

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO.31 OF 2018

1. SHRI RAJEEV GAWADE, major
in age, resident of Bld.No.14,
CHLD/MPT/Colony, Headland,
Sada, Vasco 403803.

2. SHRI OMPRAKASH MAURYA,
in age, resident of Bld.No.13,
CHLD/MPT/Colony, Headland,
Sada, Vasco 403803.

3. SHRI RAMESH R. BHOMKAR,
in age, resident of Bld. No. not
known, CHLD/MPT/Colony,
Headland, Sada, Vasco 403803.

... APPELLANTS

Versus

1. THE GOA STATE
COOPERATIVE BANK LTD.,
Sahakar Sankul Complex, Patto
Plaza, Panaji, Goa.

2. MARMUGAO DOCK LABOUR
BOARD, Empl. Co-op Credit
Society Ltd, Head Office at 1 and 2
Railway Station, Shopping Complex
(MPT), Marmugao Harbour, Goa.

3. SHRI JAIKRISHNA
BHAGWANT NAIK, the
Chairman, MDLB Emp. Co-op
Credit Society Ltd, r/o B-23, Buld.
No.14 CHLD/MPT/Colony,
Headland, Sada, Vasco Goa.

4. SHRI GOPINATH N. MORJE,
the Treasurer, MDLB Emp. Co-op
Credit Society Ltd, r/o Buld. No.7
CHLD/MPT/Colony, Headland,
Sada, Vasco Goa.

5. SHRI PUNDALIK G. KAMBLI,
the Secretary, MDLB Emp. Co-op
Credit Society Ltd, r/o B-23, Buld.
No.14 CHLD/MPT/Colony,
Headland, Sada, Vasco Goa.

6. SHRI AJAY M. NAIK, the
Director, MDLB Emp. Co-op
Credit Society Ltd, r/o near
Microwave Station, Jetty
Mormugao, Goa.

7. SHRI ARJUN S. NAIK, the
Director, MDLB Emp. Co-op
Credit Society Ltd, r/o Buld. No.14
CHLD/MPT/ Colony, Headland,
Sada, Vasco Goa.

8. SHRI SHAILESH CHOWDHARY,
the Director, MDLB Emp. Co-op
Credit Society Ltd, r/o Buld. No.
not known, CHLD/MPT/ Colony,
Headland, Sada, Vasco Goa.

... RESPONDENTS

Mr Dharmanand Vernekar, Advocate *for the Appellants*.

Mr Rama Rivankar, Advocate *for the Respondents*.

CORAM: M. S. SONAK, J.

Reserved on: 31st March 2023

Pronounced on: 10th April 2023

JUDGMENT:

- 1.** Heard Mr Dharmanand Vernekar for the appellants and Mr Rama Rivankar for the respondents.
- 2.** The appellants challenge the Judgment and Order dated 26.06.2018 made by the learned District Judge, South Goa at Margao, dismissing Arbitration Application No.12/2015, objecting to the Arbitral Tribunal's award dated 09.03.2015.
- 3.** The respondent no.1 in this appeal is the Goa State Cooperative Bank Limited (GSCB). The GSCB is a society under the Multi-State Cooperative Societies Act, 2002 (MCS Act). The GSCB advanced a loan to respondent No. 2, Marmugao Dock Labour Board Employees Cooperative Credit Society Limited (MDLB Society). At the relevant time, the appellants were the directors of the MDLB Society.
- 4.** As the MDLB Society defaulted on the loan payment to GSCB, a dispute was raised, which was referred to arbitration as provided under Section 84 of the MCS Act. The appellants objected to their impleadment/involvement in such a dispute because they were not members of GSCB. Some respondents also claimed that the then Chairman of the Society, Shri Jaikrishna

Bhagwant Naik, was solely responsible for the repayment of the loan and admitted this fact in an affidavit.

5. The Arbitrator Shri M. M. Bhartiya, after considering the material on record and rejecting the appellants' defences and objections, made an award dated 09.03.2015 requiring the MDLB Society and other respondents, including the present appellants, to jointly and severally repay the entire loan amount of ₹44,52,933/- shown outstanding as on 18.06.2013 with interest @ 11% p.a.

6. The present appellants challenged the above award dated 09.03.2015 by applying Section 34 of the Arbitration and Conciliation Act, 1996 (Arbitration Act). However, this application under Section 34 of the Arbitration Act was considered and dismissed by the learned Principal District Judge, South Goa, at Margao vide the impugned Judgment and Order dated 26.06.2018. Hence the present appeal under Section 37 of the Arbitration Act.

7. Mr Vernekar, learned counsel for the appellants, submitted that the impugned award was contrary to public policy and suffered from jurisdictional errors. He offered that the appellants were not members of GSCB and, therefore, the dispute between

the GSCB and the appellants was not arbitrable under Section 84 of the MCS Act. He relies on this Court's order dated 11.03.2019 in *Writ Petition No.481/2011 (Goa State Cooperative Bank Ltd. v/s. Ponda Consumers Cooperative Society Ltd. & 13 Ors.)*.

8. Mr Vernekar submitted that only the MDLB Society, which had taken the loan from GSCB, could be held responsible for the repayment of the loan and not the appellants, who were only the directors of the MDLB Society. He submitted that there were no proper pleadings about the appellants being involved in the day-to-day administration of the MDLB Society or the appellants having any control over the functioning of the MDLB Society when the loan was taken and possibly not repaid.

9. Mr Vernekar submitted that the Chairman of the MDLB Society had already filed an affidavit assuming full responsibility for the repayment of the loan. Therefore, only the MDLB Society and the said Chairman could have been held responsible for the loan repayment, not other directors like the present appellants. He submits that interference is warranted since the Arbitrator and the Appeal Court have not considered this crucial issue.

10. Mr Vernekar submitted that the GSCB claim was ex-facie barred by limitation. He presents that the Arbitrator or the Appeal Court has not considered this crucial issue. He pointed out that the loan was sanctioned in 2005-2006, but the dispute was raised after six years, i.e. beyond the prescribed limitation period. Mr Vernekar submits that this is a legal plea; therefore, there was no bar to considering such a plea, even though such a plea may not have been raised before the Arbitrator. He relied on *Lion Engineering Consultants v/s. State of M.P. – 2018 ALL SCR 2373*. Mr Vernekar submitted that this appeal be allowed for all the above reasons, and the impugned award may be quashed and set aside qua the present appellants.

11. Mr Rama Rivankar, learned counsel for the GSCB, defended the impugned award and the impugned Judgment and Order based on the reasoning reflected therein. He pointed out that the challenge scope to an arbitral award is minimal, and the decision's merits are not ground. He submitted that there was no error of law and no conflict with the public policy of India was demonstrated.

12. Mr Rivankar submitted that the point of limitation is a mixed question of law and fact. He pointed out that the same was never raised before the Arbitrator. Finally, he submitted that even

otherwise, the dispute was raised well within the prescribed limitation period. For all these reasons, Mr Rivankar submitted that this appeal may be dismissed.

13. The rival contentions now fall for my determination.

14. The appellants' contentions will have to be examined, keeping in mind the scope and the ambit of Section 34 of the Arbitration Act, which provides for setting aside an arbitral award by the Court. First, the appellants have objected to the impugned award because the dispute between the GSCB and the appellants was not arbitrable under Section 84 of the MCS Act. The second ground is that the arbitral award conflicts with India's public policy.

15. In *Associate Builders v/s. Delhi Development Authority – (2015) 3 SCC 49*, the Hon'ble Supreme Court held that an arbitral award could be set aside if it is against the public policy of India, i.e. to say if it is contrary to (a) fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality; or (d) patently illegal.

16. Similarly, in *ONGC v/s. Saw Pipes – (2003) 5 SCC 705*, the Hon'ble Supreme Court has explained that the phrase "Public Policy of India" used in Section 34 of the Arbitration Act

connotes some matters concerning public good and the public interest. What is for the public good or in the public interest or what would be detrimental or harmful to the public good or public interest has varied from time to time. However, the award, which is patently in violation of statutory provisions, cannot be said to be in the public interest. Such award/judgment/decision will likely affect the administration of justice adversely. Hence, in addition to the narrower meaning given to the term "public policy" in the Renusagar case [1994 Supp (1) SCC 644], it is required to be held that the award could be set aside if it is patently illegal. The result would be – the award could be set aside if it is contrary to:

- (a) Fundamental policy of Indian law; or
- (b) The interest of India; or
- (c) Justice or morality, or
- (d) in addition, if it is patently illegal.

Illegality must go to the root of the matter, and if the illegality is trivial, it cannot be held that the award is against public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. Such an award is opposed to public policy and is required to be adjudged void.

17. Regarding Mr Vernekar's first contention, the fact that the appellants were not members of GSCB is an irrelevant

consideration. The MDLB Society, of which the appellants were the office bearers and members, was admittedly a member of the GSCB. The dispute was, therefore, properly constituted and referred to arbitration under Section 84 of the MCS Act. Furthermore, the appellants have not produced any evidence about their not being concerned with managing the MDLB Society. In any case, having assumed the management and directorship of the MDLB Society, the appellants cannot now distance themselves from the liability imposed by the impugned award.

18. The contention about the Chairman filing an affidavit and assuming responsibility is not a ground for interference with the impugned award. Accordingly, at the highest, the appellants must recover whatever they may have to pay under the impugned award from such Chairman, assuming that the appellants' version about the Chairman assuming responsibility is genuine and proved. Based on this ground, however, no case is made out to interfere with the impugned award.

19. The decision in *Ponda Consumers Cooperative Society Ltd. (supra)* is distinguishable. In any case, the order was made on a concession that the directors were not responsible because they had offered no personal guarantees. Moreover, the real reason why

this Court did not grant any relief to the Bank was because the award against the directors was made without the issue of individual notices to them. The Arbitrator issued notice only to the Society and not to any of its directors. This Court, therefore, held that writ jurisdiction would not be exercised to restore any award made in breach of principles of natural justice.

20. In the present case, proper notice was issued to the directors, including the appellants. The learned Arbitrator also considered their defence. Accordingly, based upon the decision in *Ponda Consumers Cooperative Society Ltd. (supra)*, no relief can be granted to the appellants.

21. On the aspect of limitation, the same, in the facts and circumstances of the present case, raises no pure question of law, but at the highest, the same involves mixed questions of law and fact. Therefore, if the appellants were serious about this issue, they should have raised it before the Arbitrator.

22. Besides, simply saying that the loan was sanctioned in 2005-2006 and the dispute was raised in 2012 is insufficient to attract the limitation bar. The appellants should have pleaded and demonstrated when according to them, the loan was repayable or when the defaults in repayment of the loan occurred. Without

any objection to limitation being raised, even the GSCB was not called upon to produce any material about the acknowledgement of debt or the details of the loan repayment schedule. Therefore, the impugned award cannot be interfered with based on such a belated plea involving mixed questions of law and fact.

23. In *Lion Engineering Consultants (supra)*, the Hon'ble Supreme Court has held that a legal plea arising on "undisputed facts" is not precluded by Section 34(2)(b) of the Arbitration Act. However, as noted earlier, this is not a case of undisputed facts. Therefore, based on such a belated objection, which, in any case, is not even made good, the impugned award cannot be interfered with.

24. The appellants have failed to make out any case that warrants interference with the impugned award, given the limited scope of a challenge under Section 34 of the Arbitration Act. In this case, the impugned award cannot be in conflict with the Public Policy of India. In *Renusagar Power Co. Ltd. v/s. General Electric Co. – 1994 Supp (1) SCC 644*, the Hon'ble Supreme Court held that the expression "Public Policy" in the context of a foreign award would mean an award contrary to the fundamental policy of Indian law, the interest of India, justice or morality.

25. In this case, huge loans have been taken by the MDLB Society, which the appellants and others managed. Now the attempt is to avoid liability at any cost. Accordingly, the challenges raised by the appellants are not within the scope of permissible challenges to an arbitral award. Even otherwise, after giving all the parties a full opportunity, the learned Arbitrator has dealt with all the issues before him. No patent or, for that matter, latent illegality is evident. Moreover, the case was based on documentary evidence. The learned Principal District Judge has also considered the Appellants' contentions and correctly upheld the learned Arbitrator's award.

26. For all the above reasons, this appeal fails and is hereby dismissed. Accordingly, there shall be no order for costs.

M. S. SONAK, J.

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