Lucknowi Heritage and ors Vs. G.E. Money Financial Services Ltd and anr

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SooperKanoon Citation : sooperkanoon.com/956244

Court : Delhi

Decided On : Jan-17-2013

Judge : Manmohan Singh

Appellant : Lucknowi Heritage and ors

Respondent : G.E. Money Financial Services Ltd and anr

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Delivered on: January 17, 2013 + OMP No.12/2013 LUCKNOWI HERITAGE & ORS ..... Petitioners Through Mr.Prabhjit Jauhar, Adv. versus G.E. MONEY FINANCIAL SERVICES LTD & ANR ..... Respondents Through None appeared on behalf of respondents despite of advance service. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

(Oral) I.A.Nos.253/2013 & 254/2013 (exemption) Exemption allowed, subject to just exceptions. The applications are disposed of. OMP No.12/2013 1. The petitioners have filed the abovementioned petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, called the Act) for setting-aside the arbitration Award dated 29th August, 2012 passed by the Arbitrator. The Award was received by the petitioners on 4 th September, 2012.

2. Petitioner No.1 is a partnership firm and petitioners No.2 & 3 are its partners. They are carrying on their business in Mumbai. Respondent No.1 is a limited Company engaged in the business of rendering financial services/facilities etc.

Respondent No.2 is the sole Arbitrator who has passed the impugned Award and has been impleaded as a formal party.

3. Between the same parties, earlier an Award was passed on 4 th August, 2009 on the basis of the arbitration proceedings against the petitioners initiated in or about February, 2009.

4. The petitioners challenged the said Award dated 4th August, 2009 by filing of OMP No.616/2010. Vide order dated 17th October, 2011 this Court set aside the said Award on the aspect of non-service of the petitioners at proper address.

5. After passing the said order, the respondent No.1 issued a letter dated 18th October, 2011 to the petitioners calling upon them to pay a sum of Rs.88,05,341/-. A letter was issued to the petitioners by the respondent for the purpose of appointment of respondent No.2 as a sole Arbitrator to adjudicate upon the disputes between the petitioners and respondent No.1.

6. The petitioners admitted that they have received a notice dated 1st November, 2011 from the Arbitrator i.e. respondent No.2 informing the petitioners that with reference to some letter received from respondent No.1, he has accepted the appointment to act as a sole Arbitrator and has entered into reference and asked the petitioners to attend the proceedings on 16th November, 2011 for the purpose of arbitration.

7. Admittedly, the petitioners appeared before the Arbitrator and filed their written statement. Respondent No.1 also filed the statement of claim. The proceedings were conducted by the Arbitrator under the provisions of the Act.

8. The petitioners filed an application under Section 16 of the Act in respect of the jurisdiction and also filed an application under Section 12 of the Act, as according to them, the Arbitrator appointed by respondent No.1 was biased and partial and the appointment of respondent No.2 as Arbitrator has given rise to justifiable doubts as to the Arbitrators independence and impartiality. However, it was alleged by the petitioners that the respondent No.2 decided to proceed with the arbitration proceedings and passed the impugned award.

9. It is not denied by the petitioners that they and respondent No.1 entered appearance before the Arbitrator on 16 th November, 2011. The brief details of the arbitration proceedings as mentioned in the arbitration award read as under:1. 17.10.2011 2. 18.10.2011 3. 01.11.2011 4. 16.11.2011 OMP No.12/2013 Award dated 4.8.2010 was set aside by the Honble High Court on the ground that proper address of the Petitioner therein, respondent herein (Lucknowi Heritage), was not furnished to the arbitrator by the respondent therein, claimant herein, (GE Money Financial Services P. Ltd.) Demand Notice was sent by claimant to respondents. However Respondents failed to reply/make payment of the outstanding dues despite due service. Arbitration notice issued for appearance on 16.11.2011. The Arbitral procedure was defined i) Claimant was directed to supply paper book to respondents within 2 weeks, ii) Respondents were to file reply within 4 weeks.

5. 01.12.2011 6. 23.12.2011 7. 31.01.2012 8. 10.02.2012 9. 17.02.2012 10. 30.03.2012 OMP No.12/2013 filed with claim/reply. It was further clarified that no separate/ further date will be fixed for leading evidence as dispute/matter was based upon documentary evidence. Matter was Adjourned to 1.12.2011. The claimant supplied paper book to respondents. And matter was Adjourned to 23.12.11 for reply. Reply was not filed by the respondents. Respondents seek adjournment for filing reply for 31.1.12. Again Reply was not filed by the respondents. Respondents requested for adjournment for filing reply, last and final opportunity was given to respondents for filing reply for 10.2.12. Once again Reply was not filed. Respondents again sought adjournment for filing reply. However no merit was found in their contentions and hence it was held that Respondents can file their reply before the next date of hearing with advance copy to claimant. And Matter was adjourned for final arguments for 17.2.2012. Respondent filed reply and simultaneously moved application under sections 12 and 16 of arbitration act. Since advance copy of the reply was not supplied to the claimant, the reply was not taken on record. The Applications under sections 12 and 16 of arbitration act were dismissed. Arguments were heard on claim/dispute. Order was reserved. Letter dated 17.2.2012 was received from respondents. In the interest of justice, Respondents were given one last opportunity 11.

12. 10. 27.04.2012 09.08.2012 documents in support thereof within 7 days. Another application for extension of time for filing affidavit of evidence was received from respondents. Application was dismissed being without merits. Claimant filed Stamp Papers. It appears from the Award that the Arbitrator has discussed the case of the petitioners so as their objection. It is a speaking Award. As per the agreement, the seat of the Arbitration was at New Delhi. The petitioners have now challenged the Award passed by the Arbitrator.

11. The petitioners counsel sought time on 8th January, 2008 to take instructions to deposit atleast part decreetal amount of Rs.29 lac without prejudice. When the matter is listed today i.e. 17th January, 2013, learned counsel appearing on behalf of the petitioners has informed the Court that the petitioners have not given any positive response to his call about depositing part of the outstanding amount. In the objection, the petitioners have merely taken the technical objections. No one appeared on behalf of the respondents despite of advance service. However, as far as merits of objections are concerned, I do not find any merit to set aside the Award passed by the learned Arbitrator who has dealt with all pleas raised by the petitioner.

12. It is settled in law that the jurisdiction of the Court to interfere with an Award made by an Arbitrator is extremely limited and consequently the Court while entertaining an objection petition under Section 34 of the Act cannot sit as a Court of Appeal and that evidence is not to be re-appreciated. a) In the case of Markfed Vanaspati and Allied Industries Versus Union of India, reported in (2007) 7 Supreme Court Cases 679, in paragraph 17, the concept of Arbitration has been laid down by the Apex Court in the following words which are reproduced as under:Arbitration is a mechanism or a method of resolution of disputes that unlike court takes place in private, pursuant to agreement between the parties. The parties agree to be bound by the decision rendered by a chosen arbitrator after giving hearing. The endeavour of the court should be to honour and support the award as far as possible. b) In the case of Municipal Corporation of Delhi Versus Jagan Nath Ashok Kumar, reported in (1987) 4 SCC 49.it has been held by the Apex Court that the appraisement of evidence by the arbitrator is ordinarily never a matter which the Courts questions and considers. It may be possible that on the

same evidence the Court may arrive at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground for setting aside the award. c) Recently, in P.R. Shah, Shares and Stock Brokers Private Limited Versus B.H.H. Securities Private Limited And Others, reported in (2012) 1 Supreme Court Cases 594, the Apex Court in paragraph 21; the relevant portion of which is reproduced as under has observed that:21. A Court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34 (2) of the Act. Therefore, in the absence of any ground under section 34 (2) of the Act, it is not possible to reexamine the facts to find out whether a different decision can be arrived at.

13. Applying the law laid down by the various Courts including the Apex Court to the facts of the present case and on perusal of the award and objections filed by the petitioners, this Court finds no merit in the present objections filed by the petitioners. The objections are accordingly dismissed except the rate of pendente lite and future interest awarded by the learned Arbitrator . To that respect only the Award is modified for the reasons given below : a) As per the Loan Agreement bearing not HBOH00001306, the respondent No.1 granted loan to the petitioners to the tune of Rs.36 lacs and later on the petitioners also availed a TOP UP of loan of Rs.15,93,122/- thereby total loan granted to the petitioners by respondent No.1 is in the sum of Rs.51,93,122/- for a period of 180 months. b) The petitioners agreed to repay the said loan amount along with interest thereon @ 13.39% per annum, in monthly installments of Rs.64,551/-. Some instalments admittedly paid by the petitioners. c) In the first arbitration award passed on dated 4th August, 2009, it was alleged by the respondent No.1 that as on 14th February, 2009 the petitioner owed a total sum of Rs.55,71,905/- in view of the loan disbursed by the respondent No.1 to the petitioners. The said Award was set aside on account of the mistake of the respondent No.1 as there was no proper service at the address of the petitioner as was furnished to the Arbitrator. Liberty was granted to the respondent to seek appropriate remedies. Therefore, on 18th November, 2011 the respondent No.1 again invoked the arbitration clause.

14. In the claim-statement by order dated 17th November, 2011 filed in the year 2011 by respondent No.1, a claim of Rs.88,05,340.89/- along with interest @ 24% per annum from 18th October, 2011 till date of realization of the amount was made. Though in the first award when it was passed on 4th August, 2009, the amount was awarded by the learned Arbitrator of Rs.5571905/- as outstanding loan alongwith interest @18% p.a. on the principle amount of Rs.5571905/- from 21.2.2009 till the actual date of payment. As mentioned it was set aside on 17th November, 2011 due to the mistake of respondent No.1, how can now claimed a huge interest i.e. Rs.33,33,435.89 at the rate 24% p.a. from 14th February, 2009 to 18th October, 2011 (i.e. the period of two years and 8 months and 4 days) and further @ 24% p.a. granted by the learned Arbitrator as pendente lite and future interest. I am of the view that it is not justifiable as it would be literary not possible for the litigant who belongs to a middle class family to pay such high rate of interest when it was the mistake of the respondent No.1 not to serve the petitioner at the proper address. Further, it is undisputed fact that the amount awarded by the learned Arbitrator in first Award for sum of Rs.55,71,905/- includes the interest @ 13.39 % p.a.

15. In the light of the decision of the Supreme Court in State of Haryana Vs. M/s. S.L. Arora and Company, AIR 201.SC 1511.the above award of interest on interest by the Arbitral Tribunal cannot be sustained in law. Although the correctness of the said decision is pending consideration for a larger Bench of the Supreme Court, this Court is bound by the decision in State of Haryana Vs. M/s. S.L. Arora and Company as it presently holds the field. Consequently, the post-Award dated 4th August, 2011, the interest awarded by the Arbitral Tribunal @ 12% per annum will be applicable only to the principle amount awarded and recovery of Rs.55,71,905/- from the date 21.2.2009 till the actual date of payment received by the respondent No.1.

16. The petition is disposed of in the above terms. No order as to costs. (MANMOHAN SINGH) JUDGE JANUARY 17 2013