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IN THE HIGH COURT OF DELHI AT NEW DELHI

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OMP No. 532/2013

Reserved on: April 23, 2015

Decided on: May 19, 2015

HCL COMNET SYSTEMS

.... Petitioner

Through :Mr. A.B. Pandey, Advocate.

versus

V. RAMGOPAL

..... Respondent

Through: Mr.Vikas Mehta, Mr. Varun
Singh, Mr. Rajat Sehgal, Advocates.

CORAM: JUSTICE S.MURALIDHAR

J U D G M E N T

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19.05.2015

1. The Petitioner, HCL Comnet Systems, is by this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act'), challenging the impugned Award dated 10th January 2013 passed by the learned Arbitrator in its dispute with the Respondent, V. Ramgopal. The learned Arbitrator held that the Respondent was entitled to receive Rs. 4,05,854 along with future interest @ 8% per annum payable upon an amount of Rs. 1,92,094.

2. The Respondent was appointed by the Petitioner as Consultant, Telecommunication under the 'Senior Management Training Scheme' by letter dated 10th March 1995. The Respondent received promotions

subsequently and in July, 1996 was given a Maruti Zen Car which was arranged for by the Petitioner. A Memorandum of Agreement ('MoA') was entered between the parties on 1st November 1996 in respect of the said car. The MoA noted that the Petitioner had entered into a lease agreement with a finance company for the car. The Petitioner was the Lessee and the Respondent was only the bailee. Equated monthly instalments (EMIs) were payable to the finance company of which the Respondent's share was Rs. 2,677 per month. The Respondent authorized the Petitioner to deduct the said sum from his salary. The lease period was for 60 months.

3. In terms of Clause 3 of the MoA, the Respondent was entitled to pay consideration computed at 1% of the value of the car after the expiry lease period in order to purchase the car from the Petitioner. Clause 3 also provided that the car would remain in the possession of the Respondent. Clause 10 of the MoA reads as under:

“10. The employee acknowledges the fact that the Company has obtained on lease the car only in pursuance of his request for the same. The employee hereby irrevocably undertake not to return the car before the expiry of 60 months from the date hereof. Provided, however, in the event of cessation of service of the employee for any reason whatsoever, before the expiry of 60 months period, the employee shall purchase the same from the owner of the car through the company and subject to the following:

(A) Should the cessation of service be within 60 months from the allotment of car, the following formula would work out:

(i) That the employee has to pay in advance to the company in lumpsum an amount equivalent to equated monthly instalment that the Company would pay to the leasing company till the end of lease period and the following:

(ii) a) Up to 24th month of the allotment of the car, the employee shall pay the company the total EMI that the Company paid to the leasing company less the amount he was paid towards the personal use of the car.

(b) Commencement of 25th month till the expiry of 30th month of the allotment of car, the employee shall pay the Company the total EMI that the Company paid to the leasing Company less amount which he has paid towards personal use of the car and concession equivalent to 25% of the tax benefit (if any) that the company claimed on the EMI.

(c) Commencement of 31st month till the expiry of 36th month of the allotment of car, the employee shall pay the company the total EMI that the company paid to the leasing company less amount which he has paid towards the personal use of the car and concession equivalent to 50% of the tax benefit (if any) that the company claimed on the EMI.

(d) Commencement of 37th month till the expiry of 60th month of the allotment of car, the employee shall pay the company the total EMI that the company paid to the leasing company less amount which he has paid towards the personal use of the car and concession equivalent to 75% of the tax benefit (if any) that the company claimed on the EMI.

(iii) The car shall in no case be transferred in the name of the employee before 60 months from the date of allotment of car to him. It shall be transferred in the employee's name only after the company has obtained ownership of the car and after the employee has paid back to the company an amount as mentioned hereinabove.

(B) In all other cases where an employee has stayed with the company for 60 months after the car under this agreement has been allotted to him, the Car will be transferred in his name only after the leasing company has transferred the ownership of the car to the company.”

4. The employment of the Respondent ceased with effect from 31st October 1998. Since in terms of the proviso to Clause 10 this was before the expiry of 60 months of the lease, the Respondent was required to pay to the Petitioner in lumpsum the amount equivalent to the EMIs that the Petitioner would have to pay to the finance company till the end of the lease period. This was to be calculated in terms of Clause 10. The case of the Petitioner was that no attempt was made by the Respondent to clear his dues. It is not in dispute that on 5th February 1999, the Respondent was forcibly dispossessed of the car.

5. The disputes that arose between the parties in relation to the above issues were referred to the sole Arbitrator. Initially by an Award dated 2nd March 2005, the learned Arbitrator rejected the Respondent's claims. The Respondent then challenged the said Award by filing

OMP No. 294 of 2005. By a judgment dated 19th September 2007 while setting aside the Award, this Court held that the learned Arbitrator failed to noticed that certain rights had accrued to the Respondent under Clause 10 of the MoA even in the event of cessation of his employment prior to the expiry of the lease period of 60 months. The Court noted that there was no discussion in the Award of any evidence with regard to the said aspect. The Court appointed another Arbitrator to adjudicate the dispute between the parties.

6. The Respondent filed a fresh statement of claims before the learned Arbitrator appointed by the Court. Among the reliefs sought were that the Petitioner should pay the Respondent the following sums:

- (a) Rs. 50,000 which had become payable on 1st June 1996 but was retained by the Petitioner.
- (b) Rs. 52,652 paid by cheque on 6th November 1996.
- (c) Rs. 14,765 paid by cheque on 30th December 1996.
- (d) Rs. 9,332 being the excess amount deducted from salary for four months in 1996.
- (e) The monthly instalments paid by the Respondent towards the car. The total amount of monthly instalments paid worked out to be Rs. 74,956.
- (f) Rs. 14,486.19 paid by cheque on 8th December 1998.
- (g) Value of accessories purchased for the car in the sum of Rs. 4,700.

(h) The subsidy amount of Rs. 24,662 per annum as entitlement of the Respondent as per his employment package. The increased amount of subsidy – Rs. 40,000 from July 1997 onwards.

(i) Interest @ 16.5% being the rate at which the car was financed by Kotak Mahindra. Since the Petitioner retained the proceeds of the illegal sale of the car financed at this rate of interest, it should make good all payments made at this rate of interest.

7. The case of the Respondent was that the Petitioner itself violated the terms and conditions of the service contract and the MoA between the parties; that the car was forcibly taken from the Respondent; that it was sold by the Petitioner and the sale proceeds appropriated; that the Petitioner failed to refund the amount due to the Respondent. The case of the Respondent was that he had wrongly been terminated with effect from 22nd October 1998; that the Petitioner refused to pay the amounts due to him and instead the Petitioner claimed highly inflated amounts from the Respondent. When the Respondent tried to know the basis for such inflated amounts, the car was forcibly taken away from him.

8. The case of the Petitioner on the other hand was that the scheme was in the nature of 'Own Your Car Scheme.' The rights of the Petitioner as lessee were not transferred to the employees. The Respondent was only a bailee. By a communication dated 4th December 1998, Rs. 2,16,093.10 was demanded from the Respondent.

After cessation of the employment with the Petitioner, when the Respondent continued to use the car without making payment of the amounts due as per MoA, the Petitioner asked him to relinquish the possession. On the failure to pay the EMIs, the finance company, i.e., lessor resumed possession of the car.

9. The learned Arbitrator found the admitted position of the parties was that the Respondent had worked for more than 25 months and less than 30 months after receipt of the car. In terms of the proviso (A) (ii) (b) to Clause 10 of the MoA, the Respondent was to pay the entire EMI paid by the Petitioner less what the Respondent paid for his personal use with a concession of 25% on the tax benefit that the Petitioner received on the EMI. Therefore, on payment of the said amount, the Respondent would become the owner of the car. The learned Arbitrator noted that there were two components of the price which would normally be known only to the Petitioner - the EMIs that the Petitioner would be paying to the finance company and the tax benefit earned thereon. There was nothing on record to show that the Respondent was aware about the tax benefit that the Petitioner received on EMI. The Respondent on his own would not be able to calculate the price payable for purchase of the car in terms of Clause 10 of the MoA. The Petitioner was obliged to communicate the price payable by the Respondent to enable the Respondent to tender the price to purchase the car. The Petitioner had not been able to show that the two components of the price were known to the Respondent.

10. The learned Arbitrator referred to Section 52 of the Indian Contract Act 1872 ('ICA') and held that only after the Petitioner communicated the correct price of the car payable by the Respondent, would the Respondent be obliged to tender the said payment to purchase the car. By a letter dated 15th December 1998, the Petitioner asked the Respondent to tender Rs. 2,21,231 towards value of the car and Rs. 9,895 as car insurance and registration. The Petitioner by its letter dated 4th December 1998 acknowledged the delay in effecting full and final settlement. After accounting for some salary dues payable to the Respondent, Rs. 2,16,093 was demanded from him. On 15th December 1998 another letter was sent to the Respondent (Annexure E to the claim petition). After accounting for a sum of Rs. 14,486.19 paid by the Respondent on 8th December 1998, the demand now made was for Rs. 1,99,574.91.

11. Before the learned Arbitrator an additional affidavit dated 22nd December 2009 was filed by Mr. Ashish Garg, authorized signatory of the Petitioner. Even in this affidavit, the amount payable by the Respondent was shown as Rs. 2,21,231 for the car plus Rs. 9,895 for the car insurance and registration. The learned Arbitrator noted in the proceedings dated 28th September 2011 that the chart with the aforementioned affidavit showed that some payments had been received from the Respondent. However, not all the payments mentioned in the said affidavit were reflected in the chart while

calculating the amounts due towards the car. The Petitioner was then asked by the learned Arbitrator to file a fresh statement clearly indicating the amount due towards the cost of the car including the money paid by the Respondent or deducted from his monthly salary.

12. Pursuant to the above directions, Mr. Garg filed another affidavit dated 23rd January 2012 in which he stated *inter alia* that a sum of Rs. 1,18,579 continued to be owed by the Respondent. This meant that the amount earlier conveyed to the Respondent by the letters dated 4th December 1998 and 15th December 1998 was incorrect. The learned Arbitrator concluded that the Petitioner deliberately communicated the wrong price and this prevented the Respondent from paying the correct consideration as a result of which the finance company forcibly took the car. The learned Arbitrator concluded that the Petitioner was guilty of breach of contract.

13. The learned Arbitrator then referred to Clauses 13 and 16 of the Agreement dated 11th November 1996 in terms of which it was open to the Petitioner to adjust payments for dues from the salary of the Respondent. It was held that nothing prevented the Petitioner from adjusting the aforementioned sum of Rs. 1,18,579 while calculating the dues payable to the Respondent. Had this been done, the Petitioner would have been obliged to transfer the car in the name of the Respondent. The Petitioner appeared to have been aware that if the EMI's were not cleared, the finance company would take steps to re-

possess the car. The learned Arbitrator then examined individual claims. Claims 3a, 3b, 3e, and 3f were allowed and the other claims were disallowed.

14. On behalf of the Petitioner it was submitted that the learned Arbitrator failed to appreciate that the Respondent was in continuous use of the car from July 1996 till February 1999. The learned Arbitrator thus erred in allowing Claims 3a and 3b which were in fact the initial payments towards purchase of the car and Claim for a sum of Rs. 74,956 which was the share of the EMIs paid by the Respondent for the use of the car and which he had authorized the Petitioner to deduct from his salary. It is contended on behalf of the Petitioner that the Respondent had to exercise an option to claim the benefit under Clause 10 of the MoA. Since the Respondent failed to pay the amount as communicated to him by letter dated 15th December 1998, the finance company repossessed the car in question. It is submitted that the learned Arbitrator erred in concluding that the Petitioner was in breach of its contractual obligations.

15. Learned counsel for the Respondent on the other hand supported the impugned Award and pointed out that there was a clear admission by the Petitioner in the additional affidavit filed before the learned Arbitrator that the Petitioner had failed to provide the Respondent with the correct particulars of the sum to be paid and it therefore, was in breach of its obligations.

16. At the outset the Court would like to recapitulate the law as explained in *Associate Builders v. Delhi Development Authority* 215 (2014) DLT 204 (SC) that under Section 34 (2) (b) (ii) of the Act, the scope of interference with the impugned Award of the learned Arbitrator by the Court is very limited. Unless the Award is shown to be “patently illegal that it goes to the root of the matter” or it is “so unfair and unreasonable that it shocks the conscience of the Court”, the Award cannot be said to be opposed to the public policy of India.

17. Further, as explained by the Supreme Court in *State of Rajasthan v. Puri Construction Co. Ltd.* (1994) 6 SCC 485 the Arbitrator is the final authority on the factual aspects of a dispute. The Court is not sitting in an appeal over the Award. Merely because another view is possible on the same evidence, the Award cannot be interfered with.

18. The Court finds that the learned Arbitrator has gone strictly by the clauses of the MoA in arriving at the conclusion that it was incumbent upon the Petitioner to communicate to the Respondent the amount that was payable for the purposes of having the car transferred in his name. As rightly noted by the learned Arbitrator, it would not have been possible for the Respondent to have on his own known the two components of the price payable, viz., the EMIs paid by the Petitioner and the tax benefits on the said invoices availed of by the Petitioner. Significantly, the additional affidavit filed by the Petitioner made it

plain that the Petitioner had in its letter dated 15th December 1998 communicated an incorrect amount as payable. The Petitioner brought about a situation that prevented the Respondent from availing of the facility in terms of Clause 10 of the MoA, i.e., paying the balance sum due for the car so that it could be transferred in his favour.

19. The view taken by the learned Arbitrator that the Petitioner was in breach of its contractual obligations was a possible one to take. The Court is not persuaded to hold that the analysis of evidence and the reasoning and the conclusions of the Arbitrator are erroneous, perverse or so irrational so as to warrant interference.

20. In the circumstances, the Court finds that no ground has been made out for interference with the impugned Award.

21. The petition is dismissed with costs of Rs. 10,000 which shall be paid by the Petitioner to the Respondent within four weeks.

S.MURALIDHAR, J

MAY 19, 2015

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