

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.989 of 2019

Sheeba Ajayakumar,
W/o. M.G.Ajayakumar

... Petitioner

.. Vs..

1.M/s. Sundaram BNP Paribas Home
Finance Limited,
Rep by its Authorised Signatory,
No.46, Whites Road,
Chennai- 600 014.

2. Mr.M.G.Ajayakumar,
Manamathanattu House,
Olamattam Kara,
Thodupuzha Village,
Idukki District, Kerala-685 584.

... Respondents

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PRAYER : Original Petition filed under Section 34(2)(a)(ii) & (iii) of the Arbitration and Conciliation Act, 1996, praying to set aside the award dated 30.05.2017 in Arbitration Case.No.KER/SBPHF/01 of 2016 passed in favour of the 1st Respondent.

For Petitioner : Mr.A.Prabulachandran

For Respondents : Mr.P.V.Balasubramanian
for M/s.BFS Legal

ORDER

(This case has been heard through video conference)

This Original Petition has been filed challenging the award dated 30.05.2017 passed by the learned Arbitrator directing the respondents to pay a sum of Rs.1,03,54,611/- (Rupees one crore three lakhs fifty four thousand six hundred and eleven only).

2. Though several grounds made in this petition, the main ground canvassed by the learned counsel appearing for petitioner is that the loan agreement was not signed by her and the cheques have been issued and further, it is her contention that no opportunity was given. Therefore, the award is liable to be set aside.

3. Except the above contentions with regard to the factual aspects recorded by the learned Arbitrator, there is no submissions made

before this Court. Whereas, the learned counsel for 1st respondent would submit that there are many opportunities were given and despite the notices have been issued for every hearing, the petitioner and the 2nd respondent, who are husband and wife, failed to appear before the learned Arbitrator. Therefore, the learned Arbitrator proceeded exparte and passed an order on considering all the documents. Hence, it is submitted that none of the grounds have been made challenging the award and none of grounds made out to interfere with the award under Section 34 of the Arbitration and Conciliation Act. Hence, this Original Petition is liable to be dismissed.

4. From the award, it could be seen that the 1st respondent's notice dated 24.06.2016 intimating appointment of Arbitrator was received by the respondents viz., petitioner and 2nd respondent herein. However, there is no objection was raised immediately and the claim petition was filed on 15.11.2016. The learned Arbitrator has recorded the proceedings in para 4 that the notices were duly served on the petitioner and 2nd respondent on 11.07.2016, however, they failed to appear and again one more opportunity was given to the petitioner and the 2nd respondent to appear before the Arbitrator for the hearing date on 13.12.2016. Despite

service of notice, neither the petitioner nor the 2nd respondent appeared. However, the notices were sent to the correct address of the petitioner as well as 2nd respondent herein. Further, the 1st respondent viz., petitioner herein sent a letter dated 15.12.2016 indicating that the Original Suit has been filed against the claimant and obtained ad-interim injunction and also indicated that due to Vardha cyclone, the petitioner and the 2nd respondent are not able to appear for the hearing on 13.12.2016. Taking note of the above request, the learned Arbitrator had fixed the hearing date on 10.01.2017 and sent further notice. The above notice was duly served on them. Therefore, despite the notices sent, neither the petitioner nor the 2nd respondent appeared before the Arbitrator. After granting several opportunities and indicating the procedures, every hearing, the petitioner herein as well as 2nd respondent not availed the opportunities. Therefore, the learned Arbitrator has proceeded to set them exparte as per the provisions of the Act and framed necessary issues considering the documents Ex.A1 to A10 and passed an award directing the petitioner and the 2nd respondent to pay the above said amount to the claimant.

5. Having regard to the above facts, it cannot be said that no opportunity was granted. In fact, the learned Arbitrator has given several opportunities. It is not the case that on the first day itself, they were set exparte and award has been passed. From 11.07.2016 to 10.01.2017 many notices were sent to the respondents and communications also sent to them, which have been duly served on them. However, the petitioner and the 2nd respondent have not availed the opportunities. The claim is only with regard to the loan availed by the petitioner and the 2nd respondent. The learned counsel submitted during his submissions that out of total loan amount of Rs.90 lakhs, only a sum of Rs.70 lakhs has been disbursed and the remaining amount has not been disbursed. The fact is that the loan has been availed by the petitioner and the 2nd respondent, which has been taken note of by the learned Arbitrator. The learned Arbitrator has also considered all the materials as well as documents, which had been putforth before him. When the Arbitrator has considered all the documents and granted several opportunities to the petitioner as well as 2nd respondent and passed the award, this Court is of the view that merely because they were set exparte, it cannot be a ground to interfere with the well-reasoned award, particularly, many opportunities were provided to the petitioner and the 2nd respondent to appear before the Arbitrator. Hence, this Original

Petition is liable to be dismissed. Accordingly, this Original Petition stands dismissed.

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N. SATHISH KUMAR, J.

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