



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.Nos.595 to 600 of 2011

and

A.Nos.2932 to 2937 of 2011

1. Joseph Rajan Fernandes

2. Mrs.Mary Fernandes

..

Petitioners in all O.Ps

.Vs.

1. M/s. IndusInd Bank Ltd
a Company registered under
the Companies Act of 1956,
Registered Office at 2401,
General Thimaiah Road
(East Street) Cantonment,
Pune – 411 001,
Carrying on business of banking and
is regulated by the Reserve Bank of India
and other relevant Acts.
Represented by Mrs.Meera
At No.115 and 116, GN Chetty Road,
T.Nagar, Chennai – 600 017.



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2. S.G.Ramesh Kumar

Advocate,

Arbitrator,

New No.49, Old No.25,

4th Trust Cross Street,

Mandaveli, Chennai – 600 028.

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Respondents in all O.Ps

* * *

Common Prayer: Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the arbitral Award made in the aforesaid arbitration case bearing references SGRCV.No.165, 168 & 170 of 2009 dated 11.12.2009, SGRCV.Nos.166, 167 & 171 of 2009 dated 06.11.2009 on the file of the second respondent/Arbitrator.

* * *

For Petitioners : Mr.A.Palaniappan

For Respondents : Mr.S.R.Sundar

COMMON ORDER

This Petition has been filed challenging the Award dated 06.11.2009 and 11.12.2009 passed by the learned Arbitrator, Arbitral Tribunal.

2. Since the petitioners and the respondent are one and the same in all the petitions and disputes arose out of the loan agreements and the Award has been



challenged on the same grounds, this Court is inclined to dispose of all the petitions by way of common order.

3. It is to be noted that though these applications were numbered consequent to the condonation of delay of 28 days by my predecessor, the above order has been challenged before the Division Bench of this Court in O.S.A.No.420 to 425 of 2011 and by an Order dated 20.09.2016, the Division Bench of this Court has set aside the order of the learned Single Judge and the matter is remitted back to learned Single Judge and directed the petitioners to establish sufficient cause before this Court. While dealing with Section 5 of the Limitation Act, an application filed for condoning the delay of 28 days, this Court go to the issue of sufficient cause. The contention also raises as to resisting the main case also. The main contention is that in view of the non-service of notice and violation of natural justice. When the lenders' have already repossessed the vehicle, the award directing the petitioners to pay the entire amount is not maintainable and the right to re-possession is granted and the matter is not arbitrable. Hence, the main bone of contention is that the notice has not been served during the arbitral proceedings.



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4. In all the five loan agreements which are subject matter of the O.Ps, the execution of agreements and the availing of loan has not been disputed. Constitution of Arbitration Tribunal is not disputed. What was the contention raised by the learned counsel on behalf of the petitioners herein is that no notice has been served during the arbitration proceedings.

5. On perusal of the award, the same makes it clear such contention cannot be countenanced for the simple reason that notice sent for hearing dates fixed by the learned Arbitrator was refused by the petitioners. When the notice has been refused, it has to be taken as deemed service under Section 3 of the Act as well as Section 27 of the General Clause Act. Having refused notice, now it is too late for the applicant to contend that no notice has been given during the arbitration proceedings. The contention that right to re-possess the vehicle has been given to the lenders and the vehicle is also repossessed, the matter is not arbitable cannot be countenanced.



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6. Merely because repossession has been given in the agreement does not meant that the matters can only be referred in respect of repossession of the vehicle and not for other claim. On a perusal of the award, in entirety in all the matters learned Arbitrator has considered all the documents filed by the claimant and passed an award. Therefore, no ground has been made out whatsoever made by the petitioners to interfere with the award under Section 34 of the Arbitration and Conciliation Act. In such a view of the matter all O.Ps deserves to be dismissed.

7. As far as condonation of delay is concerned, there is a delay of 28 days in filing the O.Ps. It is pleaded by the petitioners that since the petitioners were in Goa, they could not instruct the counsel to represent in time. Therefore, there is delay of 28 days. It is the case of the petitioners that the award passed on two dates (i.e) 11.12.2009 and 06.11.2009. Award copies have not been served on the dates. It is a specific case of the petitioners that only during the Execution proceedings, they came to know about the award passed in this matter. Therefore, obtained the xerox copy of the award from the Execution Court and filed OP in time. However, the Registry has returned the same to file with a certified copy. Therefore, they applied for certified copy of the award before the learned Arbitrator and the same



was received on 08.12.2010. Therefore, the present Original Petition has been filed in time and there is no delay of 28 days in re-presenting this petition.

8. It is to be noted that at the petitioners have obtained the certified copy from the learned Arbitrator. There was no reason as to why they have not filed any postal cover. Much emphasis was made on the dates mentioned in the so-called award (i.e.,) 08.12.2010. The certified copy of the award was sent through the Registered Post. The non-filing of the registered post cover itself clearly indicates that the contention that the certified copies were received only on 08.12.2010 is highly improbable and cannot be countenanced. It is also brought to the notice of this Court that the documents were maintained by the learned Arbitrator when the award was passed on 06.11.2009 and the copies of the award have been sent to the petitioners on 26.11.2009 itself, which have been refused by the petitioners on 02.12.2009. The same is made clear from the endorsement found on the registered postal cover filed in the typed sets of papers. Similarly, a copy of the award dated 11.12.2009 has been despatched on 05.12.2009 and the same was also refused by the petitioners herein. The above fact itself clearly indicates that the very same ground raised in this application that they are not served with the award and they



came to know about passing of the award during the Execution Proceedings is nothing but suppression of material facts. Therefore, the contention of the learned counsel for the petitioners seeking to condone the delay cannot be countenanced and the same has been made only to get over the limitation period. Even otherwise, the reasons assigned in the application were that since they were in Goa, they could not meet their counsel in time. The reasons assigning in the petition would not satisfy the word sufficient cause to give liberal interpretation to enlarge the benefits. It is useful to refer the judgment of the Hon'ble Apex Court in **2021 SCC Online SC 233 (Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. Borse Brothers Engineers & Contractors Pvt. Ltd.,)** where in it has been held that the word “sufficient cause” means the party should not have acted in a negligent manner or there was a want of bona-fide on its part. Similarly, in para 56 of the judgment of the Hon'ble Apex court it is reiterated that the delay in filing and re-filing cannot be viewed strictly, as compared to commercial claims under the Arbitration and Conciliation Act, 1996 or the Commercial Courts Act, 2015 and held that finality is a fundamental principle and also referred judgment **(2001) 8 SCC 470** which emphasized that the finality is the fundamental principle enshrined under the Arbitration Act and a definite time limit



for challenging the award is necessary for ensuring finality.

9. The learned counsel further relied upon the judgement reported in ***ILR (2014) II Delhi 1064 (Food Corporation of India Vs. Pratap Rice & General Mills)***, wherein, it has been held as follows:

3.3. The expression 'sufficient cause', which is the measure adopted for condonation of delay, itself pre-supposes the absence of negligence or inaction on the part of the applicant seeking condonation. The expression implies presence of 'legal' and 'adequate reasons' and, therefore, it is imperative that besides, the applicant, acting in a bonafide manner, it should be able to demonstrate that it had taken all possible steps within its power and control to approach the court without unnecessary delay. The test articulated by the courts as to whether the cause is sufficient or not is one whereby the party is able to demonstrate that it could not have avoided the delay despite due care and attention. (See Blawant Singh(Dead) Vs. Jagadish Singh & Ors (2010) 8 SCC 685)

4.2. A large period of time spent in re-filing would itself tend to



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demonstrate negligence on the part of the party desirous of impugning the award; unless a credible explanation is set forth. This is more so, in view of the fact that once a petition is filed under Section 34 of the Act, the other party to the litigation, which wishes to execute the award is statutorily restrained from doing so by virtue of provisions of Section 36 of the Act. The successful party is thus deprived of the fruits of adjudication.

10. Having regard to the above judgments and considering the facts of the case and that the petitioners have not come to the Court bona-fidely and they have not come with good reasons and the material facts have been suppressed, the petitioners are not entitled to any lineancy in condoning the delay. It is also to be noted that same grounds have been raised in O.Ps filed by the same petitioners in O.P.Nos.566 to 569 of 2014 and this Court by an Order dated 12.07.2019, dismissed all the O.Ps and it appears that no appeal has been filed to condone delay. Accordingly, both delay applications as well as the original petitions lacks merits and deserves to be dismissed.

Accordingly, these Original Petitions and the applications are dismissed. No



costs.

15.07.2021

Index : Yes / No

Internet: Yes

Speaking/Non-speaking order
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N. SATHISH KUMAR, J.
dh

order in:
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