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

ARBITRATION PETITION NO.1546 OF 2014

Rosario J. Dmello & Ors.	...Petitioners
V/s.	
M/s.Kotak Mahindra Prime Ltd.	...Respondent

Mr.Chintamani Bhangoji for the Petitioners.

Mr.Jitendra Shukla for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 6TH APRIL, 2015.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996, the petitioners seek to impugn the arbitral award dated 26th May, 2014, directing the petitioners to pay a sum of Rs.84,655/- as on 13th January, 2012 with interest at the rate of 3% per month from 13th January, 2012 till payment and also costs of Rs.3000/-.

2. The arbitral award is impugned basically on two grounds i.e. (i) that the notice to take possession of the vehicle was not given to the petitioners at the correct address but at the old address of the petitioners, though the respondent knew the new address of the petitioners and (ii) that the respondents did not inform the petitioners about the sale proceeds realized from the sale of the vehicle before the learned arbitrator . It is submitted by learned counsel for the

petitioners that there was only one default committed by the petitioner and thus the respondent ought to have given proper opportunity to the petitioners to pay the said amount before taking any decision to repossess the vehicle and sale it.

3. Learned counsel for the respondent on the other hand invited my attention to the various findings of fact rendered by the learned arbitrator. It is submitted that the petitioners had admittedly committed two defaults and in support of this submission, learned counsel invited my attention to the reply of the petitioners to the notice of demand in which the petitioners have admitted two defaults in making payment of the two installments. It is submitted that the notice was given to the petitioners at the address available with the respondent. The daughter of petitioner No.1 was present at the said address and handed over the delivery of the said vehicle to the respondent. Under the provisions of the agreement entered into between the parties, the respondent was entitled to sell the said vehicle and recover the sale proceeds against the dues of the petitioners.

4. Learned counsel submits that this matter was adjourned on number of occasions even before the learned arbitrator for giving several opportunities to the petitioners to settle the dispute but the petitioners except taking the adjournments before the learned arbitrator did not give any concrete proposal.

5. A perusal of the record indicates that the petitioners have admitted that they have committed two defaults in making payment of the two installments. Under the terms and conditions of the loan

agreement, the respondent is entitled to repossess vehicle and to sell the same. Since the petitioners committed defaults, the respondent after giving notice to the petitioners has repossessed the said vehicle and has sold the same by exercising their rights under the said agreement. It is not in dispute that the petitioners did not file any counter claim before the learned arbitrator in support of their allegations that the vehicle was wrongly sold and/or no credit of the appropriated amount has been given to the petitioners by the respondent out of the sale proceeds of the said vehicle.

6. A perusal of the award indicates that the learned arbitrator has rendered several opportunities to the petitioners and has after considering the pleadings and documents has rendered a finding of fact that the petitioners have committed default in making payments. The findings of fact rendered by the learned arbitrator are not perverse and thus no interference is permissible by this Court under section 34 of the Arbitration Act, 1996 with such finding of fact.

7. Insofar as the grievance of the petitioners that no notice was given at the correct address is concerned, a perusal of the record indicates that the notice was given at the correct address by the respondent.

8. Insofar as the issue of limitation raised by learned counsel for the petitioner in the arbitration petition is concerned, a perusal of the award indicates that the learned arbitrator has rightly rendered a finding that the limitation was extended in view of the sale proceeds recovered by the respondent from the sale of the vehicle which was within three years from the date of accrual of cause of action. Merely

because the statement of claim was not served immediately upon filing the same, it cannot be urged that the limitation had not stopped. Once the notice of appointment of the arbitrator under section 21 of the Arbitration Act is issued and is received by the opponent, the arbitration proceedings commences and the limitation stops.

9. This matter has been adjourned from time to time only for giving an opportunity to the petitioners to settle the matter amicably, as the amount involved is only Rs.84,655/- plus interest. The petitioners however, did not settle the matter amicably.

10. The petition is devoid of any merits and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)