

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(COMMERCIAL DIVISION)

RESERVED ON: 13.11.2025
DELIVERED ON: 28.11.2025

PRESENT:

HON'BLE JUSTICE GAURANG KANTH

AP 211 OF 2023

SRI JAHAR DE BAKSHI AND ORS.
VERSUS
CYGNUS INVESTMENT AND FINANCE PVT. LTD.
(NAVALCO COMMODITIES PVT. LTD.)

Appearance:-

Mr. Pratip Mukherjee, Adv.
Md. Kalam, Adv.
Ms. Ankita Dey, Adv.
Mr. Purnankar Biswas, Adv.

.....for the Petitioner.

Ms. Jayati Chowdhury, Adv.
Ms. Rashmi Singhee, Adv.
Ms. Sucheta Mitra, Adv.
Ms. Mandobi Chowdhury, Adv.
Ms. Priya Malakar, Adv.

..... For the respondent no. 2

Ms. Manju Bhuteria, Adv.
Mr. Dwaipayan Basu Mullick, Adv.
Ms. A. Barman Roy, Adv.
Mr. Shubhankar Chakraborty, Adv.
Mr. Saptarshi Bhattacharjee, Adv.
Ms. Harshita Nath, Adv.

..... For the award holder.

JUDGMENT

Gaurang Kanth, J.:-

1. The present Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 assailing the Award dated 09.02.2023 passed by the learned Sole Arbitrator, Mr. Nirmal Kumar Biswas, Former District Judge. The Award has been passed ex parte qua the Petitioners as they did not participate in the arbitral proceedings.

- 2.** The facts, as borne out from the pleadings and documents placed on record, are that the landed property situated at 682, M.B. Road, P.S. Nimta, Ward No. 24, North Dum Dum Municipality, North 24 Parganas, Kolkata-700051, was originally purchased by Sm. Lila De Bakshi along with her brother, Sh. Bimalangshu De Bakshi, vide a registered Deed of Conveyance. Upon the demise of Sh. Bimalangshu De Bakshi on 20.11.1991, intestate, the present Petitioners succeeded to his share as legal heirs.
- 3.** The Petitioners, together with Smt. Lila De Bakshi, entered into a Development Agreement dated 07.07.2002 with M/s Finix Construction (Respondent No. 4 herein) for development of the aforesaid property by construction of multistoried buildings within 48 months of execution of the Agreement. On the same day, an unregistered Power of Attorney was executed by the Petitioners and Smt. Lila De Bakshi in favour of Respondent No. 4 authorising them to carry out the acts necessary for development in accordance with the terms of the Development Agreement. The Power of Attorney contained covenants restraining the attorney-holders from acting contrary to the terms of the Development Agreement or in any manner prejudicial to the interests of the owners.
- 4.** The Development Agreement, upon expiry of its term by efflux of time, was no longer operative. The Petitioners, therefore, revoked and cancelled the said Power of Attorney with effect from 21.06.2007 and also issued a public notice in newspapers inviting attention of all concerned. According to the Petitioners, after such revocation, they had no connection with the partnership firm M/s Finix Construction or any of its partners.

- 5.** On 19.11.2014, the Petitioners received a notice issued under Section 21 of the Arbitration and Conciliation Act, 1996 from Mr. Ajit Keshari, Advocate, on behalf of Respondent No. 1. In the said notice, it was alleged that Respondent No. 1, carrying on business under the name and style of Ganesh Construction, had availed a loan of Rs. 61,00,000/- under a Finance-cum-Mortgage Agreement dated 05.09.2009; that the said facility had been guaranteed by (i) Respondent No. 3 as first guarantor-cum-mortgagor, (ii) Respondent No. 4-8 as second guarantor-cum-mortgagor, and (iii) Ms. Lila De Bakshi and the Petitioners through their alleged constituted attorney Shri Nilesh Roy as third guarantor-cum-mortgagors; and that due to default in repayment, the Agreement stood cancelled. The notice invoked the arbitration clause naming Mr. Nirmal Kumar Biswas as the Sole Arbitrator and stated that a sum of Rs. 3,10,78,885/- was outstanding.
- 6.** The Petitioners responded on 08.12.2014, denying all liability. They reiterated that the only transaction entered into by them was the Development Agreement of 2002; that two Powers of Attorney were issued solely for development purposes; that both had been revoked on 21.06.2007 with due publication; and that Respondent No. 4 had no authority thereafter to bind them in any capacity, much less as guarantors or mortgagors under the 2009 Finance-cum-Mortgage Agreement.
- 7.** A further communication dated 16.01.2015 (incorrectly stated therein as 2014) was issued by the Advocate for Respondent No. 1 asserting that the Petitioners' property had been mortgaged and that the outstanding dues stood at Rs. 3,10,78,885/-, failing which appropriate recovery steps would be taken.

8. The Petitioners, who state that they are senior citizens suffering from age-related ailments, believed that no cause of action existed against them in view of the prior revocation of the Power of Attorney and the absence of any privity with the Finance-cum-Mortgage transaction. They did not participate in the proceedings before the learned Arbitrator.
9. The Petitioners were subsequently served with the impugned ex-parte Award dated 09.02.2023 on 15.02.2023, whereupon they approached this Court under Section 34 of the Act.

Submission on behalf of the Petitioner

10. Learned counsel appearing for the Petitioners submits that the impugned Award is liable to be set aside on multiple grounds, the foremost being that the Respondents suppressed material facts before the learned Arbitrator and proceeded on the basis of documents which were fundamentally fraudulent and unenforceable against the Petitioners.
11. It is submitted that the Petitioners had no privity whatsoever with the alleged Finance-cum-Mortgage Agreement dated 05.09.2009, under which Respondent No. 1 claims to have advanced a sum of Rs. 61,00,000/-. The Petitioners never executed the said agreement, nor authorised any person to execute it on their behalf. It is urged that the Respondents deliberately suppressed from the learned Arbitrator the material fact that the Power of Attorney relied upon to show the Petitioners as guarantor-mortgagors stood revoked on 21.06.2007, i.e., more than two years prior to the execution of the 2009 agreement.
12. Learned counsel submits that the Respondents were fully aware of the revocation and cancellation of the Power of Attorney, as the Petitioners had issued public notice through newspaper publication notifying all

concerned. Despite such knowledge, the Respondents sought to portray before the learned Arbitrator as if the Petitioners continued to be bound by the said Power of Attorney, thereby perpetrating a fraud upon the arbitral tribunal. The concealment of the revocation of the Power of Attorney is alleged to be a deliberate suppression of material facts, vitiating the arbitral proceedings.

- 13.** It is further submitted that the very invocation of arbitration is invalid, as the notice under Section 21 of the Act was never duly served on the Petitioners in the manner contemplated under the Act. Although a letter dated 19.11.2014 invoking arbitration was shown to have been issued, the Petitioners submit that no proper or valid service was effected, nor were any subsequent notices, including notices of hearings, ever served upon them. The Petitioners were thus denied reasonable opportunity of participation, attracting the ground under Section 34(2)(a)(iii).
- 14.** Learned counsel further submits that immediately upon receipt of the letter dated 19.11.2014, the Petitioners issued a detailed reply dated 08.12.2014 (wrongly described in some documents as 2024), emphatically pointing out the fraud practised by the Respondents, including (i) the expiry of the Development Agreement of 2002 by efflux of time, (ii) the revocation of the Power of Attorney of 2002, and (iii) the unauthorised acts of Respondent No. 4 and its partner Shri Nilasish Roy, who had no authority to mortgage the property or bind the Petitioners in any financial transaction. It is submitted that the Respondents withheld this reply from the learned Arbitrator, thereby misrepresenting as if the Petitioners had chosen to remain silent.

15. It is argued that the arbitral proceedings were conducted entirely behind the back of the Petitioners and in complete disregard of principles of natural justice. The Petitioners state that they had no reason to expect that any proceedings were continuing, as their categorical objections and assertion of fraud had already been placed before the Respondents in writing. It is only upon suddenly receiving the impugned ex parte Award on 15.02.2023 that the Petitioners became aware that proceedings had been carried out without their knowledge.
16. On these grounds, it is submitted that the impugned Award stands vitiated as being (i) obtained by suppression and fraud, (ii) passed in violation of the mandatory requirements of Section 18 of the Act relating to equal opportunity, (iii) based on a fundamentally nonexistent arbitration agreement vis-à-vis the Petitioners, and (iv) in complete violation of natural justice. Consequently, the Award is liable to be set aside.

Submission on behalf of the Respondent No.1

17. Per contra, learned counsel for the Respondent No.1 supports the impugned Award and submits that no case for interference is made out within the limited scope of Section 34 of the Arbitration and Conciliation Act, 1996. It is contended that the learned Arbitrator has passed a well-reasoned Award based on the materials duly placed before him, and the Petitioners having chosen to remain absent despite service of notices cannot now be permitted to assail the Award on grounds arising from their own default.
18. It is submitted that the notice invoking arbitration dated 19.11.2014 was duly issued to the Petitioners at their correct and known address. The Petitioners themselves issued a reply dated 08.12.2014 to the said notice.

Further, by letter dated 16.01.2015, it was clarified that the Petitioners' property stood mortgaged with Respondent No. 1 towards the outstanding dues. Thus, the Petitioners were fully aware of the arbitration proceedings but deliberately chose not to appear before the Arbitral Tribunal. The arbitral record also demonstrates that service was duly effected in accordance with law. Therefore, the plea of non-service is asserted to be an afterthought and devoid of any merit. The Petitioners, having wilfully abstained from the proceedings, cannot now rely on their self-induced absence to invalidate the Award. To substantiate this submission, reliance is placed on ***Quippo Construction Equipment Ltd. v. Janardan Nirman Pvt. Ltd.***, reported as **(2020) 18 SCC 277**.

19. It is further submitted that the Petitioners' allegations of fraud and suppression are wholly misconceived. Whether the authority granted to Respondent No. 1 was lawfully exercised or exceeded is a pure question of fact, requiring evidence. The Petitioners, having chosen not to participate in the arbitral proceedings, cannot now raise such issues before this Court when they failed to contest them before the learned Arbitrator. The plea of fraud is characterised as an attempt to reopen factual findings already adjudicated by the Arbitral Tribunal.
20. Learned counsel for the Respondents, relying on ***Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd.***, reported as **(2022) 2 SCC 573**, submits that allegations of fraud must be specifically pleaded with full particulars, failing which such a plea cannot be considered. In the present case, the Petitioners have not pleaded any specific particulars of the alleged fraud, thereby justifying the non-consideration of such a plea by the learned Arbitrator.

21. It is further submitted that the Petitioners were in receipt of the notices dated 19.11.2014 and 16.01.2015 and were aware of the mortgage since 2014. Having failed to challenge the same within the prescribed period, their plea is now barred by limitation under Section 59 of the Limitation Act, 1963, as also in view of the law laid down in ***Saranpal Kaur Anand v. Praduman Singh Chandok***, reported as **(2022) 8 SCC 401**.
22. Learned counsel submits that even assuming the Petitioners' case to be correct in its entirety, the Petitioners claim to have revoked the power of attorney dated 01.03.2005 on 20.06.2007, which was also published in a newspaper. However, the Finance-cum-Mortgage Deed was executed by Respondent No. 2 in exercise of powers granted under the powers of attorney dated 12.03.2005 and 15.03.2005, in addition to the power of attorney dated 01.03.2005. It is not the Petitioners' case that the powers of attorney dated 12.03.2005 and 15.03.2005 were ever revoked.
23. It is contended that the learned Arbitrator considered all relevant documents, including the Finance-cum-Mortgage Agreement dated 05.09.2009, the statement of accounts, and various mortgage documents, and upon due appreciation of evidence adduced by the Claimant, concluded that the Petitioners were liable as guarantors-cum-mortgagors. These findings, being based on evidence, fall squarely within the domain of the Arbitrator. It is urged that where two views are possible and the Arbitrator has adopted one plausible view, this Court cannot substitute its own opinion under Section 34.
24. It is further submitted that the Petitioners have failed to demonstrate any perversity, patent illegality, or violation of public policy. The Award, being a reasoned and well-considered adjudication, cannot be set aside merely

because the Petitioners seek to re-agitate factual issues. It is reiterated that Section 34 does not permit re-appreciation of evidence or an appellate review. Reliance is placed on **MMTC Ltd. v. Vedanta Ltd.**, reported as **(2019) 4 SCC 163**.

- 25.** Learned counsel for the Respondent No.1, therefore, prays that the impugned Award, having been passed after due notice, on the basis of evidence, and within the framework of law, be upheld, and the Petition under Section 34 be dismissed.

Legal Analysis

- 26.** This Court has heard the submissions advanced by the learned counsel for the parties and examined the records of the arbitral proceedings as well as the documents placed on file.
- 27.** The Petitioners herein were arrayed as Respondent Nos. 9 to 13 before the Arbitral Tribunal. Respondent No. 8 before the Tribunal (Ms. Lila De Bakashi) expired during the pendency of the proceedings. The Award, therefore, stands against the present Petitioners and Respondent Nos. 2 to 8 herein.
- 28.** The Claimant before the Arbitral Tribunal (Respondent No. 1 herein) had advanced a sum of Rs. 61,00,000/- to Respondent No. 2 herein. Respondent No. 3 herein stood as the first guarantor; Respondent Nos. 4 to 8 herein constituted the second set of guarantors; and the Petitioners (Respondent Nos. 9 to 13 before the Tribunal) formed the third set of guarantors. The Finance-cum-Mortgage Deed dated 05.09.2009 records that the Petitioners, being the owners of the land and entitled to 40% of the proposed construction, along with Respondent No. 2, who was entitled to the remaining 60%, created a mortgage over the scheduled property in

favour of the Claimant as security for the said loan. Upon the borrower's default in repayment, the Claimant invoked the arbitration clause contained in the said deed. As the arbitration clause named Shri Nirmal Kumar Biswas, former District Judge, as the Sole Arbitrator, he accordingly entered upon reference.

- 29.** Except for the Petitioners and Respondent No. 3, all other respondents appeared before the Tribunal. The learned Arbitrator recorded his satisfaction that service had been duly effected upon the Petitioners; however, they chose not to participate and were consequently proceeded ex parte.
- 30.** Upon examining the documents, the Arbitrator found that Respondent No. 2 executed the Finance-cum-Mortgage Deed not only in his individual capacity but also on behalf of the second and third guarantors on the strength of the respective powers of attorney. Regarding the Petitioners, it was noted that Respondent No. 2 had executed the Finance-cum-Mortgage Deed on behalf of the Petitioners pursuant to powers of attorney dated 01.03.2005, 12.03.2005 and 15.03.2005. Clause 16 of these powers of attorney expressly empowered him to mortgage or create a charge over the property for securing loans. The Arbitrator, therefore, held that a valid mortgage existed and further held the liability of the guarantors to be joint and co-extensive with that of the borrower in terms of Clause V of the Agreement.
- 31.** In view of the detailed discussion therein, the Sole Arbitrator held that Claimant is entitled to get the reliefs and vide award dated 09.02.2023 awarded a sum of Rs. 2,56,60,000/- (principal with agreed interest up to 30.06.2014), pendente lite and future interest at 15% per annum with

quarterly rests on the awarded amount, and arbitration costs of Rs. 2,00,000/- in favour of the Claimant.

32. The primary contention of the Petitioners is that they revoked the power of attorney dated 01.03.2005 vide letter dated 20.06.2007 and a corresponding newspaper publication, and therefore Respondent No. 2 had no authority to execute the Finance-cum-Mortgage Deed on 05.09.2009. They further rely on their reply dated 08.12.2014 addressed to the Claimant's advocate reiterating such revocation.

33. This Court has considered these submissions. The Claimant's communication dated 19.11.2014 intimating invocation of arbitration was admittedly received by the Petitioners, who responded on 08.12.2014 raising the issue of revocation of the power of attorneys. The Claimant's advocate thereafter, by letter dated 16.01.2015, categorically stated that a mortgage already stood created and that proceedings would continue in accordance with law. These communications were placed before the Tribunal. On perusal of the aforesaid communications, the Arbitral Tribunal, in its Minutes dated 21.01.2015, observed that the Petitioners could not advance their pleadings or objections through personal correspondence addressed to the Claimant or its counsel. Accordingly, the Tribunal directed that the Petitioners be formally notified to appear before it and raise any objections they sought to rely upon. However, the notices sent to their address were returned marked "Delivery attempted – Addressee absent – Intimation served." The Arbitrator then directed service through special messenger. The affidavit of service filed by one Samir Bera recorded that envelopes were returned with the endorsements "Refused,"

“Left,” and “Unclaimed.” The Tribunal, being satisfied that service was duly effected, treated such service as good service.

- 34.** In view of the Petitioners’ admitted knowledge of invocation of arbitration since November 2014, coupled with the Arbitrator’s detailed satisfaction on service, this Court holds that service upon the Petitioners was duly completed. Despite such knowledge, the Petitioners consciously chose not to participate in the arbitral proceedings.
- 35.** Once the Arbitrator records satisfaction regarding service, and such finding is founded on material placed on record, the same cannot be lightly interfered with in a Section 34 proceeding. The mandate of the Tribunal under Section 25(b) is clear, where a party, despite due notice, fails to appear or present its case, the Arbitral Tribunal is empowered to proceed ex parte. The Petitioners, though aware of the arbitral proceedings, neither appeared before the Tribunal nor sought an opportunity to contest the claim. They did not file a written statement, did not challenge the mortgage, and did not seek any adjudication of their alleged revocation of the power of attorney. The objections that they now raise whether relating to want of authority, alleged fraud, or invalidity of the mortgage are all issues of fact which ought to have been urged before the Arbitral Tribunal.
- 36.** A party who consciously avoids participating in the arbitral process cannot be permitted to raise factual disputes for the first time under Section 34. The jurisdiction under Section 34 is supervisory and not appellate in nature, and the Court cannot substitute its view for that of the Tribunal or undertake a re-appreciation of evidence. The Petitioners, by their own conduct, deprived the Tribunal of the opportunity to adjudicate their objections based on evidence. They cannot now rely on their own

abstention to assail findings that the Tribunal was forced to render ex parte.

- 37.** It is a settled principle of arbitration jurisprudence that a party who has had the opportunity but fails to participate in the proceedings is deemed to have waived its right to contend that the Tribunal ought to have considered issues which were never placed before it. Allowing such objections at the Section 34 stage would not only defeat the principle of minimal judicial interference but would also encourage parties to remain absent at will and disturb the finality of arbitral awards.
- 38.** In the present case, therefore, this Court is of the considered view that the Petitioners, having deliberately chosen not to appear before the Arbitral Tribunal despite due service and clear knowledge of the proceedings, cannot now invoke Section 34 to raise contentions that are fundamentally factual in nature and which they ought to have raised before the Tribunal. Their objections are barred by the principles of waiver, acquiescence, and constructive res judicata, and the scope of interference under Section 34 does not extend to permitting a party to make up for its own deliberate default.
- 39.** This Court also observes that the Petitioners have not initiated any civil or criminal proceedings against Respondent No. 2 in respect of the alleged fraud. The absence of any parallel action substantially weakens the credibility of their allegations. It is well settled that bald and unsubstantiated assertions of fraud, without any contemporaneous steps or supporting material, cannot be permitted to defeat or overshadow a well-reasoned and cogent arbitral award. Mere invocation of the term “fraud” is insufficient to displace findings duly arrived at by the Arbitral

Tribunal after appreciation of evidence. In the present case, the Petitioners have failed to make out any ground warranting interference.

Conclusion

- 40.** In light of the above findings, this Court is satisfied that the Petitioners were duly served and had clear knowledge of the arbitral proceedings, yet deliberately chose not to participate. Having wilfully abstained from presenting their defence before the Tribunal, they cannot now invoke the limited jurisdiction under Section 34 to raise objections which are factual in nature and which they ought to have raised before the Arbitrator. The scope of interference under Section 34 is narrow and does not permit re-appreciation of evidence, rehearing on merits, reassessment of factual disputes, or substitution of the Court's view in place of the Arbitrator's conclusions.
- 41.** This Court further finds that the Award is reasoned, founded on the material placed before the Tribunal, and does not suffer from perversity, patent illegality, or any violation of the fundamental policy of Indian law. The Petitioners' attempt to challenge the Award on grounds never urged before the Arbitrator is impermissible within the narrow contours of Section 34. In the absence of any ground warranting interference, this Court sees no reason to disturb the impugned Award dated 09.02.2023.
- 42.** Accordingly, the present Petition stands dismissed.
- 43.** The Department is hereby directed to release the original documents to the petitioner upon receipt of duly submitted photocopies.

(GAURANG KANTH, J.)