

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM

THE HONOURABLE Mr. JUSTICE M.SUNDAR

O.P.No.855 of 2015

Muthu

.. Petitioner

Vs.

1.M/s.Indusind Bank Limited
Represented by its Power of Attorney
R.S.Bharath
Deputy Manager - Legal
No.116, G.N.Chetty Road
T.Nagar
Chennai 600 017

2.P.Suresh B.A., B.L.,
Sole Arbitrator
New No.115, Old No.79, First Floor,
Avvai Shanmugam Salai (Lloyds Road)
Royapettah
Chennai 600 014

3.M.Madasamy .. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 20.04.2015 passed by the learned Arbitrator in Arbitration Case No.ACP.No.IND/SP/987 of 2014.

For Petitioner : Mr.S.Sairaman
For 1st Respondent : Mr.T.Karthikeyan

ORDER

Instant 'Original Petition' (hereinafter 'OP' for the sake of brevity) has been filed assailing an arbitral award dated 20.04.2015 made by a sole Arbitrator (third respondent), who constituted the Arbitral Tribunal.

2.A loan agreement dated 11.10.2012 is the fulcrum of the instant arbitral proceedings. There is no dispute or disagreement that Clause 23 of this loan agreement is an arbitration clause and therefore, the same serves as an arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' (hereinafter 'A and C Act' for the sake of brevity).

3.Considering the limited contours and confines of a petition under Section 34 of A and C Act, short facts shorn of elaboration will suffice. In other words, suffice to say that the petitioner availed loan for purchase of a

truck from the first respondent company and committed default. Arbitration clause was invoked and arbitral proceedings culminated in the aforementioned impugned award.

4. *Vide* impugned award, petitioner was directed to pay certain sums of money, which was determined to be petitioner's liability qua aforementioned loan agreement.

5. Mr. Sairaman, learned counsel on record for petitioner urged two points and they are as follows :

- (a) The Arbitral Tribunal had not given sufficient notice to the petitioner and therefore, the petitioner was unable to present his case; and
- (b) The truck which is the subject matter of the loan agreement was repossessed and sold without notice to the petitioner.

6. In the light of the first point urged by the learned counsel for petitioner, proceedings have been made by Hon'ble predecessor Judges on 08.01.2020, 13.01.2020 and 10.02.2020, which read as follows :

“Proceedings dated 08.01.2020 :

The ground of attack is that notice has not been served on the petitioner.

2.It is seen that the award which was sent to the very same address has been received by the petitioner before this Court. However, he would contend that none of the notices prior to the arbitration proceedings or during arbitration proceedings had been received by him. The said stand appears to be incorrect.

3.Considering the fact that the Award which was sent to the address has been received by the petitioner and it is also seen that the ground of challenge is mainly on the rate of interest.

4.The learned counsel for the petitioner however seeks time in order to get instructions from his client.

5.Post the matter on 13.01.2020.”

“Proceedings dated 13.01.2020 :

The Arbitrator is directed to produce the entire records relating to the arbitral proceedings between the petitioner and the respondent.

The learned counsel for the claimant undertakes to procure the said records from the Arbitrator and produce the same before this Court on 27.01.2020.

Post the matter on 27.01.2020.”

“Proceedings dated 10.02.2020 :

The first respondent has filed an affidavit to the effect that the Arbitrator had handed over the original documents to one P.Balavenkata Giri, an employee of the first respondent, who had all of a sudden collapsed in the office due to severe cardiac arrest and has succumbed to the same. The officials of the first respondent were unable to trace the originals filed, but however were able to get the certified copy of the arbitrator proceedings, which documents have been produced before this Court.

The learned counsel for the petitioner seeks time to file a counter with reference to this affidavit and the certified copies so produced.

Post the matter on 05.03.2020.”

7.Pursuant to the aforesaid proceedings, certified records of the Arbitral Tribunal are before this Court today. Before proceeding with the exercise of examining the records of the Arbitral Tribunal, this Court deems it appropriate and relevant to refer to 10.02.2020 proceedings and hold that the act of the Arbitrator in handing over the arbitral records to an employee

of the first respondent is clearly unacceptable. Though the proceedings records that original documents were handed over to the employee of the first respondent, there is no disputation that the original records of the Arbitral Tribunal were handed over to the employee of the first respondent. Such a practice ought to be discouraged and deprecated, as this tells upon the neutrality of the Arbitrator. An Arbitral Tribunal no doubt is a private Tribunal, but it cannot come across as one privatised qua one of the parties to lis. However, the issue on hand is different and therefore, this Court proceeds to examine the two points raised by the learned counsel for petitioner.

8.The first point raised by the learned counsel for petitioner is predicated on Section 34(2)(a)(iii) of A and C Act. To be noted, the plea is traceable to 34(2)(a)(iii) of A and C Act, which talks about the petitioner not being given proper notice of arbitral proceedings.

9.This takes us to the address of the petitioner. The address of the petitioner remains the same from the date of loan agreement to the date of

hearing instant O.P. There is no dispute about this. It is also submitted that it is not a leased accommodation, but petitioner's own accommodation albeit shared with his siblings. In this backdrop, a perusal of the records of the Arbitral Tribunal reveal that the notice sent by the Arbitral Tribunal to the petitioner has been returned unserved with the postal endorsement 'ID- intimation delivered'. This means that the intimation on an envelope has been given to the addressee and the addressee has not taken any steps to collect the envelope from the postal department.

10.The third respondent before this Court, who is described as a co-borrower i.e., a guarantor, died even before commencement of the arbitral proceedings. Therefore, arraying M.Madasamy as a co-respondent is of no consequence.

11.More importantly, the impugned award sent by the Arbitrator i.e., Arbitral Tribunal to the petitioner at the same address has been duly received by the petitioner. Copy of the postal acknowledgment card as can be culled out from the records of the Arbitral Tribunal is as follows :

आपना स्वीकृति (रसीद) ACKNOWLEDGEMENT

* दस्तावेज पत्र/पोस्टकार्ड/पैकेट/पारसल वाला हुआ
 * Received * Registered Insured

पाने वाले का नाम
 Addressed to (Name) }
 † बीमा का मूल्य (रुपये में) }
 † Insured for Rupees }
 ‡ बीमा की तारीख (Date of Insurance)
 * आपसबपक को कवर है
 * Cover for the insured articles
 † बीमा की राशि का बीमा
 † For insured articles value

पाने वाले के हस्ताक्षर (Signature of addressee)

12/TC08034D/Ref No. 587/14/EX/27a/IND
 Mr. Mathu,
 S/o. Madasamy,
 No.3, 1st Street, Subbarayan Nagar,
 Thirunelveli,
 Tamil Nadu, Pincode - 600044

20/15

This Court summoned the vakalatnama filed on behalf of the petitioner and the same is as follows :

in the High Court of Judicature at Madras
 ORDINARY ORIGINAL CIVIL JURISDICTION

C. S. No. 355 of 2015
 O. P. No. 355 of 2015

BETWEEN
 M/s Indus and Sons Ltd
 vs
 R-S-B Lanka

AND
 M/s Indus and Sons Ltd
 vs
 R-S-B Lanka

Plaintiff
Defendant

For the Plaintiff / Defendant above named do hereby appear and
act as Solicitor / Counsel for me / us in the above case and act my / our behalf to
conduct and prosecute (defence) the case and all proceedings therein before and after
decree. We / they are also authorized to draft other Counsel to act on behalf
behalf and also in appeal under clause 18 of the above patent and application for
review Judgment.

Done at Chennai this 20/15 **day of** 20/15

Accepted : The address for service of all notices and process is that of
 the Counsel at No. 12, Law Chambers, High Court,
 CHENNAI 106.

Counsel for Plaintiff
Counsel for Defendant

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A perusal of the signature of the petitioner in the vakalatnama reveals that

there is no variation or discrepancy. In any event, the receipt of the impugned award has not been disputed. It is the case of the petitioner that the petitioner came to know about the impugned award only on the receipt of the same. This leaves this Court with the considered view that the petitioner has been evasive by receipt of notices from Arbitral Tribunal. In any event, Section 3(1)(b) of the A and C Act read with Section 27 of the General Clauses Act has been placed reliance on by the Arbitral Tribunal in this regard, but it is not necessary to delve into it and express any view on the same in this order as service is more than obvious.

12. Arbitration is an 'Alternate Dispute Resolution' (ADR) mechanism and one of the important pillars of ADR mechanism is expeditious disposal. This is the reason why time lines have been drawn for arbitral proceedings. To be noted, all arbitral proceedings are to be completed within 12 months and at best within further extended period of 6 months which can be mutually agreed upon by the parties. Any further extension of time can be only by approaching this Court under Section 29-A of the A and C Act. Even disposal of OPs in the nature of instant OP under Section 34 of the A

and C Act, have time lines. The time line for Section 34 OP is *vide* sub-section (6) of Section 34 of A and C Act. The time line/time frame is one year from the date of service of notice under sub-section (5) of Section 34 of A and C Act. This was emphasised by Hon'ble Supreme Court in ***State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti*** reported in **(2018) 9 SCC 472**. Though ***Bhumi Vikas Bank*** case is an authority for the broad proposition that sub-section (5) of Section 34 of A and C Act is directory and not mandatory, observation made by the Hon'ble Supreme Court in paragraph No.26 of ***Bhumi Vikas Bank*** case that the one year time line prescribed in sub-section (6) of Section 34 is relevant and every Court hearing petitions under Section 34 of the A and C Act should make every endeavour to adhere to this time line.

13.If evasive tactics practiced by parties are countenanced, it will militate against aforementioned important pillar of ADR mechanism.

14.Therefore, this Court is left with the considered view that the first point raised by the learned counsel for petitioner with regard to petitioner

not being given proper notice on arbitral proceedings is negatived.

15.This takes us to second point raised by the learned counsel for the petitioner. The second point is regarding repossession and sale of the financed truck without notice to the petitioner. This is a matter which ought to have been agitated by the petitioner before the Arbitral Tribunal.

16. After the Arbitral Tribunal returns a verdict, this Court cannot embark upon the exercise of review on merits/facts under Section 34 of the A and C Act on these aspects. Therefore, considering the narrow scope of Section 34 of the A and C Act, this plea cannot be entertained at this point of time.

As both the points urged on behalf of the petitioner are negatived, instant OP is dismissed. There shall be no order as to costs.

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05.03.2020

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Speaking Order/Non-Speaking Order

Index : Yes/No

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M.SUNDAR, J.
gva



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