

Original Petition No. 1172 of 2018

E.P. Paramasivam v. Sundaram Finance Ltd.

2019 SCC OnLine Mad 6740

In the High Court of Madras
(BEFORE S. VAIDYANATHAN, J.)

E.P. Paramasivam and Another Petitioners.

v.

Sundaram Finance Ltd. Respondent.

Original Petition No. 1172 of 2018

Decided on January 25, 2019

Advocates who appeared in this case :

For Petitioners: Mr. K. Kumareshbabu, for Mr. P. Muthukumaarasaamy

For Respondent: Mr. S. Suresh

The Order of the Court was delivered by

S. VAIDYANATHAN, J.:— Respondents before the Arbitrator are Petitioners before this Court seeking to set aside the Arbitral Award dated 04.04.2017 made in Arbitration Case No. MS/SF/204/2014 passed by the sole Arbitrator.

2. The Respondent herein is the Claimant before the Arbitrator. It is their case that the 1st Petitioner herein approached them seeking to extend loan facility for the purchase of VE CV EICHER 3531, 2012 Model and thereafter, the 1st Petitioner entered into a Loan Agreement dated 30.05.2012 bearing Contract No. HZ267667 with the 1st Respondent/Claimant in respect of the said vehicle for a sum of Rs. 23,31,000/-, which was agreed to be repayable in 47 monthly instalments. The 2nd Petitioner herein stood as a Guarantor to the said loan transaction vide Guarantee letter dated 30.05.2012.

3. It is the case of the 1st Respondent/Claimant that the 1st Petitioner committed default in payment of instalments, despite several demands by them. Since the 1st Petitioner was unable to pay the instalments properly, he surrendered the vehicle in question on 20.11.2013. Thereafter, by letter dated 25.11.2013, the 1st Respondent/Claimant intimated the fact of surrender of the vehicle to the Petitioners and called upon them to settle the contract. After affording enough opportunity to the Petitioners, the 1st Respondent/Claimant invited offers for sale of the vehicle. Thereafter, the 1st Respondent/Claimant sold the vehicle in 'as is where is' condition on 27.01.2014 for a sum of Rs. 8,05,000/- and called upon the Petitioners to settle the contract and in that regard, the 1st Respondent/Claimant sent a legal notice dated 07.04.2014 to the Petitioners.

4. As the Petitioners did not come forward to settle the contract, the 1st Respondent/Claimant initiated Arbitration proceedings against them. The Arbitrator issued notice to both the Petitioners and they acknowledged receipt of the same. However, neither of them turned up for hearing before the Arbitrator. After examining the oral and documentary evidence available on record, the learned Arbitrator passed the following Award:

"23. In the result, I pass an Award directing the Respondents to pay a sum of Rs. 6,45,780.19 with interest at 18% per annum from 27.01.2014 till the date of realization, with Rs. 5,500/- being the costs of Arbitration proceedings made upto Rs. 4,000/-, the remuneration of the Arbitrator and Rs. 1,500/- being the expenses

of the Arbitrator."

5. Learned counsel for the Petitioners submitted that the 1st Petitioner was diligent in making the payments every month and only one instalment was pending to be paid as on 20.11.2013 and that the 1st Petitioner was forced to hand over the possession of the **vehicle** to the 1st Respondent/Claimant. He contended that when the cost of the **vehicle** was more than Rs. 20 lakhs, it was sold at a rock-bottom price of only Rs. 8 lakhs. Learned counsel went on to state that the 1st Petitioner was served with a Legal Notice dated 07.04.2014 by the 1st Respondent/Claimant, demanding payment of a sum of Rs. 6,45,780/- and thereafter, he was served with the Arbitration Notice and that the 1st Petitioner has also filed his Written Statement in the Arbitration Proceedings.

6. Learned counsel for the Petitioners drew the attention of this Court to an order dated 24.01.2017 passed by this Court in A. No. 249 of 2017 in A. No. 1853 of 2015, wherein, it was held that the 1st Petitioner herein (who was the 1st Respondent therein) is not a chronic defaulter and that he should have been given another opportunity of being heard and there is complete violation of the principles of natural justice and that there is no harm in giving yet another opportunity to the Petitioner to put forth their arguments.

7. In support of his case, learned counsel for the Petitioner has relied on the following decisions:

- (i) a Delhi High Court judgment in the case of *Lovely Benefit Chit Fund & Finance Pvt. Ltd. v. Shri Puran Dutt Sood*, reported in 1983 (5) DRJ 27, relevant portion of which, reads as under:

"10. The question for decision is whether in this case the Arbitrator should have given notice of change of venue and of his intention to proceed ex-parte against the Respondents when they had not appeared before him. There is no hard and fast rule of giving notice by the Arbitrator of his intention to proceed exparte or to change the venue of arbitration proceedings. But, the principles of natural justice require that a person cannot be condemned unheard and he should be afforded a reasonable opportunity of being heard. ..."

- (ii) a decision of the Bombay High Court in the case of *Loot (India) Pvt. Ltd. v. Reliance Capital Limited* reported in 2013 SCC OnLine Bom 1766, wherein, it is held as under:

"28. The principle of natural justice as settled, is not a strict jacket formula to be applied in every matter. The judgments so cited by the learned counsel appearing for Respondent No. 1 in support of the reasons, nowhere expressed and/or prohibited and/or declared that the Court under Section 34 in no circumstances should hear and/or consider the case and/or sufficient reason and/or material available on record to interfere with such ex-parte award. There are **cases**, as cited even by the learned counsel appearing for the petitioners, thereby the ex parte awards are quashed and set aside for the reasons so recorded. ..."

- (iii) a decision of the Andhra Pradesh High Court at Hyderabad in the case of *Nadendla Gopala Rao v. Steel City Securities Ltd., Visakhapatnam* reported in 2010 SCC OnLine AP 206, relevant portion of which, reads as under:

"18. We are fortified with our view from the judgment of Allahabad High Court in *Thakur Singh v. Kandai*, AIR 1935 All. 852, wherein, it was held when the party on receiving the first notice by which he was asked to appear before the Arbitrator to participate in the proceedings fails to appear, then the Arbitrator has to direct that he shall proceed with the reference ex-parte. This does not entitle the Arbitrator to straightaway award the claim against the defaulting party ex-parte."

8. Heard the learned counsel on either side and also gone through the material documents available on record.

9. A reading of the decisions relied on by the learned counsel for the Petitioners would make it clear that the principles of natural justice need to be followed. The purpose of the enactment is to ensure that there is quick disposal after due opportunity of hearing to the parties. In the present case on hand, the Arbitrator has sent notice to the Petitioners herein on 31.07.2014 and the Petitioners have acknowledged the receipt of the same. It is further seen that the 1st Respondent/Claimant had sent copies of the Claim Statement along with connected documents to the Petitioners, for the hearing on 23.10.2014. Though the 2nd Petitioner acknowledged the receipt of notice, there was no representation on behalf of the Petitioners 1 and 2. Hence, the matter was posted for evidence on 16.06.2016. Detailed evidence was let in on the side of the 1st Respondent/Claimant and after going through the evidence available on record, the Arbitrator has directed the Petitioners herein to pay the outstanding dues to the 1st Respondent/Claimant with accrued interest.

10. Thus, it is seen that the Petitioners were given due opportunity of hearing as regards the Arbitration Proceedings. The contention of the Petitioners that there was no proper notice, and that the *ex parte* Award passed against them needs to be set aside and that they must be given another opportunity of hearing, cannot be accepted, as, the Petitioners were given ample time to appear before the Arbitrator and put forth their case. Nothing prevented the Petitioners from either repaying the amount in instalments periodically or send a communication to the Arbitrator requesting for an opportunity of hearing. Hence, the decisions relied on by the learned counsel for the Petitioners may not be applicable to the facts of this case.

11. Any person who borrows money is liable to pay the same and he cannot escape on technicalities. After hearing this matter, this Court had suggested as to whether there is any possibility of settlement between the parties. Learned counsel on either side sought time to take instructions from the parties and reported that the parties are not interested for settlement.

12. Furthermore, it has to be noted that the Petitioners herein have slept over the matter for more than 18 months. Even though the Petitioners have been set *ex parte* by the Arbitrator, they have been given reasonable opportunity of hearing. This Court is of the view that the Arbitrator has rendered a finding on merits and there is no valid reason to interfere with the same.

13. Accordingly, the Original Petition stands dismissed. No costs. Consequently, connected Application No. 10088 of 2018 is closed.