

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO. 23 OF 2018

SUDIN DATTARAM NAVELKAR AND ANR., ... Appellants

Versus

KOTAK MAHINDRA BANK LTD., THR. ITS
GENERAL MANAGER., ... Respondent

Shri Ganesh R. Naik, Advocate for the appellants.

Coram:- C. V. BHADANG, J.

Date:- 27th July 2018

P.C.

Leave to produce the award of Arbitrator granted. The award to be produced forthwith.

2. Heard Shri Naik, the learned Counsel for the appellants.
Perused record.

3. This appeal filed under Section 37 of the Arbitration and Conciliation Act, challenges the judgment and order dated 18/11/2017, passed by the learned Principal District Judge at North Goa, dismissing an application filed by the appellant under Section 34 of the Act, thereby confirming the award passed by the Arbitrator on 08/12/2009.

4. Shri Naik, the learned Counsel for the appellant has raised three contentions. Firstly, it is submitted that when the vehicle was auctioned after it was repossessed, the auction was held on the basis of valuation report dated 12/04/2007, which is not correct. In the submission of the learned Counsel for the appellant, the vehicle was purchased by the appellant in April, 2007 and the valuation ought to have been done at the time when it was put to auction after two years of its purchase. Secondly, it is contended that the applicant had not taken the vehicle for auction as has been observed by the learned District Judge in para 9 of the impugned judgment. Thirdly, it is contended that the appellant had no notice of the arbitration proceedings.

5. On hearing the learned Counsel for the appellant and on perusal of the record, I find that none of these contentions can be accepted. The Arbitrator in his award has noted that the notice sent to the appellant was returned as unclaimed and the letters dated 24/09/2009 and 08/10/2009, containing the minutes of the meeting were sent to the appellant (respondent before the Arbitrator), which were duly received and acknowledged. This has been confirmed by the learned District Judge. It is, thus, not possible to accept that the appellant had not received the notice of the arbitral proceedings.

6. In so far as the valuation report is concerned, the contention

is that the valuation of the vehicle is made as on the date of purchase and not on the date of auction, which was made two years after the purchase. Even if the said contention is accepted, it is difficult to understand as to how it would prejudice the appellant. The price of the vehicle would depreciate by passage of time and thus, if the valuation was done as on the date of purchase of the vehicle by the appellant, it is bound to be on the higher side than the valuation of the vehicle two years thereafter. That apart, the appellant has also not produced the valuation report of the vehicle in this appeal or before the learned District Judge. For the aforesaid reason, this contention also cannot be accepted.

7. In so far as the question as to whether the appellant had taken the vehicle for auction or not, in my considered view, nothing turns on the said aspect, once the vehicle was repossessed by the respondent.

8. Considering the overall circumstances and the limited scope of interference available in a matter of the present nature, no case for interference is made out. The appeal is without any merit and is accordingly, dismissed.

SMA