

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2017

CORAM

THE HONOURABLE Dr. JUSTICE S.VIMALA

Original Petition Nos.713 to 715 of 2016

T.Sadavisam Naveen Senthoooran
S/o. Mr. Thiyagarajan

... Petitioner in all O.Ps.

Vs.

1. M/s. Sundaram Finance Limited,
No.21, Pattullos Road,
Chennai 600 002

2. P.R.Thirunavukkarasu

... Respondents in all O.Ps.

Prayer : Original Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996, against the awards, dated 23.01.2015, in Arbitration Case Nos.SK/SF/325/2014; SK/SF/327/2014 and SK/SF/326/2014, respectively, on the file of the learned sole Arbitrator, Mr.S.Santhakrishnan.

For Petitioner in all O.Ps. : M/s. T.Nirmal Eswar

For Respondents in all O.Ps. : M/s. T.Srinivasa Raghavan & Associates.

COMMON ORDER

Awards, dated 23.01.2015, have been passed, which are under challenge in O.P.Nos.713 to 715 of 2015, wherein, in each of the Awards there is a direction to the borrower (petitioner herein) and the guarantor to pay sums of Rs.26,46,978.10, Rs.26,60,027.16 and Rs.28,21,001.10, respectively, to the first

respondent / financier, with interest at 18% per annum, from 09.06.2014 till realization with costs, which includes the value of Non-Judicial Stamp Papers and fees / expenses of the Arbitrator.

2. A perusal of the awards passed by the learned Arbitrator would go to show that the claimant (first respondent herein) has initiated the Arbitration Proceedings, based upon the loan agreements, which were entered into between the first respondent and the petitioner towards purchase of the vehicles (three in numbers), Kamaz Vectra 6540, 2012 Model, from the dealer, M/s.Kamaz Vectra Motors Ltd., Hosur, of which, the second respondent herein stood as Guarantor. The vehicles remained hypothecated with the claimant in terms of the agreements.

2.1. The borrower had taken an objection that the vehicles were not road-worthy and that he was able to ply the vehicles only for two days. The learned Arbitrator relied upon Article 10 of the loan agreements, under which, the borrower was responsible for getting delivery of the asset from the manufacturer / dealer, after verifying fitness, quality condition, etc., Under clause 10 (2) of the agreements, the lender shall not be liable for any delay in delivering from the manufacturer or the dealer with regard to the quality / condition / fitness of the asset; on that ground, the borrower shall not

withhold the payment of stipulated instalments, either on the ground that the asset has not been delivered or for any other reason, whatsoever.

3. The petitioner, though filed counter statements before the learned Arbitrator and after the filing of the rejoinder by the Financier, did not appear before the learned Arbitrator and adduce evidence.

3.1. Despite sufficient opportunity given, the petitioner herein did not choose to adduce evidence to substantiate the contentions raised in the counter statements. Yet, the learned Arbitrator has considered all the objections raised in the counter affidavits and has passed the Awards, in terms of the agreements entered into between the parties.

3.2. The incapacity of party, invalidity of the arbitration agreement, improper notice of proceedings, proceedings not in accordance with agreement are the few grounds on which the Award can be challenged and it will be appropriate to quote Section 34 of the Act, to have the grasp of the complete grounds on which, Award can be challenged:-

“Section 34 - Application for setting aside arbitral award.

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matter beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.-- For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.-- For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award, or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was

prevented by sufficient cause from making the application within the said period of three months if may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”

4. The learned counsel appearing for the petitioner pleaded that, reasonable opportunity was not given by the learned Arbitrator to the petitioner herein to adduce evidence and therefore, it is a fit case where the Awards have to be set-aside and the matters have to be remitted back to the learned Arbitrator, with a direction to conduct a fresh enquiry, after affording

sufficient opportunity.

4.1. It is not the case of the petitioner that he was not given proper notice of the appointment of the learned Arbitrator or that he was unable to present his case. The petitioner has appeared through a counsel and has filed his counter and thereafter, for the reasons best known, the petitioner has chosen to remain absent. Therefore, the contention that sufficient opportunity was not given is not correct. It is not even the case of the petitioner that he was not able to present his case only because of the lack of opportunity.

5. It is also contended by the learned counsel for the petitioner that, because of the deficiency in quality of the vehicles to the extent of rendering them unfit for road worthiness, the vehicles were surrendered and therefore, there is no liability to pay any amount to the Financier.

5.1. This contention is against the fundamental principles of law and the terms and conditions of the contract under which the petitioner obtained finance for the vehicles.

5.2. The Awards are not under challenge on the ground that, the awards suffer from patent illegality or in contravention of fundamental policy of Indian Law or in conflict with most basic notions of morality or justice or that they are induced by fraud, corruption, confidentiality (Section 75 of the Act) or

admissibility of evidence in other proceedings (Section 81 of the Act).

5.3. Mis-appreciation of evidence and mis-application of law are alleged in passing the Awards and hence, it is contended that the awards need to be set-aside.

5.4. It is not open to this Court to set-aside the award merely on the ground of erroneous application of law or mis-appreciation of evidence, by the learned Arbitrator. Therefore, the second contention of the learned counsel for the petitioner, seeking to set-aside the Awards, is unsustainable.

6. In view of the above, the awards, dated 23.01.2015, in Arbitration Case Nos.SK/SF/325/2014; SK/SF/327/2014 and SK/SF/326/2014, respectively, are confirmed and Original Petition Nos.713 to 715 of 2016, challenging the Awards, are hereby dismissed. No costs.

21.03.2017

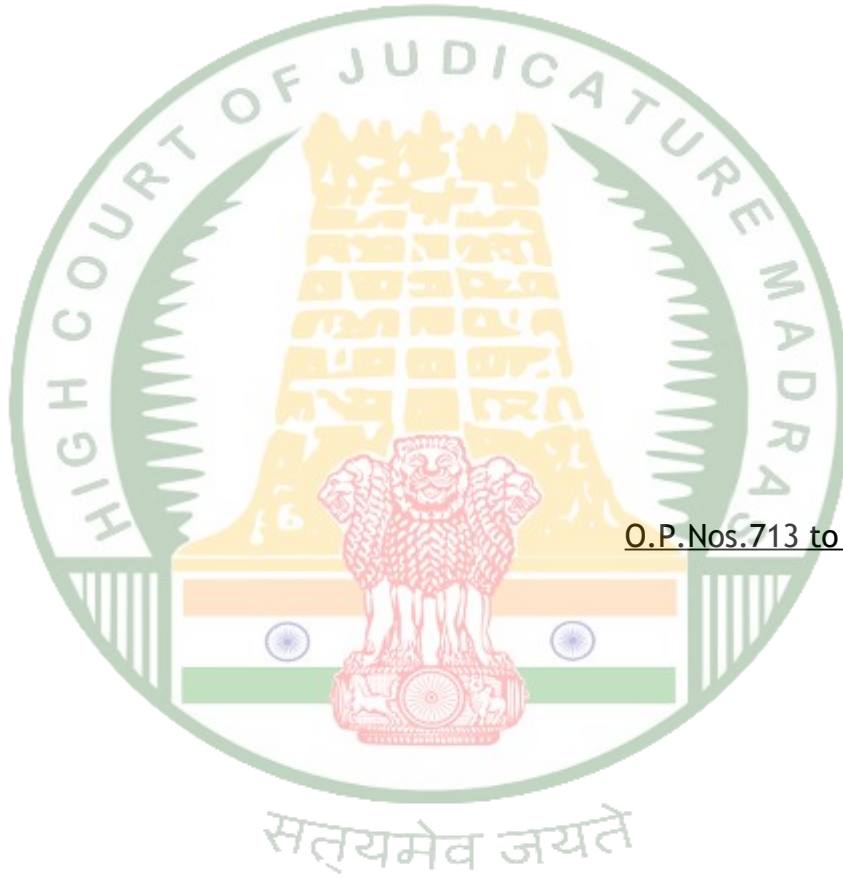
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Dr. S.VIMALA, J.,

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