

(2015) 03 BOM CK 0044

In the Bombay High Court

Case No : Arbitration Petition No. 1399 of 2014

Rajnikant B. Vora

APPELLANT

Vs

Fincruise Credit Services Pvt. Ltd.

RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 12, 16, 24, 24 (2), 24 (3)

Citation : (2015) 6 ALLMR 211 : (2015) 6 MhLj 515

Hon'ble Judges : R.D. Dhanuka, J.

Bench : Single Bench

Advocate : Omar K. Shaikh and Ambrin Khan i/by Akhlak A. Khan, for the Appellant

Judgement

R.D. Dhanuka, J.—Learned counsel appearing for the petitioner has tendered an affidavit of service dated 9th March 2015. He has also placed reliance on the affidavit of service dated 19th January 2015 which indicates that the respondent has been served with paper and proceedings of the arbitration petition. None appeared for the respondent though served.

2. By this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the said Arbitration Act), the petitioner has impugned the arbitral award dated 5th June 2014 passed by the learned arbitrator ex parte directing the petitioner to pay a sum of Rs. 3,12,183/-to the respondent as on 18th September 2013 with interest @ 18% p.a. from 29th October 2013 till the date of award and further interest @18% p.a. on the amount awarded from the date of award till payment and a sum of Rs. 5,000/-as arbitration costs. Some of the relevant facts for the purpose of deciding this petition are as under :

3. It was the case of the respondent that the petitioner had availed loan facility from Barclays Investments and Loan India Limited in the sum of Rs. 4,50,000/- which was alleged to have been sanctioned and disbursed vide agreement dated 3rd May 2008. It was the case of the respondent that the said loan account was transferred/assigned to JFC Finance India Ltd. vide agreement dated 7th

November 2012. The said JFC finance India Ltd. thereafter transferred the said portfolio including the loan availed by the petitioner to the respondent herein. The dispute arose between the parties. The respondent appointed a sole arbitrator. Learned arbitrator issued a notice on 7th October 2013 to the petitioner with a direction to remain present on 22nd October 2013. It is the case of the petitioner that the petitioner could not appear on 22nd October 2013.

4. It is the case of the petitioner that the petitioner vide his advocate's letter dated 5th December 2013 approached the venue office and filed two applications, one for giving inspection of original documents and another under Section 12 of the Arbitration and Conciliation Act, 1996. The next date of hearing orally intimated to the petitioner was 13th December 2013. On 13th December 2013, the learned arbitrator was not present. The petitioner was told by Mr. Sanjay Kadam that the arbitrator will not preside on that day.

5. It is the case of the petitioner that the petitioner did not receive any notice of future dates of hearing. The petitioner, therefore, vide his advocate's letter dated 16th December 2013 placed on record what had transpired on 13th December 2013.

6. Learned counsel appearing for the petitioner invited my attention to various correspondence annexed to the arbitration petition and also the copies of the applications filed by the petitioner before the learned arbitrator under Section 12 read with Section 16 of the Arbitration and Conciliation Act, 1996. Learned counsel submits that copies of the applications were forwarded to the learned arbitrator along with covering letter dated 16th December 2013 by the petitioner's advocate. My attention is invited to the acknowledgment card issued by the postal department and it is submitted that though the said proceedings were sent to the learned arbitrator, the learned arbitrator did not consider the said applications.

7. Learned arbitrator rendered an award on 5th June 2014. Copy of the said award was served upon the petitioner on 10th July 2014. The petitioner immediately vide his advocate's letter dated 16th July 2014 placed on record what had transpired and that the impugned award was biased, without giving any opportunity of being heard to the petitioner and without informing the next date of hearing to the petitioner. There was no reply from the learned arbitrator to the said letter.

8. Learned counsel for the petitioner invited my attention to the Minutes of Meeting held by the learned arbitrator on 5th June 2014 and would submit that even according to the said roznama, it is clear that the respondent was directed to file its claim affidavit along with related documents on 8th July 2014. In the same meeting, the learned arbitrator recorded that further directions would be issued on that day. He submits that though the matter was adjourned on 5th June 2014, the learned arbitrator has alleged to have rendered an award on 5th June 2014 itself. He submits that neither any proceedings nor any affidavit of

evidence came to be served upon the petitioner. The petitioner was not served with any further notice of hearing by the learned arbitrator. He submits that though the petitioner had filed two applications before the learned arbitrator, there is no reference to those applications in the impugned award at all. Learned arbitrator has acted bias and was totally one sided.

9. None appeared for the respondent though served. No affidavit-in-reply is filed. Averments made in this petition are deemed to have been admitted. A perusal of the record indicates that the petitioner had filed two applications on 5th December 2013 i.e. one for giving inspection of original documents and other under Section 12 of the Arbitration and Conciliation Act, 1996. Learned arbitrator has, however, not referred to any of the applications in the impugned award nor has dealt with such applications before rendering the impugned award. Learned arbitrator was not present on 13th December 2013 when the meeting was fixed by the learned arbitrator. It is the case of the petitioner that the petitioner had been to the venue office of the learned arbitrator on 13th December 2013 when the learned arbitrator was not available. The petitioner placed on record what had transpired on that date i.e. 13th December 2013 vide his advocate's letter dated 16th December 2013.

10. A perusal of the roznama indicates that on 5th June 2014, the respondent had appeared before the learned arbitrator through its advocate. It is the case of the petitioner that since no notice was issued to the petitioner, the petitioner was absent. The said roznama indicates that in the said meeting, the learned arbitrator directed the respondent to file its claim affidavit along with related documents on 8th July 2014 and the matter was accordingly adjourned to 8th July 2014.

11. It is curious to note that the learned arbitrator, however, rendered the award on 5th June 2014 itself. A perusal of the award indicates that the learned arbitrator has referred to and relied upon the alleged affidavit filed by one Mr. Sanjay Kadam dated 30th April 2014. No roznama of the learned arbitrator taking any such alleged affidavit of evidence dated 14th December 2014 taken on record had been served upon the petitioner. It is clear that the learned arbitrator has considered the alleged affidavit dated 30th April 2014 which was not served upon the petitioner. In my view, if the matter was already adjourned by the learned arbitrator on 5th June 2014 to 8th July 2014 for the purpose of filing affidavit of evidence of the respondent along with related documents, the learned arbitrator could not have rendered the award on 5th June 2014.

12. Be that as it may, the learned arbitrator, in my view, could not have considered the alleged affidavit of evidence without effecting the service of such affidavit upon the petitioner by the respondent no. 1. Learned arbitrator could not have proceeded with the matter without effecting any service of notice of hearing. Under Section 24 (2) of the Arbitration Act, the learned arbitrator has to give sufficient advance notice of any hearing and of any meeting of the arbitral tribunal to the parties. Under Section 24 (3) of the Arbitration Act, all

statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party have to be communicated to the other party. Similarly any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision has to be communicated to the parties. It is clear that the learned arbitrator has relied upon the statement of claim and documents and also the affidavit of evidence which were not served upon the petitioner. The impugned award is thus contrary to Section 24 of the Arbitration and Conciliation Act, 1996 and is in gross violation of the principles of natural justice.

13. A perusal of the award also clearly indicates that the award dated 5th June 2014 is ante-dated. The petitioner, in my view, has made out a strong case for setting aside the award on the ground that the petitioner was unable to present his case under Section 34(2)(iii) of the Arbitration Act and on the ground of violation of principles of natural justice. The award, in my view, is totally vitiated and the same thus deserves to be set aside.

14. I, therefore, pass the following order :-

- a) Arbitration Petition is made absolute in terms of prayer clauses (a) and (b).
- b) There shall be no order as to costs.