

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2020

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THE HONOURABLE Mr. JUSTICE M.SUNDAR

O.P.No.280 of 2020
and A.No.1149 of 2020

Sanjeev Kumar Bansal

Petitioner

Vs.

1.M/s.Kotak Mahindra Bank Ltd.,
5th Floor, Samson Towers,
402L, Pantheon Road, Egmore,
Chennai - 8.

2.Shri C.Prasanna Venkatesh
Sole Arbitrator,
Venkata Nilayam,
AL Block, No.214, Anna Nagar,
Chennai - 40.

.. Respondents

Original Petition filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, to set aside the award dated 03.01.2020 passed by the learned Arbitrator in Arbitration Case No.KB B DH4/2019.

For Petitioner : Mr.R.Suresh Kumar
for Mr.K.M.Vijayan Associates

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 No.26 of 1996)' (hereinafter referred to as 'A and C Act' for the sake of brevity).

2.A perusal of instant OP placed before me as part of case file reveals that instant OP has been filed under Section 34(2) of A and C Act. Sub-section (2) of Section 34 has two clauses namely clause (a) and clause (b). There are as many as five slots under clause (a) and two slots under clause (b). In other words, Sub-section (2) of Section 34 provides for as many as seven slots for dislodging an award, but the slots (grounds) on which instant OP is predicated has not been set out with statutory specificity.

3.Mr.R.Suresh Kumar of M/s.K.M.Vijayan Associates, learned counsel for petitioner projected two points in the hearing, which are as follows :

- a) No notice was served on the petitioner by the Arbitral Tribunal.
- b) The breakup of computation *qua* liability and interest has not been set out in the award.

4. Before proceeding further, it is necessary to look at three significant facets of a OP under Section 34 of A and C Act. The three significant facets are :

- (a) scope ;
- (b) nature of disposal of a OP under Section 34 Act; and
- (c) time line.

5. With regard to the first facet namely, scope, Section 34 finds its place under Chapter VII of A and C Act captioned 'RECOURSE AGAINST ARBITRAL AWARD' and Section 34 talks about 'APPLICATION FOR SETTING ASIDE ARBITRAL AWARD'. But, in this Court, such an 'application' are given the nomenclature 'OP' and therefore, this Court will continue to refer to instant matter on hand as OP. An OP under Section 34 of A and C Act is neither an appeal nor a revision. It is not even a full-fledged judicial review. It is a limited judicial review within the

contours and confines of Section 34. Section 34 gives an adumbration of as many as eight slots under which, an arbitral award can be dislodged/set aside.

6.This Court consciously chooses to use the term 'slot' as a OP under Section 34 is neither an appeal nor a revision. As mentioned earlier, it is a limited judicial review within the contours and confines of Section 34. In other words, if a party approaching this Court under Section 34 is able to demonstrate that a OP, which is a challenge to an arbitral award fits snugly and neatly into one, some or all of the eight slots, the award will be dislodged. Otherwise, the award will not be interfered with. To put it differently, Section 34 is a very delicate balance between the finality of the arbitral awards and judicial review and equilibrium of this delicate balance is based on 'minimum judicial interference' which is the sublime philosophy and salutary principle underlying the scheme of A and C Act.

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7.This takes us to the next facet namely, nature of disposal of a OP under Section 34. Hon'ble Supreme Court in *Fiza Developers & Inter-*

Trade (P) Ltd. Vs. AMCI (India) (P) Ltd. reported in (2009)17 SCC 796 held that a OP under Section 34 is a summary procedure. This *Fiza Developers* principle was reiterated by Hon'ble Supreme Court in *Emkay Global Financial Services Limited Vs. Girdhar Sondhi* reported in (2018)9 SCC 49. To be noted in *Emkay Global, Fiza Developers* principle was held to be a step in the right direction. Therefore, disposal of a Section 34 OP is by taking recourse of a summary procedure.

8.The third facet is time line for disposal of a OP under Section 34. This is set out in Sub-section (6) of Section 34 of A and C Act. Sub-section (6) of Section 34 prescribes a time line of one year from the date of notice under Sub-section (5). To be noted, notice under Sub-section (5) has been held to be directory and not mandatory by Hon'ble Supreme Court in *State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti* reported in (2018) 9 SCC 472. While laying down this proposition in *Bhumi Vikas* case, Hon'ble Supreme Court made an observation in paragraph 26, which reads as follows :

'26. We are of the opinion that the view propounded by the

High Courts of Bombay and Calcutta represents the correct state of the law. However, we may add that it shall be the endeavour of every court in which a Section 34 application is filed, to stick to the time-limit of one year from the date of service of notice to the opposite party by the applicant, or by the Court, as the case may be. In case the Court issues notice after the period mentioned in Section 34(3) has elapsed, every court shall endeavour to dispose of the Section 34 application within a period of one year from the date of filing of the said application, similar to what has been provided in Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This will give effect to the object sought to be achieved by adding Section 13(6) by the 2015 Amendment Act.'

(underlining made by this Court
to supply emphasis and highlight)

Therefore, time line for disposal of a OP under Section 34 is one year and as notice under Sub-section (5) has been held to be directory.

9.To be noted, aforementioned third facet is not of any great significance in the case at hand, as instant OP is coming up before this Court for the first time, but, it is being mentioned only to make the discussion regarding facets, dynamics and dimensions of Section 34 as comprehensive as possible.

10. Having set out the scope, nature of disposal and time line *qua* Section 34, there is no difficulty in holding that short facts shorn of elaboration will suffice, owing to the narrow scope of Section 34. Suffice to say that there was a loan agreement bearing reference No.CSG152776437 (hereinafter 'said contract' for the sake of convenience and clarity). It is submitted by the learned counsel for petitioner that the petitioner had availed financial assistance under said contract, agreed to repay the loan amount in equated monthly instalments ('EMIs' in plural and 'EMI' in singular for the sake of brevity). After paying several EMIs, there was a default, resulting in arbitral clause in said contract being invoked by the first respondent in instant OP, which is the claimant before Arbitral Tribunal. Arbitral Tribunal entered upon reference and passed an award dated 03.01.2020, which has been assailed in instant OP. To be noted, Arbitral Tribunal was constituted by a sole Arbitrator. First respondent in instant OP is the claimant before Arbitral Tribunal. It is submitted that petitioner is the borrower and second respondent is the guarantor.

11.This takes us to the second point projected in the hearing by the learned counsel for the petitioner. As far as the first point is concerned, though not articulated either in the OP or in the hearing, this Court finds that it is traceable to second limb of Section 34(2)(a)(iii) i.e., ground that the petitioner was not given proper notice of the arbitral proceedings.

12.Under the normal circumstances, this Court would have requisitioned the records of the Arbitral Tribunal, to ascertain whether notice was given to the petitioner, but, in the instant case, burden of the song is very different. Address of the first respondent before the Arbitral Tribunal as contained in the impugned award, is the same as given by the petitioner in instant OP and the same reads as follows :

'F-235-236, Block F, Prashant Vihar, New Delhi 110085'

Petitioner has not placed before this Court said contract i.e., loan agreement to demonstrate the address given in the said contract.

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13.Be that as it may, attention of this Court is drawn to point No.3 in the instant OP, which reads as follows :

'3.The petitioner states that only from the award the petitioner came to know that a notice was claimed to be served on the last known address and it would be evident from the award that the address shown is imperfect wherein the address of the petitioner is defective and the area "Rohini Sector" is not found as per the award and the petitioner asserts that no notice was served on him.'

A perusal of point No.3 reveals that though Rohini Sector is mentioned in the second respondent's address in the award, but it is not mentioned in the address of the first respondent. This Court is informed that the second respondent is the first respondent's spouse, besides being a guarantor *qua* said contract. More importantly, there is nothing to demonstrate that the address given to the first respondent/claimant is different from the one in the impugned award as well as instant OP.

14.The impugned award in paragraph No.2 mentions that the notices were sent to the last known addresses of the respondents by registered letter acknowledgment due and the same constitutes sufficient service. Petitioner obviously cannot be called upon to prove the negative that he did not receive notice, but, it is the pointed case of the petitioner that Rohini Sector has to be mentioned in the address and the petitioner is unable to

demonstrate that the address given to the claimant mentions Rohini Sector. Therefore, this puts an end to the first point canvassed.

15.The second point pertains to computation of liability and interest. All this turns on merits of the matter. As already mentioned, an OP under Section 34 of A and C Act is not an appeal and the petitioner should be able to demonstrate that it is predicated in one or some of the eight slots adumbrated in Section 34. That is not the case here. This puts an end to the second point raised in instant OP.

As both the points raised in instant OP did not find favour with this Court, the instant OP fails and the same is dismissed. Considering the nature of the matter, there shall be no order as to costs. Connected application also dismissed.

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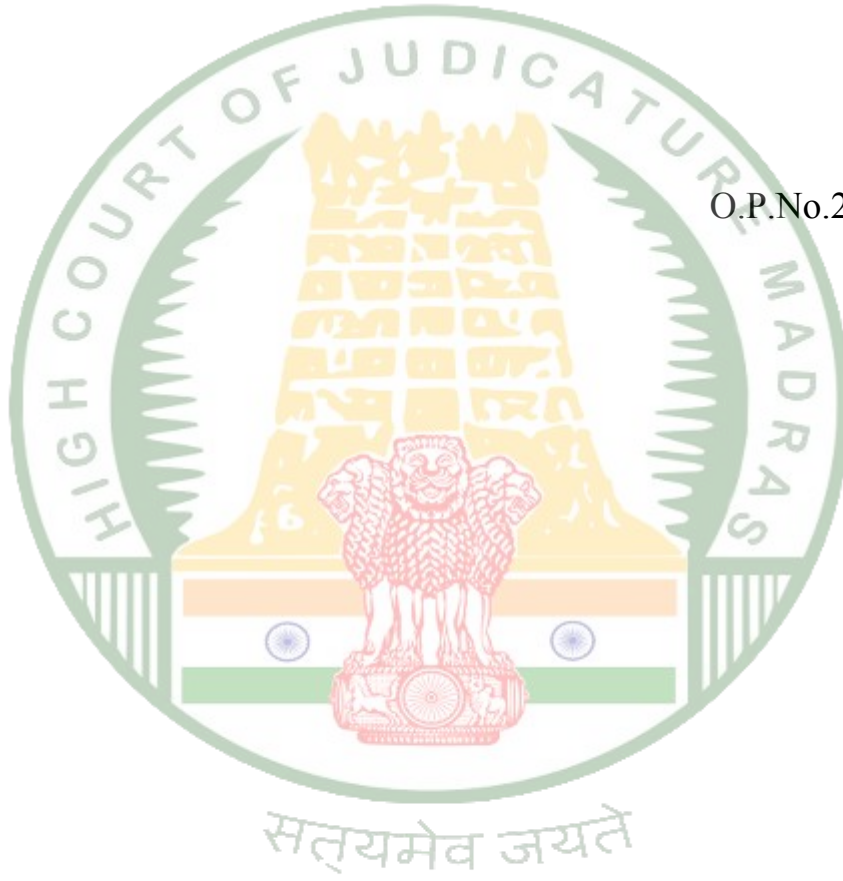
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Speaking Order
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M.SUNDAR, J.
gva



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