The Indian Evidence Act, 1872. Therefore, Section 18 of A and C Act, on the facts on hand, does not carry the petitioner any further in this case.

9. With regard to **Sasankan's** case, Paragraph 10, has already been extracted and reproduced supra. In this regard, this Court reminds itself about the well settled *Padma Sundara Rao Vs. State of Tamil Nadu* case reported in (2002) 3 SCC 533 with regard to precedents and the most relevant paragraph is paragraph 9 and the same reads as follows :

“9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

10. On applying **Padma Sundara Rao** principle, it becomes clear that **Sasankan's** case does not carry the petitioner any further in instant case.

11. A perusal of the award, which has been challenged in instant OP, brings to light that the Arbitral Tribunal has awarded 18% both *pendente lite* and future interest. It is also noticed that the transaction between the petitioner and the respondents was clearly a commercial transaction. In this regard also, this case is different from **Sasankan's case**, where the interest awarded was at the rate of 25% up to the date of decree thereafter, 19.4% future interest.

12. The instant OP is predicated on a loan agreement. To be noted, Section 34(2)(a)(ii) of A and C Act has been extracted and reproduced supra. This Court finds that no case has been made out to show that the Arbitration Agreement is not valid under Law, to which parties were subjected to or any other law for the time being in force. A perusal of the pleadings before the Arbitral Tribunal also reveals that no plea has been made before the Arbitral Tribunal to the effect that the Arbitration Agreement is not valid under the law to which parties were subjected into.

13. To be noted, reference to Arbitration Agreement in Section 34(2)(a)(ii) is clearly a reference to an arbitration agreement within a meaning of Section 2(1) (b) read with Section 7 of A and C Act, which reads as follows:-

'2(1)(b) - "arbitration agreement" means an agreement referred to in section 7'

7.Arbitration agreement- (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in -

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.'

14. As already alluded to supra, the scope of interference in an Arbitral Award under Section 34 of A and C Act is very limited and it is a delicate balance between the finality of the arbitral award and judicial review. Moreover, minimum judicial interference is also one of the pillars of Alternate Dispute Resolution (ADR). As this Court is convinced that there is no compelling reason to interfere with the Arbitral Award passed by the Arbitral Tribunal, instant OP fails and the same is dismissed. Considering the nature of the matter, there shall be no order as to costs. Consequently, connected application is closed.

02.03.2020

Speaking order: Yes/No

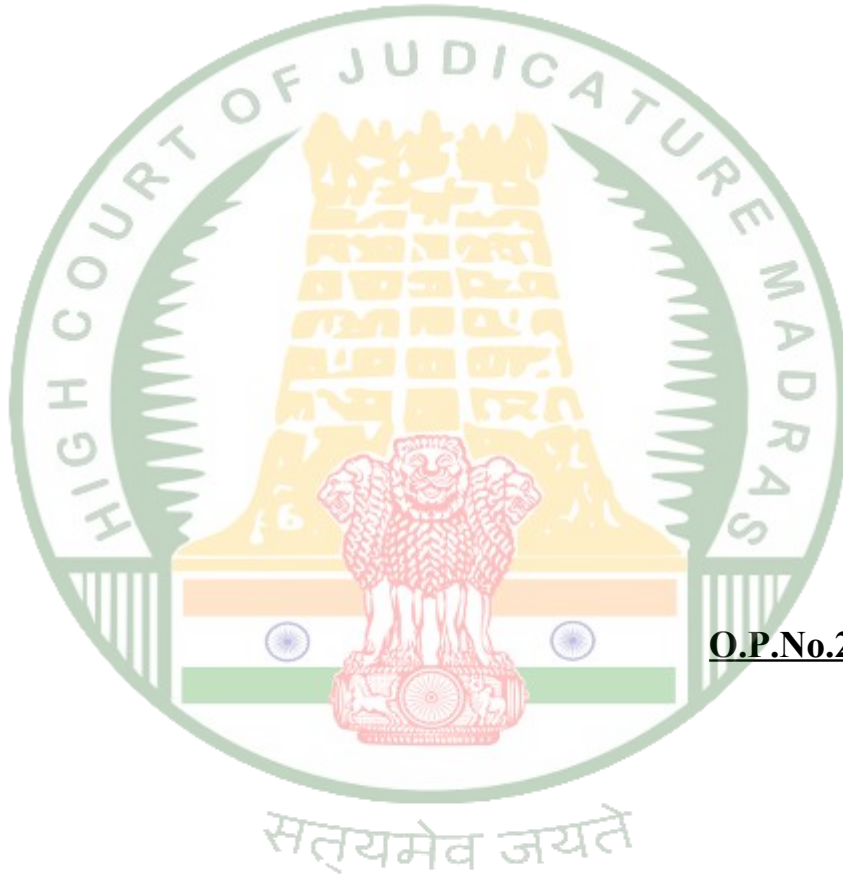
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