

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.08.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Original Petition No.259 of 2014

1.Mohammed Saifulla
S/o.Mohammed Yousuf,
Proprietor,
Superior Electricals,
No.773, Behind Pops Foods,
R.T.Nagar Post,
Bangalore - 560 032.

2.Farzana Sultana,
No.773, Behind Pops Foods,
R.T.Nagar Post,
Bangalore - 560 032.

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Petitioners

versus

1.M/s.Cholamandalam Investment &
Finance Company Limited,
Rep. by its General Manager,
Dare House, No.2, NSC Bose Road,
Parrys, Chennai - 600 001.

2.Mr.V.K.Thirunavukkarasu,
Principal District Judge (Retired),
Sole Arbitrator in Arbitration VKT/CHOLA/456/2012
M/s.Cholamandalam Investment &
Finance Company Limited,
Rep.by its General Manager,
Dare House, No.2, NSC Bose Road,
Parrys, Chennai - 600 001.

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Respondents

PRAYER: Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, r/w Order XLIII Rules 1, 2, 3 & 6 of the O.S. Rules, to set aside the Arbitration award dated 28.11.2013 made in Arbitration Case No.VKT/CHOLA/456/2012 on the file of the second respondent / sole Arbitrator.

For Petitioner : Mr.A.Mohamed Mushtak
for M/s.Rashaq Associates
For Respondent No.1 : Mr.D.Pradeep Kumar

ORDER

This Original Petition has been filed by the petitioners to set aside the arbitration award dated 28.11.2013 made in Arbitration Case No.VKT/CHOLA/456/2012 on the file of the second respondent / Sole Arbitrator.

2. The brief facts leading to file this Original Petition is as follows;

2.1. The first petitioner before this Court had availed a vehicle loan for a sum of Rs.4,25,000/- from the first respondent by executing an agreement dated 01.04.1999. As there was some default in the loan and insurance charges, the vehicle bearing No.KA-04-A-3804 was repossessed on 07.06.2004 by the Financier, as per the terms of the Contract. Thereafter, it appears that the first petitioner has filed a complaint in Complaint No.2776 of 2006 before the District Consumer Disputes Redressal Forum at Bangalore. By order dated 29.01.2007, the above complaint was dismissed by the said Forum.

2.2. As against which, the first petitioner has filed an appeal before the Karnataka State Consumer Disputes Redressal Commission, Bangalore. On 29.03.2007, the said Forum was also dismissed the appeal. Thereafter, a Suit has been filed before the City Civil Court, Bangalore, seeking for a mandatory injunction directing the defendant to return of the vehicle bearing No.KA-04-A-3804 in the same condition, as it was seized to the plaintiff or direct the defendant to pay a sum of Rs.5,00,000/- being the value of the loan together with interest at 18% per annum and also direct the defendant to pay a sum of Rs.5,00,000/- towards the financial losses and mental agony.

2.3. During the pendency of the Suit, an application under Section 8(1) of the Arbitration and Conciliation Act, 1996, was taken out by the Financier for referring the parties to Arbitration as per the specific clause contained in the Loan Agreement. The learned City Civil Judge, Bangalore, has referred the matter to the learned Sole Arbitrator.

2.4. During the arbitral proceedings, the petitioners had filed a counter claim seeking a sum of Rs.2,99,37,020/- on various dates. It is to be noted that the counter claim was filed on 18.04.2013 almost after 9 years of

the seizure of the vehicle, the learned Sole Arbitrator has negated the counter claim on 2 grounds. The first counter claim raised after 9 years from the original cause of action is barred by limitation. Further, the suit was filed beyond the period of limitation and hence, the suit claim was also rejected. Aggrieved over the same, the present Petition has been filed.

3. The learned counsel appearing for the petitioners would contend that even assuming the counter claim is barred by limitation, the suit claim ought to have been allowed by the learned Arbitrator. The learned Arbitrator has not taken note of the fact that the suit was filed within 3 years from the date of sale of the vehicle, which was sold on 17.12.2004. Therefore, his contention is that the above claim ought to have been allowed by the learned Arbitrator.

4. Whereas it is the contention of the learned counsel appearing for the first respondent that the Suit is barred by limitation. Admittedly, the vehicle was repossessed on 07.06.2004 as per the terms of the Contract. Such repossession ought to have been challenged within a period of 3 years, which has not been done so. Therefore, the mandatory relief of return of vehicle filed after 3 years, is not maintainable. Similarly, the second column for the

alleged payment of Rs.5,00,000/- was also barred by limitation. Hence, submitted that the entire rejection of the claim by the learned Arbitrator does not require any interference.

5. I have perused the arbitral award passed by the learned Arbitrator.

6. As rightly held by the learned Arbitrator that the counter claim was filed only in the year 2013, after 9 years from the cause of action certainly is barred by limitation. Similarly, no liberty whatsoever granted either by the District Consumer Disputes Redressal Forum or by the State Consumer Disputes Redressal Commission exempting a period of limitation in the Civil Court and also granted exemption under Section 14 of the Limitation Act to file a suit. The vehicle was repossessed as per the terms of the Contract on 07.06.2004, this fact is not in dispute. Such being the position, the original cause of action for questioning such repossession of the vehicle arose on the date of seizure of the vehicle. In any relief for direction to return of the vehicle ought to have been filed within 3 years i.e. on or before 07.06.2007, whereas the Suit itself was filed on 08.10.2007 much beyond the period of limitation. Therefore, the claim cannot be entertained after the period of limitation.

7. Though, it is urged by the learned counsel appearing for the petitioners that, since the vehicle was sold on 17.12.2004, the limitation start there only and not from the date of repossession of the vehicle i.e. on 07.06.2004. Such contention cannot be countenanced for the simple reason that, the entire original cause of action for return of vehicle arose as early as on 07.06.2004 itself. Any relief touching the seizure of the vehicle ought to have been filed within 3 years, which has not been done so. Therefore, the second claim of Rs.5,00,000/- is also not maintainable.

8. I do not find any infirmity in the order of the learned Arbitrator. Hence, the Petition filed by the petitioners is liable to be dismissed. Accordingly, the Original Petition stands dismissed. However, there is no order as to costs.

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Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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N.SATHISH KUMAR, J.,

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