



WEB COPY



Arb.O.P.(Com.Div.)No.487 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.487 of 2023

V.Shanthi

M.Viswanathan (died)

.. Petitioner

Vs.

M/s.Five Star Business Finance Limited,
Represented by its Authorised Signatory,
Mr.G.S.Robert,
A Company Registered under the Companies Act, 1956,
Having the registered Office at
No.39, Outer Circular Road,
Kilpauk Garden Colony,
Kilpauk, Chennai – 600 010.

.. Respondent

Prayer: Original Petition is filed under Section 34(2)(a)(i)(ii)(iii) of the Arbitration and Conciliation Act, 1996, praying (a) to set aside the Award in Arbitration Case No.ARC/FSBFL/060/2018 dated 21.10.2019 passed by the Sole Arbitrator in its entirety and (b) to direct the respondent to pay the costs.



WEB COPY



Arb.O.P. (Com.Div.) No.487 of 2023

For Petitioners : M/s.R.Bhalasubramaniam

For Respondent : Mr.M.Uma Shankar

ORDER

This petition has been filed to set aside the impugned Award dated 21.10.2019 passed by the learned Arbitrator.

2. By the impugned Award, the Arbitral Tribunal has awarded a sum of Rs.9,59,885/-, as the petitioner failed to service the loan under the loan agreement dated 01.07.2016 properly.

3. The facts on record indicates that the aforesaid loan was recalled by the respondent on 01.06.2018 which culminated in the cancellation of the loan agreement. Thereafter, the arbitral proceedings came to be initiated. During the pendency of the arbitral proceedings the respondent proceeded to invoke the powers under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and has auctioned the property through a public auction on 29.08.2023. Pursuant to the aforesaid auction, the highest bidder has also paid the amount and a sale was confirmed on 10.10.2023. It appears that the sale certificate has also been issued to the highest bidder on



10.10.2023.

WEB COPY

4. The only ground of challenge to the impugned Award dated 21.10.2019 before this Court is that the arbitration before the learned Arbitrator was without jurisdiction, as the agreement between the parties is not governed by any arbitration Clause under the loan agreement dated 01.07.2016.

5. It is the further case of the petitioner is that there was no notice issued under Section 21 of the Arbitration and Conciliation Act, 1996 and therefore even on this count also Award passed by the learned Arbitrator on 21.10.2019 was liable to be interfered with.

6. That apart, it is the further submissions of the learned counsel for the petitioner that the respondent had also failed to furnish Statement of Accounts and therefore the Award passed by the learned arbitrator has culminated in a patent illegal Award and therefore liable to be set aside under Section 34(2-A) of the Arbitration and Conciliation Act, 1996.



7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

8. The Award passed by the learned Arbitrator appears to be a well reasoned Award and therefore would not call for any interference. The respondent has initiated proceedings under the provisions of the SARFAESI Act, 2002 by taking possession of the property on 11.03.2023. It is only thereafter the petitioner has open up and has approached this Court on 02.10.2023 to set aside the Award. Registry had also numbered the present Original Petition on the ground that the Award was communicated much later. The respondent has also invoked the powers of the Court under Order XXI of CPC in E.P.No.49 of 2023 and the provisions of SARFAESI Act, 2002, which resulted in an auction being held on 29.08.2023 and confirmation of sale in favour of the auction to the highest bidder on 10.10.2023 and a sale certificate was also issued on the same day.

9. That apart, it is noticed that the amount that was awarded by the arbitral Tribunal was Rs.9,59,885/-, whereas, the property has been sold for a sum of Rs.23,70,000/-. It appears to be a residential



Arb.O.P. (Com.Div.) No.487 of 2023

property of the petitioner. The attempt of the respondent to speed track the procedure to dispose of the secured interest of the property appears to be a motivated with a view to deprive the petitioner of the residential property.

10. Considering the same, while dismissing the Original Petition, liberty is given to the petitioner to challenge the steps taken by the respondent in auctioning the residential property of the petitioner in the manner known to law.

11. Accordingly, this Original Petition stands dismissed with the above liberty, leaving the parties to bear their own costs.

07.02.2024

jas

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



WEB COPY



Arb.O.P. (Com.Div.) No.487 of 2023

C.SARAVANAN, J.

jas

Arb.O.P.(Com.Div.)No.487 of 2023

07.02.2024