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Arb.O.P. No.43 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P. No.43 of 2024

1.Radhu RB

2.Radhakrishnannair S.

... Petitioners

Versus

M/s.IndusInd Bank Ltd.,

rep. by its Power of Attorney Holder

... Respondent

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 28.07.2023 in A.C.P. (IBL-PPD) No.979 of 2023 passed by the Sole Arbitrator Mr.D.Saravanan and to direct the respondent to pay costs.

For Petitioners : Mr.S.Kingston Jerold

For Respondent : Mr.K.Senthil Kumar

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the impugned Arbitral Award dated 28.07.2023 passed in favour of the respondent against the petitioners.

2.The petitioners are defaulters in repayment of the loan to the



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respondent. In view of the default committed by the petitioners, the respondent initiated arbitration in accordance with the arbitration clause contained in the agreement, which is the subject matter of the dispute, by appointing a Sole Arbitrator. The Sole Arbitrator, acted upon the reference and after hearing both the parties, has passed the impugned Arbitral Award dated 28.07.2023 under which the petitioners have been directed to pay a sum of Rs.94,235/- together with interest at 18% per annum on the said sum from the date of reference i.e. 19.10.2022 till the date of realisation to the respondent. The petitioners, aggrieved by the impugned Arbitral Award, have filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 raising the following grounds:

a)The Arbitrator, who passed the impugned Arbitral Award, was unilaterally appointed by the respondent, without the consent of the petitioners;

b)The contentions of the petitioners as raised in the statement of defence filed by the petitioner before the Arbitrator, have not been considered by the Arbitrator in the impugned Arbitral Award;

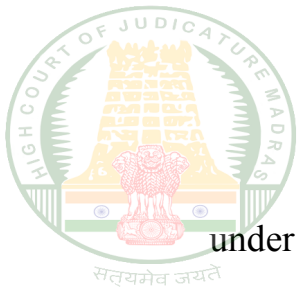
c)The principles of natural justice have been violated by the Arbitrator, while passing the impugned Arbitral Award.



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WEB COPY 3.Learned counsel for the petitioners would reiterate the grounds that have been raised in this petition by the petitioners. He also drew the attention of this Court to the impugned Arbitral Award to substantiate the petitioners' case.

4.On the other hand, the learned counsel for the respondent would submit that the petitioners did not raise the ground of unilateral appointment in the arbitral proceedings either through their statement of defence or through their submissions. According to him, having participated in the arbitration, without any demur, the question of raising the ground of unilateral appointment at this stage in the Section 34 petition does not arise. In support of the said contention, learned counsel for the respondent drew the attention of this Court to the Division Bench judgment of this Court dated 26.11.2024 passed in O.S.A. (CAD) Nos. 62 & 63 of 2023 in the case of VR Dakshin Private Limited vs. SCM Silks Private Limited and would submit that when a party, who had participated in the arbitration, did not raise the ground of unilateral appointment of an arbitrator, the Award passed by such an Arbitrator is perfectly valid and cannot be set aside by this Court



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under Section 34 of the Arbitration and Conciliation Act, 1996.

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5.Learned counsel for the respondent drew the attention of this Court to another order passed by the Delhi High Court in the case of Arjun Mall Retail Holdings Pvt. Ltd. and others vs. Gunocen Inc dated 23.01.2024, which also supports the same view. Learned counsel for the respondent also submits that the Division Bench judgment of the Madras High Court in O.S.A. (CAD) Nos.62 & 63 of 2023 in the case of VR Dakshin Private Limited vs. SCM Silks Private Limited, referred to supra, has also been upheld by the Hon'ble Supreme Court by its order dated 16.12.2024 passed in M/s.SCM Silks Pvt. Ltd. vs. VR Dakshin Pvt. Ltd. by dismissing the S.L.P. Nos.30047 & 30048 of 2024. Learned counsel for the respondent also submits that as seen from the impugned Arbitral Award sufficient opportunities have been granted to the petitioners to raise all their objections and despite the same, excepting for filing the statement of defence, the petitioners have chosen not to defend the case any further in the Arbitral proceedings. According to him, only based on the evidence available on record, the Arbitrator has passed the impugned Award. He would also submit that the petitioners have themselves acknowledged their liability to

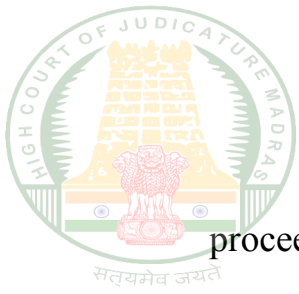


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the respondent by offering to settle the dues of the respondent through their letter dated 18.10.2022. The award has been passed only for a sum of Rs.94,235/- and therefore, since the petitioners have acknowledged their liability, the award cannot be set aside under Section 34 of the Arbitration and Conciliation Act, 1996 as this Court cannot re-appreciate the evidence once again under Section 34 of the Arbitration and Conciliation Act, 1996.

6.This Court has perused and examined the impugned Arbitral Award. This Court has also examined the written statement filed by the petitioners before the Arbitrator. Excepting for making bald statement, without any supporting evidence, to substantiate the case of the petitioners that they are not liable to pay the claim amount made by the respondent in the arbitration, the petitioners have not produced any evidence whatsoever before the Arbitrator in the form of proofs for having made payments to the respondent as claimed by them in the written statement filed before the Arbitrator. This Court has also taken note of the fact that several opportunities were granted to the petitioners to participate in the arbitration to let in evidence to substantiate their defence. On various dates, the petitioners remain unrepresented despite having knowledge about the hearing dates in the arbitral

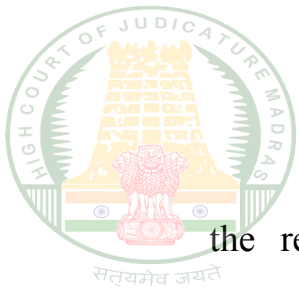


proceedings. The petitioners did not participate in the following hearing

dates:

a)24.01.2023; b)28.02.2023; c)21.03.2023 and d)09.05.2023.

7.As seen from the Arbitral Award, the Arbitral Tribunal has given a long rope to enable the petitioners to raise all defences in the arbitration to let in evidence to substantiate their defences raised in the written statement. Despite granting several opportunities, excepting for making bald averments in the written statement, the petitioners have not filed any documentary evidence to substantiate their defences. Infact as seen from the letter dated 18.10.2022 sent by the petitioners to the respondent just prior to the initiation of the arbitration by the respondent, the petitioners have acknowledged that they have committed default in re-payment of the loan and they have also agreed to settle the claim of the respondent. The only dispute they had raised is with regard to the charging of exorbitant interest by the respondent. The amount awarded by the Arbitral Tribunal is only a sum of Rs.94,235/-. Before the Arbitral Tribunal, the respondent has filed 10 documents, which were marked as Exhibits A1 to A10, which includes the statement of account, which reveals the payments made by the petitioners to



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the respondent and the outstanding amount due and payable by the petitioners to the respondent. Only based on the evidence available on record, the Arbitrator has passed the impugned Arbitral Award directing the petitioners to pay a sum of Rs.94,235/- to the respondent together with interest at 18% per annum on the said sum from the date of reference to arbitration i.e. from 19.10.2022 till the date of realisation.

8. Admittedly, the vehicle, which was the subject matter of hypothecation with the respondent, has also not been surrendered by the petitioners to the respondent till date. Permission has also been granted by the Arbitrator to the respondent to re-possess the vehicle from the petitioners or wherever available. The scope for interference under Section 34 of the Arbitration and Conciliation Act, 1996 is very limited. The petitioners have not satisfied any of the requirements of Section 34 of the Arbitration and Conciliation Act 1996 for setting aside the arbitral award. The petitioners, having participated in the arbitration and having not raised the ground of unilateral appointment of the Arbitrator either through their statement of defence or through their submissions, the question of entertaining such a plea at this belated stage does not arise. The Division Bench judgment of the



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Madras High Court in the case of VR Dakshin Private Limited vs. SCM Silks Private Limited, rendered on 26.11.2024 in O.S.A. (CAD) Nos.62 & 63 of 2023 as well as the Delhi High Court decision in the case of Arjun Mall Retail Holdings Pvt. Ltd. and others vs. Gunocen Inc dated 23.01.2024, relied upon by the learned counsel for the respondent, also makes it clear that when a party, who had participated in the arbitration, did not raise the ground of unilateral appointment of an Arbitrator, the award passed by such an Arbitrator is perfectly valid and cannot be set aside by this Court under Section 34 of the Arbitration and Conciliation Act, 1996. Therefore, there is no merit in this petition. Accordingly, this petition is dismissed. No costs.

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ABDUL QUDDHOSE, J.

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