



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.07.2024

Coram:

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

Arb.O.P.No.19 of 2024

and

A.No.2420 of 2024

1.Mr.R.Madesh
2.Mrs.M.Abinaya

.. Petitioners

Vs.

M/s.Aptus Value Housing Finance India Limited
Represented by Mr.S.Balaji, Assistant Manager – Legal
8B, Doshi Towers, 205, Poonamallee High Road,
Kilpauk, Chennai – 600 010.

.. Respondent

This Petition filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 praying,

(a).To set aside the exparte award dated 15.12.2023 in Arbitration Case No.SJK/AVHFIL-39 of 2023 passed by the Sole Arbitrator Mr.S.Jayakumar, in the dispute arising between M/s.Aptus Value Housing Finance India Limited and Mr.R.Madesh and others in respect of Loan Agreement No.A1341800006998 dated 30.06.2014 by allowing this petition.

(b).To direct the respondent to pay the costs.

For petitioner : Mr.K.J.Parthasarathy



ORDER

This petition has been filed taking advantage of Section 34(2) of the Arbitration and Conciliation Act, 1996 seeking interference with an award of the sole arbitrator dated 15.12.2023.

2.The petitioners were the respondents in the arbitration proceedings. The petitioners had entered into a loan agreement with the respondent, M/s.Aptus Value Housing Finance India Limited and had obtained a loan of Rs.10/- Lakhs and in that connection had also provided as collateral security, property at Naligabetta Agraharam Village, Hosur Taluk, Krishnagiri District in S.No.10/4A, 10/4B, 10/5A and 10/5B measuring about 1.53.0 Hectares in Sub-division S.No.325/1A. The said lands had been converted into house sites in S.No.10/5A & 10/5B. There was an obligation on the part of the petitioners to repay the amount of Rs.10/- Lakhs with interest at 16% pa in Equated Monthly Instalments (EMI) of Rs.14,687/-. It is also covenanted that the date of the first payment of EMI shall be in the first day of month of the following month in which disbursement of the loan was completed. It is not in dispute that the loan had been disbursed to the petitioners herein to a sum of Rs.10/- Lakhs. However, there had been default in the payment of EMI by the petitioners herein. This had necessitated the respondent to issue a notice under Section 13(2) of Arbitration and Conciliation Act, 1996 on 18.05.2023. It is stated that

Page No.2/8



the loan was recalled by the respondent and in the said notice, it had been stated that the account had been declared as non-performing asset on 10.05.2023. The total outstanding balance was Rs.10,34,864/-. It was therefore demanded that the petitioners should comply with the demand to avoid further action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The details of the recalled amount were given in the notice. In the loan agreement, there is a clause for arbitration and it is as follows:

“11.1. In the event of any dispute or any claim arising pursuant to or in relation to or touching upon this agreement, either party shall be entitled to require the managing director of APTUS or if there is no managing director, such person who is nominated by the board of APTUS in this regard to nominate and appoint an arbitrator to resolve the dispute or claim so made by such party and the decision of such sole arbitrator shall be binding on the parties and such arbitration shall be in accordance with Arbitration and Conciliation Act, 1996 or any statutory modifications or amendments thereto or any other law or any statutory replacement relating to adjudication of dispute by arbitration.

11.2. The managing director of APTUS or such other nominated person as aforesaid shall be entitled to appoint an arbitrator in the place of the arbitrator appointed earlier, if a



vacancy arises for any reason whatsoever and the arbitrator so appointed shall be entitled to proceed with arbitration proceedings from the stage of the earlier arbitration proceedings.

11.3.The venue of arbitration shall be at CHENNAI at the place nominated by the Arbitrator.”

3.Taking further action, in consequent to such a covenant in the agreement, the respondent had appointed as arbitrator to preside over the arbitral tribunal, Mr.S.Jayakumar. The learned arbitrator entered appearance and directed notice to the petitioners herein. One of the grounds raised in this petition is that this appointment of the arbitrator was unilateral in nature, but I am not able to accept that contention raised on that particular ground, since the covenant in the agreement itself provides for the respondent to require the Managing Director of the respondent and if there is no Managing Director, such other person who is nominated by the board of Aptus to be appointed as arbitrator. Therefore, the power of respondent to appoint an arbitrator is quite wide and it is not restricted to appoint a member of the respondent, but any other persons who is considered competent by the Board of the respondent. Therefore, the contention of the learned counsel for the petitioners that there has been unilateral appointment of an arbitrator to the disadvantage of the petitioners is rejected.



WEB COPY

4.The learned counsel for the petitioners, however, placed an alternate argument and pointed out the notes in the award, which are extracted below:

14.08.2023	Dispute was referred to arbitration by appointing Mr.S.Jayakumar as Sole Arbitrator in accordance with the agreement in reference and as per the Arbitration and Conciliation Act, 1996, to try, adjudicate and resolve the dispute between the claimant and the respondents.
14.09.2023	Date of notice for the 1 st hearing on 07.10.2023.
07.10.2023	Date of first hearing.
07.10.2023	The authorized representative for the claimant present. Notice sent to the respondents was returned unserved. As the service of the notice is not complete on the respondent, a fresh notice is ordered to the respondents. Hence, the matter is adjourned to 28.10.2023.
28.10.2023	The authorized representative for the claimant present. The proceeding of the 1 st hearing and 2 nd hearing notice sent to the respondents was returned unserved. The service of the notice is complete and held sufficient on the respondents. Despite, two notices sent to the respondents, they had neither appeared nor filed any objections. The respondents were called absent and set-exparte. On behalf of the claimant, exhibits A1 to A5 marked and the matter was reserved for passing award. The said proceedings were sent to the respondents.

5.The noting of the arbitrator had been pointed out by the learned counsel. A perusal of the same shows that the date of first hearing was on 07.10.2023. Notice had been issued on 14.09.2023 for the hearing dated 07.10.2023. The notice was returned unserved. Fresh notice was directed for the



hearing date 28.10.2023. It was stated that notice had been again issued and was returned unserved. The method of service when notices are returned unserved are prescribed under the Civil Procedure Code. The arbitrator was under an obligation to find out the reason why the notice had been returned unserved.

6. In paragraph No.2 of the award, he had noted that the notice sent to the last known address had been returned unserved, but that constituted sufficient service. In my opinion, the observation of the learned Arbitrator is not correct. Section 34(2) of the Arbitration and Conciliation Act, 1996 provides a specific ground to interfere with an award under Section 34 of the Act when notice had not been served in manner known to law.

7. This is the ground which is now urged by the learned counsel for the petitioners. He pointed out the noting, which had been extracted above and the observations of the arbitrator that even if notice has not been served notice was deemed sufficient. That observation of the learned Arbitrator does not stand the scrutiny of this Court. The arbitral tribunal should have taken efforts to serve the present petitioners at the last known address and even if the notice had been returned unserved, further steps should have been taken in manner known to law to complete the service. A conclusion that taking notice on two separate occasions and even though notices had been returned unserved would be deemed



that the notice is sufficient is not a correct view taken by the arbitrator.

8. Without entering into any further discussion on the merits of the claim of the respondent, on this one sole ground itself, I hold that the arbitral award will have to be necessarily interfered with by this Court. The award dated 15.12.2023 is therefore set aside. The respondent may proceed further in manner known to law, if at all they are of the impression that they should proceed further.

9. A perusal of the records also show that as a condition for stay, this Court had directed that the petitioners should deposit a sum of Rs.2,50,000/- to the credit of Arb.O.P.No.19 of 2024. The learned counsel states that such condition had been complied with. The Registry may examine the same and if a memo is filed, on proper identification, the amount may be refunded to the petitioners.

C.V.KARTHIKEYAN, J.

smv

10. In view of the above reasons, this Arbitration Original Petition stands

Page No.7/8



allowed.



12.07.2024

WEB COPY

Internet: Yes/No

Index: Yes/No

smv

Arb.O.P.No.19 of 2024

Page No.8/8