IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

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THE HONOURABLE Mr.JUSTICE ABDUL QUDDHOSE

O.P.No.475 of 2011

1.M.Viswanathan
2.P.Sivakumar .. Petitioners

Vs

1.M/s.Shriram Transport Finance Company Ltd.,
rep. by its Junior Executive,
Mr.S.Varadhan
No.33/34, Anjugam Nagar 2nd Street,
I floor, Jafferkhanpet, Chennai - 83.

2.The Sole Arbitrator,
M/s.S.S.Mariappan .. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to allow this petition and set aside the Award passed by the second respondent in Arbitration Case No.129 of 2010 dated 30.09.2010.

For Petitioners : Mr.F.Sebastian

For Respondent 1 : Mr.S.Prabhakaran

ORDER

The instant petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award dated 30.09.2010 passed by the Arbitrator against the petitioners.

2. The brief facts leading to the filing of the instant petition are as follows: The petitioners entered into a loan cum hypothecation agreement dated 26.03.2008 with the first respondent for purchasing the vehicle Ashok Leyland Heavy Goods Vehicle bearing registration No. TN28-AB-3012. The total agreement value was Rs.9,02,146/- repayable by the petitioners in 35 monthly installments at the rate of Rs.25,776/- p.m from 1st to 34th monthly installments and a sum of Rs.25,762/- for the 35th monthly installment commencing from 01.05.2008. According to the first respondent, the petitioner paid only part payment of Rs.9,850/- towards first monthly installment and thereafter, the petitioners stopped making any payment to the first respondent. In view of the dispute between the parties, the dispute was referred to the Arbitration by the first respondent who appointed the second respondent as the sole Arbitrator to decide the dispute on merits. The second respondent/sole arbitrator acted upon the reference and after issuing notice to both the parties, passed an Award dated 30.09.2010 directing the petitioners to pay a sum of Rs.5,59,674/- together with interest at the rate of 18% p.a. from the date of the claim petition till the date of realisation and also directed the petitioners to pay the cost of the arbitral proceedings.

3. Aggrieved by the Award dated 30.09.2010, the instant petition has been filed.

4. The learned counsel for the petitioners submits that the primary ground for challenge in the instant petition is that on the date of the

repossession of the vehicle, the petitioners had not committed default and he had paid seven monthly installments on that date. According to the learned counsel for the petitioners, the Arbitrator has not verified the statement of accounts, before passing the Award against the petitioners.

5. According to him, payments made by the petitioners were not given due credit by the first respondent, which fact was also not considered by the learned Arbitrator. Further, the learned counsel for the petitioners submitted that the value of the vehicle sold by the first respondent was Rs.8.5 lakhs at the time of sale, whereas the first respondent has sold the vehicle only for Rs.3,05,000/-. Therefore, on these grounds, the learned counsel for the petitioners prayed that the Award passed against the petitioners will have to be set aside by this Court.

6. This Court has examined and analysed the Arbitral Award. As seen from the Arbitral Award, the notice was duly served on the petitioners in the Arbitral proceedings. Despite service of notice on the petitioners, the petitioners failed to defend the claim made by the first respondent against them before the Arbitral Tribunal. It is the case of the first respondent that the petitioner had paid only a sum of Rs.9,850/- towards part of the first installment and thereafter, no payments were made by the petitioners to the first respondent.

7. Admittedly, the total amount that has to be repaid by the petitioners under the loan agreement was Rs.9,02,142/-. Despite

opportunities given to the petitioners to defend the claim, the petitioners had not made use of those opportunities by entering appearance before the Arbitrator and filing the statement of defence. The vehicle was also sold on 17.02.2009 for the sum of Rs.3,05,000/- by the first respondent. The first respondent has also given due credit for the sale proceeds of the vehicle and only for the balance amount, they have made the claim against the petitioners before the sole Arbitrator. In the Arbitral proceedings, the Arbitrator has framed six points for consideration and each and every point has been duly considered by the learned Arbitrator.

8. The first respondent had filed eight exhibits before the Arbitrator which included the loan cum hypothecation agreement dated 26.03.2008 and the legal notices dated 25.08.2009 together with the acknowledgment cards as well as the statement of accounts. All the documents were duly considered by the Arbitrator and only thereafter, the Arbitrator has passed the Award dated 30.09.2010 against the petitioners.

9. The scope for interference under section 34 of the Arbitration and Conciliation Act, 1996 is very limited. This Court cannot re-appreciate the evidences available before the Arbitrator. As seen from the Award, the findings of the Arbitrator are not perverse and does not suffer from any illegality. This Court does not find any merit in the instant petition.

10. The Hon'ble Supreme Court in a Catena of decisions starting

from ***Renusagar Power Company Ltd vs. General Electric Company 1994 Supp (1) SCC 644 to the recent Associated Builders Vs DDA (2015) 3 SCC 49*** has held only under the following grounds the Arbitral Award can be challenged under Section 34 of the Arbitration and Conciliation Act:

(a)Procedure contemplated under Arbitration and Conciliation Act was not followed by the Arbitrator.

(b)The Arbitral Award is a non speaking Award.

(c)The Arbitrator has transgressed his jurisdiction.

(d)The Arbitral Award is in conflict with the public policy of India.

(iii)An award would be regarded as conflicting with the public policy of India if:-

(a) it is contrary to the fundamental policy of Indian law, or

(b) it is contrary to the interests of India,

(c) it is contrary to justice or morality,

(d) it is patently illegal, or

(e)it is so perverse, irrational, unfair or unreasonable that it shocks the conscience of the court.

(iv)An award would be liable to be regarded as contrary to the fundamental policy of Indian law, for example, if

(a) it disregards orders passed by superior courts, or the binding effect thereof, or

(b)it is patently violative of statutory provisions, or

(c) it is not in public interest, or

(d) the arbitrator has not adopted a "judicial

approach", i.e. has not acted in a fair, reasonable and objective approach, or has acted arbitrarily, capriciously or whimsically, or

(e) the arbitrator has failed to draw an inference which, on the face of the facts, ought to have been drawn, or

(f) the arbitrator has drawn an inference, from the facts, which, on the face of it, is unreasonable, or

(g) the principles of natural justice have been violated.

(v)Insofar the "patent illegality" has to go to the root of the matter. Trivial illegalities are inconsequential.

(vi) Additionally, an award could be set aside if

(a) either party was under some incapacity, or

(b) the arbitration agreement is invalid under the law,

Or

(c) the applicant was not given proper notice of appointment of the arbitrator, or of the arbitral proceedings, or was otherwise unable to present his case, or

(d)the award deals with a dispute not submitted to arbitration, or decides issues outside the scope of the dispute submitted to arbitration, or

(e)the composition of the Arbitral Tribunal was not in accordance with the agreement of

the parties, or in accordance with Part I of the Act, or

(f)the arbitral procedure was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(g) the award contravenes the Act, or

(h) the award is contrary to the contract between the parties.

(vii) "Perversity", as a ground for setting aside an arbitral award,has to be examined on the touchstone of the Wednesbury principle of reasonableness. It would include a case in which

(a) the findings, in the award, are based on no evidence, or

(b) the Arbitral Tribunal takes into account something irrelevant to the decision arrived at, or

(c) the Arbitral Tribunal ignores vital evidence in arriving at its decision.

(viii) At the same time,

(a) a decision which is founded on some evidence, which could be relied upon, howsoever compendious, cannot be treated as "perverse",

(b) if the view adopted by the arbitrator is a plausible view, it has to pass muster,

(c) neither quantity, nor quality, of evidence is open to re-assessment in judicial review over the award.

(ix)"Morality" would imply enforceability, of the agreement, given the prevailing mores of the day. "Immorality", however, can constitute a ground for interfering with an arbitral award only if it shocks the judicial conscience.

11. The petitioners have not satisfied any of the grounds mentioned above to interfere with the Award dated 30.09.2010. Hence, Original Petition shall stand dismissed. However, there shall be no order as to costs.

11.07.2018

Index: Yes/No

Speaking/Non-speaking orders

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ABDUL QUDDHOSE, J.

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