

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.06.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.P. No.437 of 2016

J.Gethsiyal

.. Petitioner

-VS-

1.Shriram City Union Finance Ltd.,
rep. by its Authorised Representative
having their office at
No.6, L.B.Road,
Sorrento Building,
II Floor, Adyar, Chennai-20.

2.C.Ravichandran

3.A.Ulaganathan

4.V.Kalavathi

5.N.Veilughanthai

.. Respondents

Prayer: Petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 to set aside the award passed by the second respondent (Arbitrator) in the proceedings in Arbitration Proceedings No.A.C.P. No.(EF/CAR) 42/2014 dated 24.10.2014.

For Petitioner : Mr.N.Sankar

For respondents : No appearance

ORDER

The instant petition has been filed by the petitioner challenging the Award dated 24.10.2014, passed by the second respondent/ Arbitrator.

2.The petitioner had availed loan from the first respondent under an Agreement dated 07.07.2011. According to the first respondent, the petitioner had committed default in the repayment of loan. There arose disputes between the petitioner and the first respondent. In accordance with the Arbitration clause contained under the loan agreement, the dispute was referred to Arbitrator and the first respondent appointed the second respondent as the sole Arbitrator to decide the disputes on merits.

3.Despite service of notice, none appears on the side of the respondents.

4.Learned Arbitrator passed an Award directing the petitioner to pay a sum of Rs.2,12,776/- together with interest at 18% per annum from 12.03.2014 till its realisation and Rs.5,000/- towards the cost of Arbitration. Aggrieved by the award, the instant petition has been filed under Section 34 of the Arbitration and Conciliation Act 1996.

5.The petitioner has challenged the Arbitral Award on the ground of non service of notice in the Arbitral Proceedings as well as non receipt of Arbitral Award from the Arbitrator.

6.The other ground for challenge raised by the petitioner is that despite finding that the petitioner has paid a sum of Rs.4,18,576/- much more than the loan amount of Rs.4,00,000/-, the Arbitrator has arbitrarily directed the petitioner to pay a sum of Rs.2,12,776/- together with interest and costs to the first respondent.

7.Learned counsel for the petitioner drew the attention of this Court to the finding given on the service of notice in the Arbitral Proceedings. He referred to the proceedings of the Arbitrator dated 30.04.2014 which reads as follows:

'Claimants representative present. Second notice returned as served/left/no such person/no such address. Seems evading services. Services sufficient respondent called absent. No representation set exparte. Adjourned to 15.05.2014.'

8.He then drew the attention of this Court to the letter dated 12.08.2015 sent by the first respondent to the petitioner informing the petitioner that the copies of the award was already despatched to him on 27.10.2014, but was returned to his office with an endorsement 'left'.

9. According to the learned counsel for the petitioner, the Arbitral Award was not sent by the Arbitrator, but was sent only by the first respondent which is not in accordance with the provisions of the Arbitration and Conciliation Act 1996.

10. This Court has perused the Arbitral Award which is the subject matter of challenge in the instant petition. As seen from the proceedings of the Arbitrator dated 30.04.2014, notice was never served in the Arbitral Proceedings on the petitioner. Even though the notice was not served on the petitioner, the Arbitrator has set the petitioner *ex parte* on 30.04.2014. Further as seen from the letter dated 12.08.2015 of the first respondent to the petitioner, the Award was sent only by the first respondent and not by the Arbitrator. Under Section 31(5) of the Arbitration and Conciliation Act, the Arbitrator ought to have sent the Award to the petitioner. But in the instant case, the first respondent/ claimant has sent the Arbitral Award to the petitioner. Since the petitioner has satisfied this Court about the non receipt of notice, there is no necessity for this Court to decide the second contention raised by the petitioner that excess payment was made than what was due to the first respondent.

11. Therefore, this Court is of the considered view that the findings of the Arbitrator that notice was served on the petitioner are perverse and patently illegal and hence, the Arbitral Award dated 24.10.2014 which is under challenge in this O.P. is set aside.

12. Accordingly, this Original Petition is allowed. No costs.

27.06.2018

vga



WEB COPY

ABDUL QUDDHOSE,J.

vga



O.P. No.437 of 2016

WEB COPY

27.06.2018