

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.Nos.898 to 943 of 2016

1. M/s Vasan Health Care Pvt.Ltd.,
No.15A, Thillai Nagar Main Road
Trichy 620 018
Also at : Registered Office
No.70, Dr.Radhakrishnan Salai
Westminster Complex, Mylapore
Chennai 600 004 through its Directors

2. Dr.A.M.Arun ... Appellants in all the C.M.A's
/Respondents/Respondents

-Vs-

M/s Kotak Mahindra Prime Ltd.,
represented by its Authorised Signatory
Mr.P.Balaji, having office at
CEEEROS Centre, First Floor,
No.45, Montieth Road, Egmore
Chennai 600 008 ... Respondent in all the C.M.A's
/Claimant/Petitioner

Memorandum of Grounds of Civil Miscellaneous Appeals under
Section 37(2) (b) of the Arbitration and Conciliation Act, 1996,
against the common order dated 08.03.2016 made in I.A.Nos.1, 2,
3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36,
37, 38, 39, 40, 41, 42, 43, 44, 45 & 46 of 2016 respectively in
Arbitration Case Nos.PD 1 to 46 of 2016 on the file of the Sole
Arbitrator Mr.V.Paul Das, B.A.,B.L., Judge (Retd.) in so far as
the order of directing the Appellants to continue to pay the
monthly EMI payments regularly from the month of March, 2016
till the arbitration.

For Appellants : Mr.R.Nagasundaram
in all CMA's

For Respondent : Ms.S.Rajini Ramdas
in all CMA's

JUDGMENT

These appeals are directed against the common order dated 8.3.2016 passed by the sole Arbitrator in I.A.Nos.1 to 46 of 2016 in Arbitration Case Nos.PD 1 to 46 of 2016, whereby the learned Arbitrator has directed as follows:-

- "1. The respondents are directed to pay jointly and severally a sum of Rs.20,00,000/- (Rupees Twenty Lakhs) on or before 23.3.2016 and another sum of Rs.20,00,000/- (Rupees Twenty Lakhs) on or before 8.4.2016 to the petitioners/claimants towards part of the EMI arrears as on the date of the petitions, in respect of the above arbitration cases.
2. The respondents are also directed to continue to pay jointly and severally the monthly EMI payments regularly from the month of March 2016, till the disposal of the main arbitration cases.
3. In the event of the failure of the above said orders, the petitioners/claimants are entitled to re-possess the above said subject vehicles with the help of police if it is necessary and keep the same in their custody till the disposal of the arbitration proceedings against the respondents."

2. Learned counsel for the appellants submitted that when the appellants/borrowers have been repaying the EMI's as per the schedule and substantial amounts have already been realized by the respondent/claimant, at one point of time the appellants committed default in payment of EMI's, as a result the respondent, in terms of the arbitration clauses, resorted to the arbitration proceedings taking a stand that they are taking steps to sell the subject vehicles. On this basis the claims were made before the Arbitrator to re-possess the subject vehicles, pending disposal of the arbitration proceedings. But the learned Arbitrator, it is pleaded, keeping the arbitration proceedings pending, has wrongly passed the impugned order beyond the scope of the petitions, more particularly, imposing a condition to pay the monthly instalments regularly, is wholly erroneous. Adding further, he submitted that when the first part of the order directing the appellants to pay jointly and severally a sum of Rs.20,00,000/- on or before 23.3.2016 and another sum of Rs.20,00,000/- on or before 8.4.2016 to the claimant towards part of the EMI arrears as on the date of the

petitions, has been complied with, the only grievance is that the second part of the order directing the appellants to pay jointly and severally the monthly EMI payments regularly from the month of March, 2016 till the disposal of the main arbitration cases, is causing great prejudice to the appellants, since, in terms of the third direction, if the appellants are not able to comply with the second direction, the claimant is entitled to re-possess the subject vehicles with the help of police if it is necessary, will bring the appellants' establishment to a standstill, because they will not be in a position to operate the emergency ambulance vans. Continuing his arguments, he has contended that the learned Arbitrator ought not to have imposed such an onerous condition on the appellants resulting in the frustration of the contract between the appellants and the respondent. Moreover, the learned Arbitrator has failed to take note of the ground reality that the nature of interim order to be granted should be confined only to the subject matter of dispute referred before him and not otherwise. In any event, since the second part of the order is wholly erroneous and unsustainable, the same is liable to be set aside, he pleaded.

3. In reply, the learned counsel for the respondent/claimant urged this Court to dismiss the appeals on the footing that the appellants cannot come to this Court challenging only the second part of the order after having complied with the first part of the order. Adding further, she submitted that when the whole order has been passed with the consent given by the respondent and after complying with the first part, they cannot challenge the second part of the order. In support of her claim, drawing the attention of this Court to the counter affidavit filed by the appellants before the Arbitrator, she submitted that when the appellants in paragraph-7 of the counter affidavit have undertaken before the Arbitrator that the subject vehicles would not be parted with or sold and they would be maintained in tact and they would be produced for inspection on prior notice within a reasonable time during the pendency of the above proceedings with a further undertaking that they would continue to make the payments towards EMI's and report the same to the knowledge and information of the learned Arbitrator, the learned Arbitrator, accepting the undertaking given by the appellants before him, has specifically recorded in his order that the appellants had fairly conceded to pay a sum of Rs.40,00,000/- within a period of six weeks pending disposal of the arbitration proceedings, keeping in mind that the total claim in respect of all the 46 arbitration cases is at Rs.2,00,80,320/- and the EMI arrears alone is Rs.68,00,200/-, has rightly passed the impugned order directing the appellants to jointly and severally pay a sum of Rs.20,00,000/- on or before 23.3.2016 and another sum of Rs.20,00,000/- on or before 8.4.2016 to the respondent/claimant

towards part of the EMI arrears. Consequently, an incidental direction has been given to continue to pay the EMI's regularly from the month of March 2016 till the disposal of the main arbitration cases, failing which liberty was given to the respondent/claimant to re-possess the subject vehicles with the help of police, if necessary. Therefore, the appeals are to be dismissed, she pleaded.

4. I also find merits in the submissions of the learned counsel for the respondent/claimant. In the pending arbitration proceedings on the file of the sole Arbitrator, the appellants have filed their counter affidavit, wherein, in paragraph-7, they have agreed as follows:-

"7. It is submitted and placed on record that without prejudice to the contentions available for these Respondents in the main Claim Petition, these Respondents undertake that the financed vehicle will not be parted with or sold, will be maintained intact and will be produced for inspection by the Claimant on prior notice with reasonable time, during the pendency of the above proceedings. Further, it is also hereby placed on record that these Respondents would continue to make payments towards the EMIs and report the same to the knowledge and information of this Tribunal."

When the appellants have specifically given the above written undertaking before the learned Arbitrator, they cannot now challenge the order passed by the learned Arbitrator. Secondly, in the order impugned herein, the learned Arbitrator has also specifically mentioned that during the course of enquiry, the learned counsel for the appellants fairly conceded that they will be paying a sum of Rs.40,00,000/- within a period of six weeks pending arbitration proceedings, for which the learned counsel appearing for the respondent objected that the time limit for payment should be reduced to three weeks. However, accepting the undertaking of the appellants that they are prepared to pay a sum of Rs.40,00,000/- within six weeks, the learned Arbitrator has given time to pay a sum of Rs.20,00,000/- on or before 23.3.2016 and another sum of Rs.20,00,000/- on or before 8.4.2016 towards part of the EMI arrears. As a matter of fact, the said direction has also been admittedly complied with by the appellants. Now with regard to the second part, the contention made by the learned counsel for the appellants that the direction to pay the monthly EMI's from March 2016 till the disposal of the main arbitration cases is causing great prejudice to them, is also not justified, for the reason that the stand taken by the appellants

in paragraph-7 of the counter affidavit clearly shows that they had agreed to pay the monthly instalments. Therefore the learned Arbitrator, accepting the stand taken by the appellants in the counter affidavit, has rightly directed them to pay jointly and severally the monthly EMI's regularly from the month of March, 2016, failing which the condition to re-possess the subject vehicles has been ordered.

5. To sum up, the appellants, having borrowed 46 loans based on the terms and conditions of the agreements, committed default in repayment of the EMI's leading to the appointment of the sole Arbitrator. As per the arbitration clause, the Arbitrator appointed to decide the claim has given a fair concession to the appellants based on their consent that they would be paying a sum of Rs.40,00,000/- within a period of six weeks pending disposal of the arbitration proceedings and accordingly directed them to pay a sum of Rs.20,00,000/- on or before 23.3.2016 and another sum of Rs.20,00,000/- on or before 8.4.2016 towards part of the EMI arrears. Secondly, when it is an admitted case that the appellants/borrowers have to pay the monthly EMI's regularly, a further direction was issued to pay jointly and severally the monthly EMI's from the month of March, 2016 till the disposal of the main arbitration cases in order to avoid re-possession of the vehicles. Thirdly, it has been mentioned that only in the event of failure of the above said two orders, the claimant is entitled to re-possess the subject vehicles.

6. For all the aforementioned reasons, this Court is not able to find any merit in the appeals. Accordingly, the appeals fail and they are dismissed. Consequently, C.M.P.Nos.7279 to 7324 of 2016 are also dismissed. No costs.

Sd/-

Assistant Registrar(J)

//True Copy//

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Sub Assistant Registrar

ss

To

The Sole Arbitrator

Mr.V.Paul Das, B.A.,B.L.,

Hon'ble Judge (Retd.)

No.82/106, Perambur High Road Lane (South)

Jamalia, Chennai 600 012.

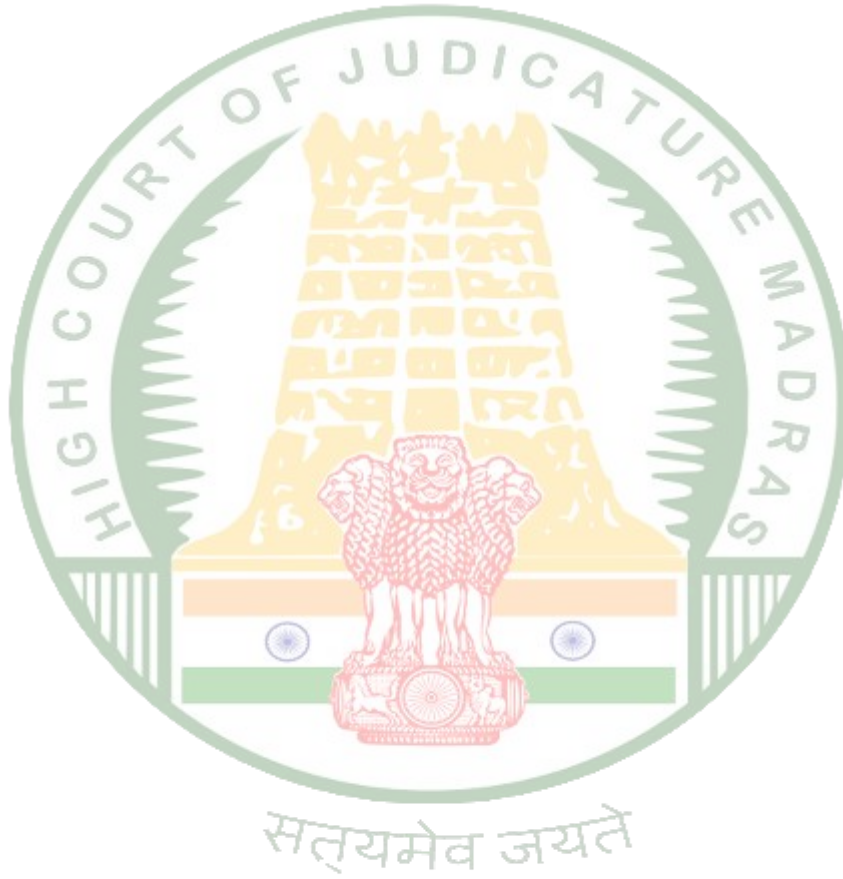
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Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

C.M.A.Nos.898 to 943 of 2016

UG (CO)
CA (05/01/2017)



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