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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) 166/2018, CM APPL. 47070/2018-Addl.doc**

KOTAK MAHINDRA BANK LTDAppellant

Through: Mr. Arun Aggarwal, Mr. Shivam
Saini and Mr. Praful Rawat, Advocates.

Versus

SURINDER SINGH TIRTH SINGH CHANDOK & ORS

.....Respondents

Through: Mr. Vishnu Sharma, Adv. (VC)

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

06.02.2025

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1. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1995 (the Act) seeks to assail the order dated 28.09.2018 passed by the learned Single Judge in OMP 694/2011. Vide the impugned order, the learned Single Judge has disposed of the application preferred by the respondents under Section 34 of the Act assailing the arbitral award dated 28.03.2011 by holding as under:

“8. Today, it is submitted by the counsel for the Petitioner that the basic grievance that the Petitioner have against the award is that it was passed ex parte. In fact he submits that the notice in the arbitration proceedings was received in respect of some other case and not the case which was filed against the Petitioner. Be that as it may, when asked as to whether the



Petitioners have availed the loan facility, he submits that the loan which was disbursed to the Petitioners was Rs.60,50,000/- and not Rs.75 lakhs which was the sanctioned amount and Rs.73 lakhs as awarded by the Arbitrator. He submits that out of the Rs.60,50,000/- which was in fact disbursed, some instalments were actually paid by the Petitioners.

9. In this view of the matter, there is no major dispute which exists between the parties. The objection petition is disposed of by restricting the award. The Respondent is awarded a sum of Rs.60,50,000/- minus the total amount of instalments which may have already been paid by the Petitioners. On the balance amount, interest @ 8% per annum from the date of payment of last instalment would begin to run. The payment of the final amount of Principal along with interest shall be made within three months. Beyond the period of three months, interest @ 10% per annum would be liable to be paid.

10. In order to facilitate the calculations of the principal amount and the interest as also to ensure that due credit is given to the instalments already paid, the Petitioners are directed to meet the official of Kotak Mahindra Bank in Mumbai and show the proof of the payment of instalments. Upon the principal amount being calculated and the interest amount duly communicated, the period of three months for making payment would commence.

11. The meeting between the Petitioners and officials from Kotak Mahindra Bank shall be held on 15th October, 2018 at 11:30 AM in Kotak Mahindra Bank's Mumbai Branch at Samsung Building, Mezzanine floor, Amar Brass, Vinay Biiava Complex, 159-A C.S.T. Road, Kalina, Santa Cruz (E), Mumbai - 98. The name of the officer who is to meet the Petitioners is Ms. Nikki Kumar, Port Folio Resolution Manager (M-7045900551).”



2. Learned counsel for the appellant submits that while directing the parties to have a joint meeting on 15.10.2018 so as to determine the principal amount and interest payable by the appellant to the respondents, the learned Single Judge has failed to appreciate the various grounds raised in the reply filed by the appellant to the respondents' application under Section 34 of the Act. Further the admissions made by the respondents in their rejoinder have also been ignored.
3. Even though his submissions appears to be attractive at the first blush, upon perusal of the impugned order, we find that the pleas now sought to be urged before this Court did not appear to have been raised before the learned Single Judge. The learned Single judge has clearly proceeded on the basis that there was no major dispute between the parties.
4. In these circumstances, we have put to learned counsel for the appellant as to how the appeal would be maintainable when the appellant did not raise any such pleas before the learned Single Judge, and that too when no such grounds have been raised in the present appeal that the learned Single Judge did not take into account that submissions made on behalf of the appellant. Learned counsel for the appellant has nothing to say in this regard.
5. We, therefore, find no reason to interfere with the impugned order, which is, accordingly, disposed of along with the pending application.
6. At this stage, learned counsel for the appellant submits that the respondents are not even coming forward for the meeting in terms of the directions issued in the impugned order. If that be the case, it



would be for the appellant to avail of appropriate remedies seeking enforcement of the impugned order as per law.

REKHA PALLI, J

SAURABH BANERJEE, J

FEBRUARY 6, 2025
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