Manmohan Singh and anr Vs. Ge Money Financial Services Ltd

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Court : Delhi

Decided On : Aug-30-2013

Judge : V.K.Shali

Appellant : Manmohan Singh and anr

Respondent : Ge Money Financial Services Ltd

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + FAO 339/2013 Decided on 30th August, 2013 ..... Appellants MANMOHAN SINGH & ANR Through: Mr.Basant Kumar Singh, Advocate. versus GE MONEY FINANCIAL SERVICES LTD ..... Respondent CORAM: HON'BLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

(ORAL) 1. This is an appeal against the order dated 23.03.2013 passed by the learned ADJ vide which the objections of the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 against the award passed by the arbitrator, were partly allowed.

2. The main contention of the learned counsel for the appellants is that the appellants had not received the notice about the proceedings having been initiated before the arbitrator and consequently an ex parte award was passed against him. It has been contended by him that since principles of natural justice were not followed, therefore, the arbitration award passed again him is void ab initio.

3. In order to support his contention, the learned counsel for the appellants has also relied upon the judgment of the Supreme Court in Dulal Poddar vs.Executive Engineer, Dona Canal; 2004 (1) Arb.L.R. 24 (SC).

4. I have gone through the said judgment. There is no doubt that the case which has been sought to be relied upon by the learned counsel for the appellant, the apex court has observed that the award which has been passed by the arbitrator without affording an opportunity of hearing to the respondent in the said case was illegal and void, but the question is as to whether a party to an arbitration proceeding has been served or not, is essentially a question of fact. In the instant case, there is no dispute about the fact that the appellants had taken a loan of Rs.15 lakhs from the respondent and mortgaged the property. In the loan agreement, there was an arbitration clause and the appellants had given their correspondence address of Rohini. Since the appellants had defaulted in payment of loan, the respondent appointed an arbitrator in terms of the arbitration clause who entered into the reference. The arbitrator is purported to have issued two notices to the appellants at the Rohini address on 04.04.2011 and 08.05.2011. Both these notices were received by the appellant inasmuch as the acknowledgement card which had gone along with the notices was served on one Ms.Rajini and another person whose signatures were illegible.

5. Despite the said service on Ms.Rajini and another person, there was no appearance on behalf of the appellants and consequently they were proceeded ex parte and the arbitrator passed the ex parte award.

6. Prima facie, the acknowledgment card which is purported to have been accepted by the arbitrator as proof of service shows that the appellant had been served the notice. It was essentially now for the appellants to have discharged the onus by putting in appearance and refuting this fact by cogent evidence by filing an affidavit that they were not the persons who had received the notice. This has not been done by the appellants. Therefore, apart from the presumption of fact which may be drawn once a letter is addressed to the addressee, the acknowledgment card which has been duly received back after signatures corroborating the fact that the notice has been served on the addressee. There is

nothing wrong in the presumption and the factum of notice having been served on the appellants being accepted by the arbitrator as well as by the court below and dismissing the objections of the appellant in this court.

7. It has also been contended by the learned counsel for the appellants that the arbitrator had not recorded the evidence. This objection of the learned counsel for the appellants has also been rejected by the court below on account of the fact that documents have been placed on record before the arbitrator to the effect that the appellants had taken the loan and signed the loan agreement. It is admittedly not the case of the appellants that they had not taken the loan or had not created any charge/security by way of mortgage on the property in question or they had not signed the loan agreement. In the absence of such a plea and in the light of the fact that the documents of loan are not denied by the appellants, it was, in my considered view, not necessary that evidence ought to have been taken by the arbitrator. The documents in themselves were sufficient enough to fasten the liability on the appellants. This objection of the learned counsel for the appellants, thus, does not have any merit and has been rightly dismissed by the court below.

8. I do not find that there is any illegality and impropriety in the rejection of the objections of the appellants by the arbitrator. Accordingly the appeal is dismissed. V.K. SHALI, J AUGUST 30 2013/dm