

Ex No.488 of 2016 Jaspal Singh Vs. IndusInd Bank

Present:- Ms. Meenakshi Advocate counsel for the applicant
Mr. Vishal Kaushal Advocate for the respondent No.1
Ms. J.K.Bhangu Advocate for respondent No.2.

ORDER

This order shall dispose of objection petition filed by the applicant Jaspal Singh under Section 34 of Arbitration and Conciliation Act for setting aside the award dated 10.09.2015 passed by the Sole Arbitrator under Arbitration and Conciliation Act 1996 against the applicant.

2. It has been averred in the objection petition that the applicant is permanent resident of village Chilla, Tehsil and District SAS Nagar. He came to know about the award when he received summons issued by the Court in execution application filed by respondent No.1 against the applicant and respondent No.2. Thereafter the applicant enquired the matter and came to know about the impugned exparte award. The applicant was having no knowledge about the arbitration proceedings as well as appointment of arbitrator. As per Section 9 & 21 of CPC, it is a fundamental principle that a decree passed by a Court without jurisdiction is nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even, at the state of execution and even in collateral proceedings. The award passed by the arbitrator at Chennai has no jurisdiction to try to pass the award. The applicant resides at Mohali within the jurisdiction of Mohali Courts and loan was obtained at Mohali and the documents of loan were also executed at Mohali. It is submitted that in the arbitration proceedings no notice was ever served upon the applicant by the arbitrator and due to this reason the award is liable to be set-aside. The award passed by the arbitrator is contrary to substantive provisions of law and also against the fundamental policy and that the said award is against the provisions of Section 20 of CPC, Section 28 of Indian Contract Act and Section 24 of Arbitration and Conciliation Act 1996. It is further submitted that the award passed by the arbitrator is also liable to set-aside as it is so unfair and unreasonable that it shock the conscious of the Court. It is submitted that total loan amount was

Rs.1,85,900/- and the DH received full amount by down payment and installment paid by the JD as well as sale consideration of the vehicle in question after taking its possession. Thereafter the matter was referred to the arbitrator and exparte award dated 10.09.2015 was passed by the Arbitrator at Chennai. It is submitted that the applicant could hardly afford to go to Chennai and to contest the claim as he is a poor person. So the award passed by the arbitrator is unfair and unreasonable and is liable to set-aside. Lastly prayer for acceptance of objections petition has been made.

3. Reply to the objection petition has been filed wherein preliminary objections have been raised that the jurisdiction of the appellate court to interfere with an award passed by the arbitrator is limited and the Court can interfere only if it comes to the conclusion that on the basis of the material that was before the learned arbitrator, it was impossible for the arbitrator to take the view that has been taken by the learned arbitrator in the award. The present objections are barred by limitation as the award passed on 19.09.2015 and the applicants already have knowledge of the award and now filed the objections in the execution of the Arbitration and Conciliation Act well after the expiry of limitation period and as such the objections are not maintainable. It is submitted that the arbitrator has given ample opportunity to the respondent/JD and then passed the award. The applicant has not come to the court with clean hands as they firstly defaulted the amount even after the initiation of arbitration and after the passed of the award in September 2015, they never turned up for any settlement and as such the objections are liable to be dismissed on this ground alone. The award can be set aside only if

- (a) i. a party was under some incapacity or
- ii). the arbitration agreement is not valid under the law to which the parties have subjected it or failing any indication thereon under the law for the time being in force;
- iii). the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case or.

iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or it contains decision on matters beyond the scope of the submission for the arbitrator.

v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this part from which the parties cannot derogate or failing such agreement was not in accordance with this Part; or b) the Court find that

i). the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force or

ii) the award is in conflict with the public policy of India. Hence, as would be evident from the above and a simple reading of the petition under reply, none of the grounds raised by the applicants in the application under reply fall within the limited sphere of Section 34.

C. the application under reply is not maintainable and is liable to be dismissed as it is settled that under the provisions of Section 34 of the said Act, the Court does not sit as a Court of application against the award passed by the Arbitrator as held in various pronouncements.

It is averred on merits that the applicants already have knowledge of the award and now filed the application under Section 34 of the Act for setting aside the award after the expiry of 90 days from the date of knowledge of the award and hence this present application is not maintainable which has been filed with sole aim to delay the execution proceedings. The objections under Section 34 of the Act are not maintainable and are liable to be dismissed as the same are malafide mischievous, vexatious and fictitious in nature. The applicants have approached to the respondents for availing loan facility for purchase of “ATUL GEM Pago” model vehicle and the loan agreement was executed at Mohali vide loan agreement dated 19.6.2013 and the respondent

financed the amount of Rs.2,08,735. The installments have to be paid promptly on due dates as per agreement and as per agreement it was pre fixed that the arbitrator shall be st at Chennai whenever it will be required. The agreement was signed by the applicant after fully aware about the terms and conditions of the agreement, so Chennai has jurisdiction to try, entertain and pass the said award. It is averred that after sending several notices, the applicant did not turn up intentionally to contest the award before the Arbitrator, as such the award was passed exparte. It is submitted that actual due amount including miscellenous expenses was Rs.2,08,725/- and that the award passed by the Arbitrator is fair and reasonable. It is admitted that the vehicle in question was taken into possession by the D.H. lastly prayer for dismissal of the objection petition has been made.

4. I have heard the learned counsel for the parties and have gone through the arbitral record with their able assistance.

5. The main contention of the learned counsel for the applicant/objector is that the applicant was not aware of appointment of arbitrator, arbitration proceedings as the applicant was never served in the case. Beside this other points have also been raised like award has not been passed by following the fundamental principles. The same is patently illegal, unfair and unreasonable and is also against the public policy. The learned counsel for the applicant has also challenged the jurisdiction.

6. As against it, the learned counsel for the respondent primarily raised issue of limitation that award was passed on 10.09.2015 and the applicants had knowledge of the award. The present petition has been filed under Section 34 of Arbitration and Conciliation Act for setting aside the arbitration award after the expiry of 90 days from the date of knowledge of the award, hence, the application is not maintainable. It has been contended by the learned counsel for the respondent that the agreement was signed by the applicants and they were aware about the terms and conditions of the agreement. They were also aware that Chennai is the jurisdiction to try, entertain and to pass the said award. The applicants intentionally did not pursue the same despite issuance of many

notices to them, so exparte award was rightly passed against them.

7. Perusal of the record of the arbitration proceedings shows that the arbitrator was appointed vide letter dated 17.03.2015 in terms of the alleged agreement dated 19.06.2013. The arbitrator issued notices to the respondents as per the order dated 30.4.2015 and 18.06.2015 and later passed exparte award on 10.09.2015. There is nothing on the record to show either the respondents were having notice of the appointment of arbitrator or arbitral proceedings or passing of the award. As all the registered covers issued to borrower Jaspal Singh and his guarantor Balesh Kumar received back with the reports of “insufficient address” “returned to sender”, addressee moved, “returned to sender”. There is no report on the file to show that they were ever served through arbitrator enabling this Court to attribute knowledge upon them. The time start to run from the date of service or knowledge of the award but since the service upon the applicant has not been proved on the file, as such the award has been challenged within the prescribed period of limitation as it has been categorically mentioned by the objector that he came to know regarding the same on receiving the summons in the execution application wherein execution of the said award was sought. So it is held that application under Section 34 of Arbitration and Conciliation Act is within time.

8. As per clause 23 of the arbitral agreement it was agreed between the parties that all dispute, differences or claim arising of the said agreement shall be referred to Arbitrator at Chennai. Since it was agreed between the parties that Chennai City will have jurisdiction to try, entertain the dispute between the parties, therefore, Chennai has the jurisdiction to try, entertain and to pass the said award. There is no force in the contention of the learned counsel for the applicant that Chennai has no jurisdiction to try, entertain and to pass the said award. There is also no force in the contention of the learned counsel for the applicant that the applicant could hardly afford to go to Chennai to contest the claim as such a plea is not available to the applicant because he himself signed the loan agreement and thereby bound himself of that agreement whereby Chennai has exclusive jurisdiction in case of any dispute between the parties.

9. As per Section 34 of Arbitration and Conciliation Act, award can only be set-aside if a party was under some incapacity or ii); the arbitration agreement is not valid under the law to which the parties have subjected it or failing any indication thereon under the law for the time being in force; iii). the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case. So as per above section if the applicant was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case, then an award can certainly be set-aside. As per record of arbitrator notices were issued for 30.04.2015 and then for 18.06.2015. Reference of the same has been given in para No.6 of the award wherein arbitration has mentioned that “ *The claimant's representative submitted that as per Section 3(1)(b) of the Arbitration and Conciliation Act 1996 and Section 27 of General Clauses Act, the service of notice is deemed to be complete when the communication is properly addressed by sending the same by registered post*”.

10. It is correct that service of notice is deemed to be complete when communication is properly addressed by sending the same by registered post. But in the present case communication was not sent at proper address, the registered covers were received back unserved carrying reports regarding “insufficient address” and with the report that addressee moved and “returned to sender”. These reports are proof of the fact that proper notice of the appointment of arbitrator or arbitral proceedings and passing of the award was not in the knowledge of the applicant. Consequently, in these circumstances, the impugned award cannot be granted judicial recognition, as such, objections of the applicant are up held and objection petition stands allowed and award passed by the arbitrator dated 10.09.2015 is set-aside and the matter is remanded to the arbitrator to decide it afresh after giving due opportunity to applicant. Parties are directed to appear before the Arbitrator on 25.09.2018. Arbitration record be sent back alongwith copy of this order to the Arbitrator and this file be consigned to the record room.

Pronounced

(Sanjay Agnihotri)

Sanjay Agnihotri

UID No.PB-099

Dated:-23.08.2018

Additional District Judge,
SAS Nagar