



WEB COPY



Arb.O.P.No.108 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date 04.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Arb.O.P.No.108 of 2023

1.Late Mr.P.Kasi

2.Mrs.K.Jaya

... Petitioner

Versus

M/s. Equitas Small Finance Bank Limited

(Formerly known as M/s.Equitas Small Finance Bank Limited)

Represented by its A.L.M.Mr.Fernandez

Spencer Plaza, 4th Floor Phase II

No.769, Mount Road, Anna Salai

Chennai – 600 002

... Respondent

PRAYER : Petition filed under Section 34(2) of Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award made in Arbitration Claim Petition No.VSP/SME/205/2023 dated 03.08.2023 passed by the Sole Arbitrator Mrs.V.S.Prabha in its entirety.

For petitioner : Mr.A.Sathar Khan

For respondents : Mr.A.Damodaran

ORDER

This petition has been filed challenging the award dated 03.08.2023, wherein, the matter has been referred to the sole arbitrator, appointed by the respondent counsel for certain amount. According to the respondent, the principal



Arb.O.P.No.108 of 2023

borrower has committed default after the borrowal. Hence, the matter has been referred to the sole arbitrator on the basis of reference clause contained in the agreement.

2. The reference itself was made by the respondent on 08.05.2023 to the Sole Arbitrator pursuant to the clause contained in the agreement for reference. It is the case of the respondent after borrowal of a sum of Rs.3,27,000/-, the first petitioner failed to pay the interest and there was a due of Rs.24,240/-. Hence, the matter has been referred to the Sole Arbitrator.

3. The learned Arbitrator has passed the exparte order mainly on the ground that the first petitioner failed to appear. Hence, they were set exparte and the impugned award has been passed. The Arbitrator has sent one notice on 08.06.2023 as per the award, however, whether a notice has been served to the first petitioner or not, there is no reference in the arbitration proceedings. Be that as it may, the award was put into challenge mainly on the ground that the arbitration proceedings has been initiated against the dead person. It is the contention of the learned counsel for the petitioner that even after the death of the



first petitioner, the insurance amount has been received by the respondent on 28.11.2022. Thereafter, they sent a notice claiming only a sum of Rs. 24,240/- on 03.12.2022. However, the entire matter has been referred to arbitrator as if there was a huge due of about Rs.1,30,369/-

4. I have perused the entire materials. The fact that the first petitioner died much prior to the initiation of the arbitral proceedings is not disputed, the death certificate annexed in the typedset of documents also establishes the same. That apart, even prior to initiation of the arbitration proceedings, the respondent was aware of the death of the first petitioner, in fact, they had received the insurance claim directly from the insurance company, this also could be seen in the documents. These facts are also not disputed by the respondent. The matter was referred to the Sole Arbitrator only on 08.05.2022, that too, after the death of the first petitioner and the receipt of the insurance amount, much prior to the reference date.

5. The respondent having aware of the fact that the first petitioner is already died, proceeded, as if he was alive and had referred the matter to the sole



Arb.O.P.No.108 of 2023

arbitrator. The sole arbitrator proceeded to pass ex parte order without ascertaining the fact of the death of the first petitioner.

6. Considering the above, this Court is of the view the very award passed as against the dead person is nullity in the eye of law and no notice whatsoever is served to the second respondent to show that she was given an opportunity. When the bank is aware of the death of the first petitioner and having received the insurance amount and still initiating the proceedings as if the person concerned is alive such action is nothing but suppression of material facts and getting an award as against the dead person is nothing but patent illegality.

7. Accordingly, the award dated 03.08.2023 passed in Arbitration Claim Petition No.VSP/SME/205/2023 as against the first petitioner is set aside and this petition is allowed, accordingly. No costs.

04.03.2024

Index : Yes / No

Internet: Yes

Speaking/non speaking order

dhk



WEB COPY



Arb.O.P.No.108 of 2023

N. SATHISH KUMAR, J.

dhk

order in:

Arb.O.P.No.108 of 2023

04.03.2024