

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

Coram

The Hon'ble Mr. Justice **N.SATHISH KUMAR**

O.P.Nos.532, 533, 534 & 535 of 2010

1.Mrs.A.Malathy
2.Mr.R.Anbalagan

.. Petitioners
(in all O.P)

Vs

1.M/s.Prem Hire Purchase Limited.,
No.1, Managappan Street,
Sowcarpet,
Chennai – 600 079.

..1st Respondent

(in O.P.Nos.532 & 533 of of 2010)

2.M/s.Prem Syndicate,
No.1, Managappan Street,
Sowcarpet,
Chennai – 600 079.

..1st Respondent

(in O.P.Nos.534 & 535 of of 2010)

3.Mr.N.C.Vijay Ragavan
Arbitrator,
Block No.A1, Door No.89/1
5th Street, Anna Nagar,
Chennai – 600 040.

.. 2nd Respondent
(in all Original Petitions)

Petitions filed under Section 34 of Arbitration and Conciliation Act, 1996, against the Arbitral Award dated 09.04.2010 in Case No.234, 235, 237 & 238 on the file of the 2nd respondent.

For Petitioners	..	Mr.V.Subramanian, in all OP.
For R1	..	Mr.K.Moorthy, in all OP.
For R2	..	No appearance

COMMON ORDER

Challenge has been made against award passed by the Sole Arbitrator, the 2nd respondent dated 09.04.2010.

2. The main contention of the learned counsel for the petitioners is that initiation of arbitral notice was issued on 04.03.2010 and claim petition was also filed on the same date and no consent whatsoever has been obtained from the petitioner/respondent in appointing the Arbitrator. The further contention with regard to the appointment of the Arbitrator is also challenged by the respondents in the counter affidavit.

3. The above aspect had not been decided by the learned Arbitrator. Hence, the contention is that no notice for reference has been made as per law. It is the further contention that the claim is barred by limitation. As per the contract, the limitation starts from the date of default and the matter has been referred to the Arbitrator much after the period of limitation. Clause 9 of the Agreement between the parties clearly stipulates the period of limitation. The entire claim has been referred after the period of three years, which is

barred by limitation. The learned counsel for the petitioners also placed reliance on the following judgments of this Court in (i) **(1997) 2 MLJ 239, M.Gopal and Anr. Vs. Sri Vetrivel Chit Funds Pvt. Ltd.,** (ii) **M/s.Shriram Transport Finance Vs. Balanisamy in C.M.A.No.575 of 2014 dated 31.01.2013** and (iii) **M/s.Sundaram Finance Vs. Noorjahan Beevi and Anr., decided by the Hon'ble Supreme Court in Civil Appeal.No.7245 of 2008 dated 29.06.2016.**

4. The learned counsel appearing for the respondents, rebutting the above submissions, submitted that the date of commencement of proceedings is 24.02.2010, which has not been referred by the petitioners. Further, the question of obtaining consent does not arise in this case, as the contract itself provided that the respondents have to appoint an Arbitrator of any person.

5. The Arbitrator in his letter also disclosed the reasons. So it is the contention that the claim is made within a period of limitation. There is no substance in the argument of the learned counsel for the petitioners and hence he prayed for dismissal of all the original petitions.

6. It is now well settled that the Arbitrator award can be interfered with only when the award is in violation the fundamental

policy of the Indian Law or Patent illegality etc. Originally the award had been passed on the basis of the hire purchase agreement and the same was put in challenge before this Court. This Court directed the Arbitrator to give an opportunity to the respondents, namely, the petitioners to produce the documents. Thereafter, after producing the entire documents as submitted by the respondents/petitioners, the arbitrator has confirmed the earlier award giving the set off to the value of the vehicle sold after re-possession at the instance of this Court's order.

7. Now, with regard to the contention of the learned counsel that no consent whatsoever was sought, for appointment of the Arbitrator and such a contention cannot be countenanced for the simple reason that the agreement, in particular Clause 21, makes it very clear that in the event of any dispute, the matter shall be referred to the sole Arbitrator, nominated by the owner. When the parties are bound by that, now it cannot be canvassed to the effect that there is no consent at all.

8. Admittedly, notice was originally issued by the respondents intimating the sole Arbitrator's nomination dated 04.03.2010. By letter

dated 24.02.2010, notice has been issued by the owner for referring the matter to the Arbitrator. On 15.03.2010 issued a notice regarding fixing the date of hearing on 31.03.2010 and granted time for defence statement. Admittedly, the defence statement also been filed. Wherein, it is stated that without waiting for the consent of the Arbitrator, there is a collusion between the claimant and the Arbitrator. Except stating that there is a collusion between the claimant and the Arbitrator, and the manner in which the appointment of Arbitrator was in collusion with the petitioner, is not stated in the petitions. Therefore by merely making bald allegation that there was a collusion, one cannot state there is an objection for appointment of the Arbitrator strictly under Section 35 of the Arbitration and Conciliation Act.

9. Section 13(2) of the Arbitration and Conciliation Act, makes it clear that the party intends to challenge, an Arbitrator, shall within 15 days, after becoming aware of the constitution of the Arbitral Tribunal or after becoming aware of the circumstances referred in sub clause (3) of Section 12 send a written statement of the reasons for the challenge to the Arbitral Tribunal.

10. The above said Section 13 makes it clear that if the appointment of sole Arbitrator is challenged, such challenge should

contain the relevant reasons in the form of statement. The reasons must be with the specific particulars, challenging the appointment. Therefore mere bald allegation that there is a collusion, cannot be a ground to challenge the appointment of Arbitrator. In view of the above, the petitioners counsel contention cannot be sustained in law.

11. As far as the limitation is concerned, it is the contention of the learned counsel for the petitioners, that the contract clearly stipulates that the moment the default is committed, limitation starts. In this regard, Clause 9 of the Contract reads as follows:

"9. In case the Hirer shall during the continuance of this Agreement do or suffer any of the following acts or things, viz., either,

(a) fail to pay any of the hiring installments within the stipulated time whether demanded or not;

(b) become insolvent, or compounded with his creditors;

(c) the hirer being a limited company shall pass a resolution for voluntary winding-up or shall have a petition for winding-up presented against it or if a receiver shall be appointed of its undertaking;

(d) pledge or sell or assign or attempt to pledge or sell or assign or part with possession of or otherwise alienate or transfer the vehicle;

(e) do or suffer any act or thing whereby or in consequence of which the said vehicle may be distrained or taken in execution under legal process, or taken in execution under legal process, or by any public authority;

(f) fail to keep the vehicle comprehensively insured during the period Agreement;

(g) fail to pay to the Government or any public authority any tax or surcharge or other levies due in respect of the vehicle;

(h) removes the vehicle to another State and get it re-registered there.

(i) break or fail to perform or observe any of the conditions on his part herein contained.

Then and on the occurrence of any such event, the rights of the Hirer under this Agreement shall forthwith stand determined ipso facto without any notice to the Hirer and all the installments previously paid by the Hirer shall be absolutely forfeited to the owner who shall there upon be entitled to enter any house or place where the said vehicle may then be remove and retake possession of the same and to sue for all the installments due and for damage for breach of Agreement and for all the costs of retaking possession of the said vehicle and all costs occasioned by the Hirer's default."

12. From the above Clause, it is clear that if any of the installments are not paid or the hirer committed default, the owner is entitled to re-possesses the vehicle and sue for all the installments due and also for damages for breach of the Agreement.

13. Though the above Clause makes it clear that the limitation starts for enforcing the right, the limitation commences the moment the default is committed by the hirer. The fact remains that though some default has been committed on 25.07.2007, thereafter, within a period of three years from the date of such default, subsequent installments have been paid. The statements also make it clear that till 14.05.2008, subsequent installments have been paid.

14. No doubt, in the Apex Court Judgment, referred by the learned counsel for the petitioners, the Apex Court has held that the limitation commences as per the contractual clause and if any default is committed, the limitation starts on the date of default. Therefore, any action ought to have been taken within a period of three years from the date of such default and absolutely, there is no dispute with regard to the above legal position upheld by the Apex Court. The fact remains in this case that though the initial default has been committed, within a period of limitation of three years, the petitioners

continued to pay the installments till 14.05.2008. In this regard, it is useful to refer Section 19 of the Limitation Act, which reads as follows:-

"19. Effect of payment on account of debt or of interest on legacy. Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made: Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

*Explanation.-For the purposes of this section,-
 (a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;
 (b) "debt" does not include money payable under a decree or order of a court."*

15. The above Section makes it very clear that any amount paid before the expiration of the prescribed period by the person who is liable to pay the debt or legacy or by his agent duly authorised in this

behalf, a fresh period of limitation shall be computed from the time when the payment was made. In this case, the statements clearly indicate that the installments have been paid till 14.05.2008. Such being the position, the limitation commences thereafter and it expired in the year 2011. Whereas the claim has been preferred within a period of three years. Therefore, the contention of the petitioners as to limitation cannot be countenanced.

16. For all the above reasons, I do not find any ground to interfere with the impugned award passed by the Arbitrator. Accordingly, all these petitions are dismissed.

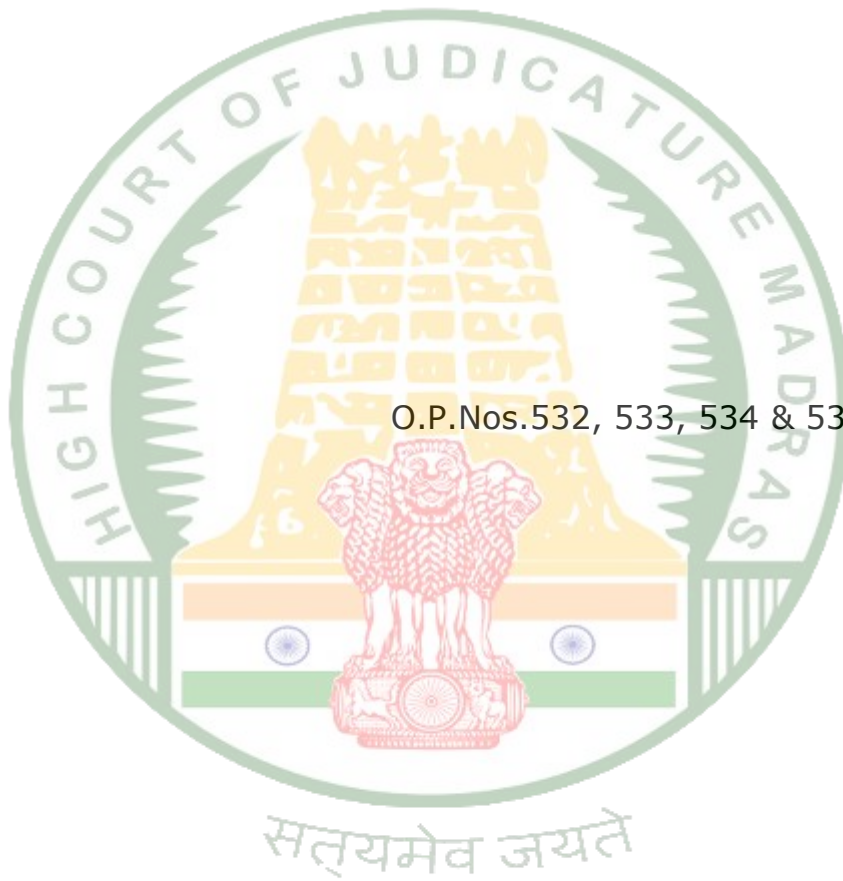
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