IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 239 OF 2023

1) Manjula Dinesh Rita]
601, 6th Floor, Bhavya Building,]
5th Road, Opp. Jain Temple, Khar]
(West), Mumbai 400 052.]

2) Komal Bhadresh Nissar]
A/301, 3rd Floor, Saraswati Tower,]
Vasudev Mishra Marg, Andheri (East),]
Mumbai 400 069.]

3) Niral Nimesh Satra]
A/201, 2nd Floor, Mangal Villa, Tejpal]
Road, Dwarkadish Mandir, Vile Parle]
East Mumbai 400 057.]

4) Bhavya Dinesh Rita]
601, 6th Floor, Bhavya Building, 5th Road,]
Opp. Jain Temple, Khar (West),]
Mumbai 400 052.] ...Petitioners

Versus

1) Lokmanya Multipurpose Co-operative]
Society Ltd, having its branch office at]
Ground Floor, Bhavya Sphurthy CHSL]
7/620, Kastur Park, Shimpoli Road,]
Borivali (West), Mumbai 400 092.] ...Respondent No.1

2) Mitesh Champakbhai Rita]
Flat No. 5, 2nd Floor, Haji Mansion,]
5th Road, Khar (West), Mumbai - 400 052] ...Respondent No.2

Mr. Rushabh Sheth a/w Mr. Parth Parikh i/b Mr. Dhiren H. Shah for the Petitioners.

Mr. Avinash B. Avhad a/w Mr. Mahesh V. Rawool a/w Mr. Anuj Kathed and Mr. Sachin Gawade i/b Mr. Dinesh Khaire for the Respondent No. 1

Ms. Riddhi Dhamecha i/b Miloni Gala for the Respondent No. 2.

CORAM	**:**	**SHARMILA U. DESHMUKH J.**
RESERVED ON	**:**	**AUGUST 07, 2026.**
PRONOUNCED ON	**:**	**SEPTEMBER 16, 2026**

JUDGMENT :

1. By this Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, "**Arbitration Act**"), the Petitioners impugn the Award dated 7th March, 2022 passed by the Learned Arbitrator appointed under Section 84 of the Multi State Co-operative Societies Act, 2002, directing the Petitioners and Respondent No.2 to jointly and severally pay to the Respondent No.1, sum of Rs.18,95,34,034.10 together with interest @ 18% per annum and additional penal interest @ 2% per annum from 12th October, 2020 till the date of complete realization of the amount, with costs of Rs.2,00,000/- within 30 days from the date of the award.

2. The case set out in the Petition is that the Petitioners No. 1 to 4 are the legal heirs of one Dinesh Shamji Rita, who expired on 6th May, 2018. Petitioner No.1 is the widow of the deceased and one of the guarantors to the loan of Rs.1,50,00,000/- disbursed by the Respondent

No. 1 to the deceased Dinesh Rita. Petitioners No. 2 to 4 are the children of the deceased. The Respondent No.1 is a Multi Purpose Co-operative Society Limited, registered under the Multi State Co-operative Societies Act, 2002 (for short, "**MSCS Act**"), having its head office at Belgaum and a branch office at Borivali (West), Mumbai.

3. In the year 2012, the deceased Dinesh Rita had approached the Borivali (West) branch of the Respondent No.1 for sanction of cash credit facility with a limit of Rs.1,50,00,000/- to meet the working capital requirement for his construction business. The loan application was submitted on 27th February, 2012 and Petitioner No.1 and Respondent No 2 stood as guarantors for the said credit facility. The credit facility of Rs.1,50,00,000/- was sanctioned on 22nd March, 2012 and the disbursements were made subsequently. Apart from the guarantees executed by Petitioner No.1 and Respondent No.1, Flat No.101, admeasuring 591.67 square feet carpet area, along with the terrace and three parking spaces of the building known as Laxmi Palace, situated at Khar (West), Mumbai was mortgaged as additional security with the Respondent No. 1.

4. It is claimed that the Respondent No.1 alleged that in September, 2012, the Respondent No.1 and the deceased Dinesh Rita were in the process of starting a joint venture and Respondent No.1 had paid a sum of Rs.3,00,00,000/- to the deceased as investment. There was discussion between the deceased and Respondent No.1 on 25th May, 2015 about restructuring the grant of Rs.3,00,00,000/- into a separate credit facility on the condition that the deceased would offer additional security by 30th June, 2015 and would close the earlier cash credit facility of Rs.1,50,00,000/- by payment along with interest by 31st July, 2015. The Petitioners claim that they were not informed by the deceased about the additional credit facility, nor had they executed any documents such as guarantees or undertakings in favour of the Respondent No.1, and no additional security was offered by the deceased, which was stated to be the condition for restructuring the grant of Rs.3,00,00,000/- into a separate credit facility.

5. On 16th September, 2019, a legal notice was issued by the Respondent No1 to the Petitioners alleging sanction of credit facility of Rs.4,50,00,000/- to the deceased and an outstanding debt of Rs.15,57,26,637/. The Respondent No.1 made claims on other properties of the deceased which were not mortgaged. The legal notice was responded by the Petitioner's Advocate's reply dated 3rd October, 2019, denying their liability. There was further exchange of correspondence re-iterating their respective stands.

6. On 9th December, 2020, an undated notice along with Arbitration Case No.76 of 2020 dated 12th October, 2020 was received from the learned Arbitrator, calling upon the Petitioners to remain present at the

Arbitrator's office on 14th December, 2020 in Belgaum, Karnataka. As the documents appended to the statement of claim were not served to the Petitioners, a legal notice was addressed on 7th December, 2020 to the Respondent No.1 and the learned Arbitrator, requesting them to provide a copy of the documents to prepare the reply to the claim. By communication dated 9th December, 2020, the Respondent No.1 refused to provide copies of the documents on the ground that the same could be obtained by the Petitioners from the learned Arbitrator on the next date of hearing in the arbitration proceedings. A reminder was sent on 11th December, 2020, which also challenged the jurisdiction of the Arbitrator as no part of the cause of action had arisen in Belgaum. No further communications were received by the Petitioners and the impugned award dated 7th March, 2022 was forwarded on 25th March, 2022 by the Respondent by letter dated 14th March, 2022. Hence the present Petition.

7. To the Petition, an affidavit-in-reply has been filed by the Respondent No.1, contending that the deceased Dinesh Rita had approached the Borivali (West) branch of the Respondent No.1 and requested sanction of cash credit facility of Rs.4,50,00,000/- and loan application for Rs.4,50,00,000/- was submitted on 5th August, 2012. The first disbursement of Rs.1,50,00,000/- was availed on 10th April, 2012, and the subsequent disbursement of Rs.3,00,00,000/- was made on 22nd

March, 2012. Petitioner No.1 and Respondent No.2 herein were guarantors of the loan facility, which was also secured by way of a registered mortgage. Since the Petitioners failed to clear the outstanding loan, the arbitration was initiated under Section 84 of the MSCS Act at Belgaum, Karnataka against the deceased Dinesh Rita through his legal heirs. Along with the notice, the Petitioners were also served with the statement of claim, however, the Petitioners denied the receipt of the documents annexed with the statement of claim and, instead of appearing in the arbitral proceedings, have addressed communication demanding the documents. It is stated that the Petitioners did not participate in the proceedings and, therefore, the arbitral proceedings were ordered to proceed *ex-parte*. It is stated that the arbitral proceedings were held in Belgaum, Karnataka, as the head office of the Respondent No.1 is situated at Belgaum, Karnataka, and the award has been passed by relying upon the evidence produced by the Respondent.

8. Mr. Sheth, learned counsel appearing for the Petitioners, submits that the cash credit facility sanctioned was to the tune of Rs.1,50,00,000/- in favour of the deceased Dinesh Rita,to which Petitioner No.1 and Respondent No.2 were guarantors. He would further point out the recitals and covenants of the mortgage deed, executed by the deceased to contend that the mortgage was in respect of overdraft facility of Rs.1,50,00,000/-. He submits that a sum of Rs.3,00,00,000/- was advanced as investment by the Respondent No.1 for starting joint venture and there are no documents produced to substantiate the grant of credit facility of Rs 4,50,00,000/. He would further point out the alleged minutes of the meeting held on 25th May, 2015, recorded on the letter-head of Respondent No.1, where the deceased is mentioned as representative of Bhavya Infrastructure Industries Private Limited. He submits that the endorsement on the minutes of the meeting is by the deceased on behalf of the private limited company and not in his individual capacity. He has taken this Court through the contents of the minutes recorded of meeting held on 25th May, 2015 to contend that there was no document produced to substantiate that the conditions as agreed were met by the deceased and separate cash credit account was opened to impose the liability of Rs 4,50,00,000/.

9. He submits that the arbitral award does not record the existence of the said document and despite thereof, the learned arbitrator has considered the disbursement under a loan facility of Rs.4,50,00,000/- and not Rs.1,50,00,000/-. He would further point out that the legal notice dated 16th September, 2019 addressed by Respondent No.1 to the Petitioners, acknowledges that a sum of Rs.13,00,000/- has been paid by the deceased, whereas the award ignores the payment made and mechanically grants the entire sum along with interest. He would submit that pertinently, there is no mention of the alleged minutes of the meeting dated 25th May, 2015 in the said legal notice.

10. He would further point out that the specific stand of the Petitioners was of denial of further loan facility of Rs.3,00,00,000/- and therefore the said fact was required to be proved by leading cogent evidence.

11. He would further submit that no notice invoking arbitration was received by the Petitioners. He submits that there is no disclosure as mandated under Section 12(1) of the Arbitration Act received from the Arbitral Tribunal. He submits that the documents annexed to the statement of claim was not served upon the Petitioners and despite several communications were not served upon the Petitioners. He submits that the arbitral award refers to service by substitution and, without any inquiry or efforts as regards the normal mode of service, Respondent No.1 was permitted to effect substituted service in one newspaper, which is treated as good service.

12. He submits that under Section 24 of the Arbitration Act, Respondent No.1 is bound to serve upon the Petitioners a complete copy of the statement of claim along with the documents and, as the request was denied, the Petitioners did not have a meaningful opportunity to present their case, which violates Sections 18 and 34(2)(a)(iii) of the Arbitration Act.

13. Taking the Court through the impugned award, he submits that the award is completely unreasonable, unintelligible and contrary to Section 31(3) of the Arbitration Act. He submits that there is no discussion on the evidence and no reasons given for awarding the amount of Rs.18,95,34,034.10 in favour of Respondent No.1. He submits that the impugned award accepts the case of Respondent No.1 that a cash credit facility of Rs.4,50,00,000/- was advanced without there being any loan document on record. He would submit that there is no reasoning as to how Petitioner No.1 and Respondent No.2, who were guarantors only in respect of a loan facility not exceeding Rs.1,50,00,000/-, became liable in respect of the principal loan amount of Rs.4,50,00,000/-.

14. He submits that considering the provisions of Section 84 of the MSCS Act, the legal heirs of the deceased, i.e., Petitioners No. 2 to 4, who are not even members, are made jointly and severally liable. He submits that there is no discussion as to the liability of legal heirs for debts of deceased and no material on record to show inheritance by legal heirs. He submits that the arbitral award is passed in contravention of Section 37 of the MSCS Act. In support, he relies upon the following decisions.

i. Ssangyong Engineering & Construction Co. Ltd. V/s. National Highways Authority of India (NHAI)[1].

ii. Delhi Metro Rail Corporation Ltd. V/s. Delhi Airport Metro Express Private Ltd[2].

iii. Associate Builders V/s. Delhi Development Authority[3].

iv. Dyna Technologies Pvt. Ltd. V/s. Crompton Greaves Ltd. [4]

v. Neerja Realtors Pvt. Ltd. V/s. Janglu (dead) through Legal Representative[5].

vi. Sunil Poddar & Ors. V/s. Union Bank of India[6].

15. *Per contra*, Mr. Avhad, learned counsel appearing for Respondent No.1, would submit that the arbitrator is the master of the quality and quantity of evidence and no interference under Section 34 is warranted. He would submit that the notice issued by the arbitrator is not undated, as the date of 6th December, 2020 is mentioned below signature of arbitrator. He would submit that no *bona fide* attempt was made by the Petitioners to participate in the proceedings, and only communications were addressed seeking documents, despite service of statement of claim. He submits that the Petitioners ought to have appeared before the Arbitrator and sought necessary documents. He submits that complete copy of the papers and proceedings was served upon the Petitioners, who received the documents at the same address

1 (2019) 15 SCC 131
2 (2024) 6 SCC 357
3 (2015) 3 SCC 49
4 (2019) 20 SCC 1
5 (2018) 2 SCC 649
6 (2008) 2 SCC 326

at which the award was sent. He submits that there was no communication addressed to the Arbitrator seeking necessary documents, which has been noted in the impugned award.

16. He would point out the finding in the impugned award that the Petitioners should have attended in person or through an authorized agent during the 5 adjournments, excluding the lock-down period, and collected copies of the required documents. He submits that the notice of hearing makes it clear that no postal correspondence will be entertained by the Arbitrator and, therefore, the only course which was available to the Petitioners was to appear before the Arbitrator.

17. He submits that there can be no challenge to the arbitral award as the Petitioners did not participate in arbitration proceedings. He has taken the Court through the findings in the impugned award to contend that the learned Arbitrator has considered the oral and documentary evidence on record to hold that a cash credit of Rs.4,50,00,000/- was disbursed under the cash credit loan account carrying interest as well as penal interest. He submits that as there was no contest, the evidence went uncontroverted and the award came to be rightly passed.

18. Mr. Avhad would submit that the decision in the case of ***Quippo Construction Equipment Private Limited versus Janardan Nirman Private Limited***[7], in the identical facts, has held that once the Petitioner

7 2020 AIR (SC) 2038

was served with the pleadings as well as the notice with a direction to remain present before the learned Arbitrator and having chosen not to do so, the Petitioner is itself to be blamed for an *ex-parte* award. He would submit that the Hon'ble Apex Court has held that a party in such a case cannot take undue advantage of its failure to appear before the Arbitrator and defend its case.

19. He would further point out that the decision in the case of ***Rajlaxmi Multistate Credit Co-operative Society Limited versus Gajanand Vasant Shirbhate***[8], by the Coordinate Bench, has held that the appointment of an Arbitrator under Section 84 of the MSCS Act does not require the consent of the Respondent and the same is valid. He would point out that the Court has also considered the issue of whether the guarantors are amenable to arbitration and it is held that the guarantors cannot escape liability merely by claiming non-membership, as they have voluntarily assumed such liability by signing binding legal documents.

20. As the entire arbitration proceedings were conducted at Belgaum, Karnataka, a query was raised by the Court on the jurisdiction of this Court, to which the parties have addressed arguments at length.

21. Mr. Sheth would contend that the arbitration was statutory arbitration under Section 84 of the MSCS Act and the appointment of

8 2025 DGLS (Bom.) 3407

the Arbitrator was by the Central Registrar. He submits that neither the MSCS Act nor the rules framed thereunder provide for designation of a seat or venue and there is no discussion in the arbitral award which defines or designates a seat for the purpose of the arbitral proceedings. He has taken this Court through Section 84(5) of the MSCS Act and Rule 30 of the Rules framed thereunder and would submit that the test to be applied is the Court which would have jurisdiction in context of Section 2(1)(e) of the Arbitration Act.

22. He submits that the original borrower and guarantors reside in Mumbai, the loan was sanctioned from the office of Respondent No.1 in Mumbai, the documents were executed in Mumbai, the mortgaged property is situated in Mumbai and, therefore, the entire cause of action has arisen in Mumbai. He submits that under Section 2(1)(e), the Courts in Mumbai would alone have jurisdiction had the same been a suit claim and, merely because the Respondent No.1's head office is in Belgaum, Karnataka, without any cause of action arising there, the district court there would not have jurisdiction.

23. He would further submit that Belgaum, Karnataka is not a seat designated by the parties, but is only a convenient venue selected for conducting the arbitral proceedings and there is no express designation of the venue at Belgaum for it to become a juridical seat of the arbitral proceedings. He would further point out the arbitral award to indicate that the award in the heading states 'sitting at Belgaum', which is a mere recital of a place which cannot constitute a seat for the purposes of Section 2(1)(e) of the Arbitration Act. To support his case on jurisdiction, he relies upon the following decisions.

i. BGS SGS Soma JV vs. NHPC LTD[9].

ii. The National Highways Authority of India, Govt. of India vs. Dinesh Singh[10].

iii. GEA Westfalia Seperator India Pvt. Ltd. vs. SVS Aqua Technologies LLP[11].

iv. United India Insurance Company Ltd. vs. Eastern Bulk Company Ltd.[12]

v. Gurumahima Heights Co-operative Housing Society Ltd. vs. M/s. Admirecon Infrastructure Pvt. Ltd.[13]

vi. King Chariot through its sole proprietor Mrs. Neelima Suri vs. Tarun Wadhwa[14].

vii. Patel Roadways, Bombay vs. Prasad Trading Company[15].

24. Mr. Avhad would rely upon the decision of ***GEA Westfalia Seperator India Pvt. Ltd. vs. SVS Aqua Technologies LLP (supra)***, which is also relied upon by Mr. Sheth on the issue of jurisdiction, to contend that this Court would not have jurisdiction as the said decision has held that the place where arbitration proceedings were conducted was held as the juridical seat.

9 2020 4 SCC 234
10 Arbitration Appeal No. 99 of 2021 decided on 7th May, 2025 before the Madhya Pradesh High Court.
11 2025 SCC Online Bom 3157
12 2019 SCC Online Bom 1404
13 Interim Application No. 3305 of 2022 in Comm. Arbitration Petition No. 130 of 2022 decided on 26th April, 2023 before the Bombay High Court
14 2024 SCC Online Del 4039
15 1991 4 SCC 270

25. Dealing first with the issue of jurisdiction, the arbitration in the present case is statutory arbitration under Section 84 of the MSCS Act. Section 84 of MSCS Act provides for reference of dispute of the nature specified therein amongst the classes specified therein to arbitration. Sub Section (5) of Section 84 of MSCS Act applies the provisions of Arbitration and Conciliation Act, 1996 (for short **"Arbitration Act"**) except as otherwise provided in MSCS Act. Under the enactment, the power to appoint the arbitrator vests in an authority created by the statute itself. The statutory reference to arbitration does not involve jurisdictional aspect and there is no designation of seat or venue of the arbitrator. Section 34 of Arbitration Act provides recourse to a Court against the arbitral award, which would be a Court as defined in Section 2(1)(e) of Arbitration Act as under:

> "(e) "Court" means—
>
> (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;"

26. The Court is therefore defined as principal Civil Court of original jurisdiction which would have jurisdiction over the subject matter of the arbitration, if the same would have been subject matter of suit. In the present case, the entire cause of action has arisen in Mumbai, however, sittings were held by the Learned Arbitrator in Belgaum, Karnataka. Section 20 of Arbitration Act governs the place of arbitration and reads as under:

> **“20. Place of arbitration.**
>
> (1) The parties are free to agree on the place of arbitration.
>
> (2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
>
> (3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at anyplace it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.”

27. In ***BGS SGS Soma JV vs. NHPC LTD*** (supra) a three Judge Bench of the Hon’ble Apex Court has held that the expression ‘subject matter of the arbitration’ used in clause (e) of sub-section (1) of Section 2 of the Arbitration Act has a reference and connection with the process of dispute resolution and hence it refers to a court which would essentially be a court of the ‘seat’ of the arbitration process. Referring to provisions of Section 20 of the Arbitration Act and after considering the ratio of Constitution Bench Judgment in ***BALCO Vs. Kaiser Aluminum Technical services Inc.***[16], the Hon’ble Apex Court underscored the distinction between sub-section (1) and (2) of Section 20 of Arbitration Act on one hand and sub section (3) of Section 20 on the other hand to hold that sub-section (2) of Section

16 (2012) 9 SCC 552

20 refers to the 'jurisdictional seat' whereas sub-section (3) refers to 'venue' of arbitration. The Hon'ble Apex Court in ***BGS SGS Soma JV vs. NHPC LTD*** (supra) thereafter proceeded to discuss the tests for determination of 'seat' of arbitration. It is held in Para 61 and 82 of the judgment thus:

> "61. **It will thus be seen that wherever there is an express designation of a "venue", and no designation of any alternative place as the "seat", combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.**
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> **82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings**, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced

> by the Arbitration Act, 1996 as applying to the "stated venue", which then becomes the "seat" for the purposes of arbitration."
>
> ***(emphasis supplied)***

28. The Hon'ble Apex Court has held that wherever there is an express designation of a 'venue' and no designation of any alternative place as the 'seat', the stated venue is actually the juridical seat of the arbitral proceedings. It is further held that whenever there is designation of a place of arbitration in an arbitration clause as being the 'venue' of the arbitration proceedings, the expression 'arbitration proceedings' would make it clear that the 'venue' is really the 'seat' of the arbitral proceedings.

29. In the present case, the heading of the arbitral award mentions "Sitting at Belgaum". Section 20(2) of Arbitration Act provides for determination of place of arbitration by the arbitral Tribunal having regard to the circumstances of the case including the convenience of the parties. The provision implies application of mind by the Learned Arbitrator which would demonstrate a conscious determination of the place of arbitration by the Learned Arbitrator. There is no material on record to demonstrate the exercise being conducted as contemplated under Section 20(2) of Arbitration Act. The holding of sittings at Belgaum is relatable to convenient place of meeting under Section 20(3) of Arbitration Act. As there is no express designation of venue or seat under the statutory scheme or determination under Section 20(1) or 20(2) of Arbitration Act, the fallback is Section 2(1)(e) of Arbitration Act, which would essentially be the court of the 'seat' of the arbitration process.

30. In the case of ***GEA Westfalia Separator India Private Limited vs SVS Aqua Technologies LLP*** (supra), the Co-ordinate Bench was considering the issue of territorial jurisdiction in case of arbitration proceedings conducted by the Facilitation Council under the provisions of Section 18 of Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**"). In the context of statutory arbitration, it noted the provisions of Section 2(1)(e) of Arbitration Act and held that it was the Facilitation Council in Pune that statutorily had territorial jurisdiction and the principal court with original jurisdiction would be the Court at Pune.

31. The learned Single Judge was considering the statutory arbitration conducted under Section 18 of the MSMED Act, which itself provides for the jurisdiction of the Facilitation Council in sub section (4) of Section 18 of the MSMED Act, within whose jurisdiction the supplier is located. As there was statutory territorial jurisdiction, the learned Single Judge held that Pune was the seat of arbitration.

32. In the present case, under MSCS Act, there is no conferment of statutory territorial jurisdiction. The original borrower and the guarantors have their place of residence in Mumbai. The office of Respondent No.1 from where the loan was sanctioned is situated in Mumbai. The loan agreement and the mortgage deed were executed in Mumbai, and the mortgaged property is also situated in Mumbai. There is no designation of seat or venue at Belgaum and no part of cause of action arises in Belgaum, Karnataka where the Learned Arbitrator has held its sittings. The Court as contemplated under Section 2(1)(e) of Arbitration Act, would therefore be the Court in Mumbai having supervisory jurisdiction.

33. Coming to the merits of the case, alongwith the notice dated 6th December, 2020, the statement of claim was served upon the Petitioners sans the documents appended to the statement of claim. Perusal of the list of documents annexed to the statement of claim would indicate that about 17 documents relied upon by the Respondent No.1 which includes promissory note of Rs 3,00,00,000/, loan agreement, registered mortgage deed, letter of guarantee etc. Immediately on 7th December, 2020, the Petitioners addressed a communication to the branch manager of Respondent No.1-bank, stating that no documents as mentioned in the list of documents have been received, and to provide copies of the documents to enable the Petitioners to file their reply to the same. The response of Respondent No.1 does not deny non supply of documents and instead calls upon the

Petitioners to obtain the copies from Arbitrator on the scheduled date of hearing. The repeated request on 11th December, 2020 with copy endorsed to the Learned Arbitrator was met with the same response.

34. The notice with the Arbitrator's signature dated 6th December, 2020 was served upon the Petitioners intimating the date of hearing on 14th December, 2020 at Belgaum. The parties are residing at Mumbai and the hearing was scheduled in Belgaum during the COVID 19 pandemic. After the issuance of the first notice of hearing, no further notices of the meetings of arbitration were issued to the Petitioners. The impugned Award has been passed on 7th March, 2022 and mentions about five adjournments excluding the lock down period. The arbitration proceedings were therefore adjourned from time to time without any notice of subsequent hearings given to the Petitioners. The Learned Arbitrator ordered the arbitration proceedings to proceed *ex-parte* without giving any notice to the Petitioners. The impugned Award refers to the Affidavit of evidence filed by the Regional Manager of the Respondent No.1 alongwith documents. There is no service of Affidavit of evidence and documents upon the Petitioners.

35. As noted above, immediately upon receiving the notice of arbitration, the Petitioners called upon the Respondent No.1 to furnish the documents, which request was declined contending that the copies can be obtained from the Learned Arbitrator. The impugned Award refers to the communications addressed by the Petitioners seeking the documents from the Respondent No.1 and expresses disapproval of the copy of communication seeking documents being endorsed to the Arbitrator. The Learned Arbitrator holds that the Petitioners should have attended in person or through authorised agent and collected copy of required documents. In this context, the provisions of Section 24 of Arbitration Act are relevant and Sub-section (3) of Section 24 reads as under:

> "(3) All statements, documents or other information supplied to, or application made to, the arbitral Tribunal by one party shall be communicated to the other party and any expert report or evidentiary document on which the arbitral Tribunal may rely in making its decision shall be communicated to the parties."

36. The duty is cast on the party producing documents before the arbitral Tribunal to supply the same to the other party. The non compliance of Section 24(3) of Arbitration Act deprived the Petitioners of a full opportunity to present its case as mandated by Section 18 of Arbitration Act. Surprisingly, the Learned Arbitrator instead of taking appropriate note of the non compliance and issuing necessary directions to supply copies opines about requirement of personal attendance by the Petitioners. In ***Ssangyong Engineering & Construction Co. Ltd. V/s. National Highways Authority of India (NHAI)*** (supra), the Hon'ble Apex Court considered the ground of challenge under Section 34 (2)(a)(iii) of Arbitration Act. It noted the provisions of Section 18 and Section 24(3) of Arbitration Act and held in paragraph 51 as under:

> "51. Sections 18, 24(3), and 26 are important pointers to what is contained in the ground of challenge mentioned in Section 34(2)(a)(iii). Under Section 18, each party is to be given a full opportunity to present its case. Under Section 24(3), all statements, documents, or other information supplied by one party to the arbitral tribunal shall be communicated to the other party, and any expert report or document on which the arbitral tribunal relies in making its decision shall be communicated to the parties. Section 26 is an important pointer to the fact that when an expert's report is relied upon by an arbitral tribunal, the said report, and all documents, goods, or other property in the possession of the expert, with which he was provided in order to prepare his report, must first be made available to any party who requests for these things. Secondly, once the report is arrived at, if requested, parties have to be given an opportunity to put questions to him and to present their own expert witnesses in order to testify on the points at issue."

37. Section 34(2)(a)(iii) of Arbitration Act presents a ground to set aside the award where the party making the application was not given proper notice of the appointment of arbitrator or of the arbitral proceedings or was unable to present his case. As to what would constitutes failure to give proper notice or inability of opportunity to present his case is relatable to Section 18 and Section 24(3) of Arbitration Act.

38. Applying the settled position of law to the facts of present case, the failure to supply the necessary documents including Affidavit of Evidence to the Petitioners, failure to give notice of subsequent hearings and failure to intimate the minutes of the arbitration meetings constitutes denial of proper opportunity to the Petitioners to present their case and vitiates the award under Section 34(2)(a)(iii) of the Arbitration Act.

39. The Respondent No.1's claim was based on advancing of cash credit facility of Rs 4,50,00,000/ to the deceased Dinesh Rita secured by mortgage of Flat No 101 and guaranteed by the Petitioner No.1 and Respondent No 2 dated 10th April, 2012. The Letter of Guarantee executed by the Petitioner No.1 and Respondent No.2 was for sum of Rs 1,50,00,000/. The mortgage deed executed by the deceased mentions the overdraft facility of Rs 1,50,00,000/.

40. The impugned Award restates the contents of the Affidavit of Evidence of the Respondent No.1's witness and holds in paragraph 12 as under:

> " 12. The entire deposition of the Regional manager Shri Ramesh Shirsat and the documents including the statement of account Exh P 16 is gone uncontested although ample opportunity was given to them. In such circumstances the Disputant Society deserves the order in their favour as under:
>
> **<u>O R D E R</u>**
>
> The Opponents 1(i) who is also Opponent No.3, Opponent No.1(ii) , Opponent No.1(iii), Opponent No.1(iv) and Opponent No.2 shall jointly and severally pay to the Disputant Society a sum of Rs.18,95,34,034.10Ps (Rupees eighteen crores ninety five lakhs thirty four thousand thirty four and ten paises only) together with interest @ 18% p.a. and additional penal interest @ 2% p.a. from 12/10/2020 till the date of complete realisation of the amount, with costs of Rs.2,00,00,000/- (Rupees two lakhs only) within 30 days from the date of this award.
>
> If the Opponents fail to comply with the award then the Disputant Society will be free to execute the award in terms of law.
>
> The signed copy of the award shall be furnished to the parties present.
>
> Belgaum, 7th March 2022."

41. In ***Dyna Technologies Pvt. Ltd. V/s. Crompton Greaves Ltd.*** (supra), the Hon'ble Apex Court considered the issue of requirement of reasoned award. It noted the provisions of Section 31(3) of Arbitration Act and held in paragraphs 34 and 35 as under:

> "34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the Courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regards to the speedy resolution of dispute.
>
> 35. When we consider the requirement of a reasoned order three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasoning in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."

42. The impugned Award fails on all requirements of reasoned award. There is no discussion and no findings on the oral and documentary evidence produced by the Respondent No.1. The Learned Arbitrator has merely restated the contents of the affidavit of evidence and referred to the documents produced without any discussion on the evidence and has accepted the claim of the Respondent No.1 of sum of Rs.18,95,34,034.10.

43. The learned Arbitrator has ignored vital evidence that letter of guarantee by the Petitioner No.1 and the Respondent No.2 was for a sum not exceeding Rs.1,50,00,000/-. It also ignored that the loan application executed by the deceased, to which the Petitioner No.1 and Respondent No.2 had guaranteed, was for a sum of Rs.1,50,00,000/-. The learned Arbitrator has also ignored that the mortgage deed executed by the deceased was for securing the overdraft facility of Rs.1,50,00,000/-. The collateral security and guarantee was in respect of facility of Rs 1,50,00,000/ and the guarantors have been held jointly and severally liable for the credit facility of Rs 4,50,00,000/ with interest and penalty. The impugned Award suffers from perversity and is patently illegal.

44. Coming to decision cited by Mr. Avhad, In the case of ***Quippo Construction Equipment Private Limited versus Janardan Nirman Private Limited***, (*supra*) the Hon'ble Apex Court was concerned with the issue of place of arbitration. In that case, the Respondent had failed to participate in proceedings before the arbitrator and did not raise any submission that the arbitrator did not have jurisdiction, in which case the Respondent is deemed to have waived all such objections. Though in present case, Mr. Sheth would also argue on the objection to jurisdiction being raised in Petitioner's communication, this Court has not found the said contention as a ground to set aside the impugned award.

45. In the case of ***Jamboo Kumar Jain and Another Versus Tata Capital Financial Services Limited and Ors.***[17], the learned Single Judge of this Court was considering the challenge to the award on the ground that no notices were ever received by the Petitioners therein of the hearing of the arbitral proceedings. In that case, there was a dispute about the service of the notices upon the Petitioners. The learned Single Judge perused the record, which indicated that the Petitioners had been served with a copy of the statement of claim and also various notices, along with minutes of meetings from time to time, from the learned arbitrator at the address mentioned in the letters addressed by the Petitioners themselves. The learned Single Judge observed that there was acknowledgment of the receipt of statement of claim and receipt of various minutes of meetings by the Petitioners. It noted that the grievance of the Petitioners was that the objections raised in those letters, Section 16 of the Arbitration Act was required to be first decided by the arbitrator and, till such objections were decided by the

17 2015 (3) Bom. C.R. 571

learned arbitrator, the Petitioners would not appear in any of the meetings. The learned Single Judge further observed that only after rendering several opportunities to the Petitioners, the learned arbitrator had proceeded *ex-parte*, and the learned arbitrator had made it clear time and again that if the Petitioner chooses to remain absent, the learned arbitrator would proceed with the matter *ex-parte* against the Petitioners, which minutes of the meetings were forwarded and duly received by the Petitioners. The learned Single Judge held that once the Petitioners were served with the pleadings as well as the notices, and in spite thereof, have chosen not to file any written statement and not to remain present, the Petitioners themselves have to be blamed for an *ex-parte* award.

46. The learned Single Judge referred to the decision in the case of ***Sohan Lal Gupta versus Asha Devi Gupta***[18], where the Hon'ble Apex Court has held that for constituting a reasonable opportunity, the following conditions are required to be observed :

> "1) Each party must have notice that the hearing is to take place.
> 2) Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses.
> 3) Each party must have the opportunity to be present throughout the hearing.
> 4) Each party must have a reasonable opportunity to present evidence and argument in support of his own case.
> 5) Each party must have a reasonable opportunity to test his opponent's case by cross-examining his witnesses, presenting rebutting evidence, and addressing oral argument.

18 A.I.R. 2004 (8) S.C. 856

6) The hearing must, unless the contrary is expressly agreed, be the occasion on which the parties present the whole of their evidence and argument."

47. It also noted paragraphs 16 and 17 of the decision which reads as under :

"16. We are fortified with our view from the judgment of Allahabad High Court in (Thakur Singh v. Kandai) 4, A.I.R. 1935 Allahabad 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 proceeding 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. Whereas the Calcutta and Delhi High Courts expressed that when a party fails to appear on receiving the notice, the Arbitrator in such case should give notice of his intention to proceed ex-parte. In case of failure to issue such notice expressing his intention to proceed ex-parte, such failure may vitiate the award unless it is apparent that such failure has not caused any prejudice to the party against whom the ex-parte award has been made by the Arbitrator. See (Jaggilal Kamlapat v. General Fibre Dealers)5, AIR 1955 Calcutta 354; (Lovely Benefit Chit Fund and Finance (P) Ltd. v. Puran Dutta)6, AIR 1983 Delhi 413. However, Punjab and Haryana High Court also expressed the same view in (Premlal v. Om Prakash)7 AIR 1956 Punjab 187 , namely, arbitrator should adopt the similar procedure before proceeding with the case ex-parte and passing an award ex-parte.

17. Since we have satisfied that the arbitrator has not indicated that failure of the appellant's appearance on the fixed date he will not only decide jurisdictional issue and proceed with the claim of the respondent/applicant and pass ex-parte award, appellant was denied a reasonable opportunity to contest the claim. Hence, the award passed is in violation of principles of natural justice, is liable to be set aside. We accordingly do so. Since no other point with regard to jurisdiction of the arbitrator to entertain the dispute has been urged before us, it is not necessary for us to decide the jurisdiction of the arbitrator, which he already ruled he has jurisdiction to entertain the dispute."

48. The learned Single Judge also noted the decision of the Delhi High Court in the case of ***M/s. Lovely Benefit Chit Fund Finance Pvt. Ltd. Vs. Puran Dutt Sood and Others***[19] in paragraph 17, which reads as under :

19 10. A.I.R. 1983 Delhi 413

> "17. Learned counsel appearing for the petitioners placed reliance on the judgment of the Delhi High Court in case of (M/s.Lovely Benefit Chit Fund & Finance Pvt.Ltd. vs. Puran Dutt Sood and others)10, AIR 1983 Delhi 413 and in particular paragraph (11) thereof and submits that the arbitrator should fix another date for hearing and give notice to the defaulting party of his intention to proceed ex-parte on a specified date, time and place and even after notice if the defaulting party does not take part in the proceedings the Arbitrator may proceed in his absence. It is submitted that since the learned arbitrator did not issue any notice making it clear that he would proceed with the matter ex-parte on the alleged date of hearing, the award deserves to be set aside. Paragraph (11) of the said judgment of Delhi High Court in case of M/s.Lovely Benefit Chit Fund & Finance Pvt.Ltd. (supra) reads thus :-
>
> > "11. From these authorities, it is apparent that an Arbitrator ought not to proceed ex parte against a party if he has failed to appear at one of the sittings. The Arbitrator should fix another date for hearing and give notice to the defaulting party, of his intention to proceed ex pane on a specified date time and place. Even after notice if the defaulting party does not take part in the proceedings the Arbitrator may proceed in his absence".

49. Applying the said legal position to the facts of the present case, the decision, in fact, would assist the case of the Petitioners herein. In the present case, apart from the first notice which was issued, there were no subsequent notices of hearing before the arbitrator given to the Petitioners, and neither the minutes of the meeting nor the affidavit of evidence was served upon the Petitioners. It is only when there is conformity with service of notices and documents, that the Petitioners would be precluded from raising any grievance based on Award being *ex-parte* Award.

50. The position of law, as is evident from the various decisions which were considered by the learned Single Judge, is that a notice is required to be given by the arbitrator of his intention to proceed *ex-parte*, and even after notice, if there is no participation, the arbitrator may proceed in the absence of the defaulting party. In the present case, there is a complete go-by to the principles of natural justice, as after giving the first notice, no further notices were given, and the arbitrator has proceeded *ex-parte*.

51. In light of the discussion above, the impugned award is, unsustainable and is hereby quashed and set aside. The Arbitration Petition succeeds.

52. Interim applications, if any, does not survive for consideration and stands disposed.

[SHARMILA U. DESHMUKH, J.]