

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.465 OF 2017

Rasesh Kirtikumar Modi & Anr.

..Petitioners

Vs.

Edelweiss Asset Reconstruction Company Limited

..Respondent

Mr. Vivek Salunkhe with Mr. Vaibhav Jagdale i/b. Mr.Amol Desai for
Petitioners.

Mr. Shashank Fadia with Ms. Priyanka Fadia for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : FEBRUARY 24, 2022

P.C.:

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) whereby the petitioners assail the arbitral award dated 15 October, 2016 passed by the learned sole arbitrator.

2. The case of the petitioners is that disputes and differences had arisen between the parties under a loan agreement dated 28 June, 2013 being Loan Agreement No.421725 under which the petitioners accepted a borrowing of Rs. 35 Lakhs from the respondent payable in 146 installments of Rs.56,467/-. A copy of the loan agreement is annexed to the proceedings. A security was created by way of mortgage by deposit of title deeds, in respect of the property which is described in Annexure-

1 being Plot No.B/07, 189/2, 189/3 situated at Bhakodara Co-operative Housing Society, Ankelshwar. The petitioners had defaulted in making payment of the loan installments. The respondent in such situation called upon the petitioners to regularize the account and to make the payment of the amount. However, as the petitioners failed to do so, the respondent had invoked the arbitration agreement and referred the disputes and differences to be adjudicated by the arbitral tribunal. The arbitral tribunal, after hearing the parties, has passed the following award:-

- a. The Respondents do jointly and severally pay to the Claimant a sum of Rs.40,18,295.70/- (Rupees Forth Lakhs Eighteen Thousand Two Hundred Ninety Five and Seventy Paise Only) as on 11.02.2016 on account of the total outstanding amount which include a principal loan amount, contractual interest and other charges, subject to adjustment of payment made by the Respondents, if any, after 11.02.2016;
- b. The Respondents do jointly and severally pay to the Claimant simple interest @ 18% on the outstanding amount from the date of filing of the Claim Petition i.e. 31.08.2015 till the passing of the award;
- c. The Respondents do jointly and severally pay to the Claimant simple interest @ 18% p.a. on the amount awarded from the date of award till realization of the amount;
- d. The Respondents do jointly and severally pay to the Claimant a sum of Rs.5000/- (Rupees Twenty Five Thousand Only) is awarded as cost towards present proceedings.”

3. It needs to be noted that prior to the loan agreement in question, the petitioners had availed a loan of Rs.30 Lakhs from the respondent under a loan agreement No. 265538 dated 27 June, 2012 in respect of which some other property was offered as a security. It appears that the disputes and differences between the parties under the said agreement

stood finally settled in terms of the consent terms dated 29 January 2015 which were executed between the parties also in arbitral proceedings.

4. Learned counsel for the respondent has submitted that all the disputes under first loan agreement no.265538 are already put to an end and the present arbitral proceedings do not concern any disputes under the first loan agreement or any security offered under the said agreement. He has categorically stated that the concerns of the respondent are only in respect of loan agreement no.421725 under which disputes have arisen for which security was furnished by the petitioners, which is distinct from what was earlier offered by the petitioners for the first loan.

5. On this backdrop, I have heard learned counsel for the parties.

6. Mr. Salunkhe, learned counsel for the petitioners drawing my attention to the “issues” as framed by the arbitral tribunal in the impugned award contends that the concern of the petitioners is to the answers to the issues, which, according to him, creates an impression that the security which was offered by the petitioners in respect of the first loan is relevant for the second loan which was subject matter of the arbitration in the present proceedings. He submits that the answers to the issues do not find any support in the findings as recorded by the

arbitral tribunal in as much as the arbitral tribunal in answering issue nos.1 to 3 has categorically observed that under the loan agreement in question (No.421725), the security was in respect of the property as described in Annexure-1. Mr. Salunkhe has submitted that there is some incongruity which is created in the manner the issues are framed and answered in the “remarks column” and the actual findings which are recorded by the arbitral tribunal. This is the primary contention as urged by Mr. Salunkhe in assailing the impugned award.

7. In my opinion, having perused the findings as recorded by the arbitral tribunal, it appears that there is no adjudication whatsoever in respect of anything to do with the first loan agreement or the security offered under the first loan agreement. Although, it appears from the issues that some impression in that regard is created, however, it is clear that the present dispute does not in any manner concern the property which was mortgaged in relation to the first loan agreement as also stated on behalf of the respondent and recorded above. In my opinion, the issues which have been framed, are solely the creation of the petitioners as such issues appear to have been framed on a plea as raised by the petitioners. However, although the arbitral tribunal has not happily worded the issues, looking at the findings as recorded by the arbitral tribunal, in my opinion the concern of the petitioners cannot be accepted to be true.

8. In so far as the concerns of Mr.Salunkhe are concerned, learned counsel for the respondent has also categorically stated that the disputes and differences under the first loan agreement are put to rest under the consent terms and the present arbitral proceedings in no manner would concern anything to do with the earlier loan.

9. Insofar as the impugned award is concerned, admittedly there was a default on the part of the respondent in repayment of the loan. The petitioners are not in a position to satisfy the Court that the findings as recorded by the arbitral tribunal are in any manner perverse and/or falling within the parameters of assail under the limited jurisdiction under Section 34 of the Act.

10. Thus, no case is made out by the petitioners to interfere in the impugned award in so far as it directs the petitioners to make payment of the default amount as directed.

11. The petition is dismissed. No costs.

[G.S. KULKARNI, J.]