IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.818 of 2019
&
A.No.7748 of 2019

G.V.S.Raghuram ... Petitioner

Vs

M/s.Axis Bank Ltd., Rep by its Authorised Signatory
4th Floor, New No.38, Old No. 165,
Arcot Road, Kodambakkam, Chennai – 600024
... Respondent

Prayer: Original Petition filed under Section 34 of Arbitration and Conciliation Act, 1996 against the award dated 13.06.2019 passed in A.C.P.(AXIS) 82/2019 by sole Arbitrator against the petitioner.

For Petitioner : Ms.K.Parameshwari

For Respondent : No Appearance

ORDER

The above Petition has been filed invoking the provisions of Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 13.06.2019.

2. Though the respondent has been served, there was no representation on their behalf. Though the cause list would indicate that Mr.N.Muthu Kumaran, learned counsel had entered Vakalat, however the Vakalat had been returned. The same has not been represented. Hence, this Court has proceeded to hear the matter in the absence of the respondent.

3. The respondent in the Claim Petition is the petitioner before this Court. The parties are referred to as claimant and respondent respectively.

4. The claimant had filed a Claim Petition before the learned Arbitrator claiming a sum of Rs.3,36,041/- together with interest

at the rate of penal interest per month from 15.03.2019 till date of recovery. It is the case of the claimant that the respondent had approached the claimant for financial assistance for purchasing a Vehicle of the make TATA CAT B/TIAGO. The claimant had granted the said loan on 28.11.2016 under Loan Agreement No.ALR008202145289 for a total sum of Rs.5,23,000/- to the respondent for the purchase of the said vehicle bearing Registration No. TN 09 CF 7565. The above amount Rs.5,23,000/- was repayable together with interest at Rs.1,38,320/- in all totalling a sum of Rs.6,61,320/-. The said amount was repayable in equated monthly instalments.

5. It was the case of the claimant that the loan agreement contained an arbitration clause, wherein, all dispute, difference or claim arising out of the loan amount was to be settled by arbitration. The case of the claimant was that the respondent was irregular in the payment of the monthly instalments and in view of the default, the claimant was constrained to initiate

Arbitral proceedings vide notice of reference to arbitration dated 15.03.2019. As on 15.03.2019, the respondent was liable to pay a sum of Rs.3,36,041/- to the claimant. Therefore the Claim Petition has been filed.

6. The respondent had not entered appearance in the proceedings. It is also seen that the Arbitrator had passed interim order under Section 17 of the Arbitration and Conciliation Act, directing re-possession of the Vehicle, subject matter of the loan agreement. The counsel for the respondent/petitioner would state that this order has been stayed.

7. The records would reveal that the respondent had not participated in the proceedings. However, to the letter dated 15.03.2019, issued by the claimant to the Arbitrator with a copy marked to the respondent, the respondent had sent a reply dated 30.03.2019 to the claimant, wherein, he has informed the claimant that EMI's have been paid regularly and that there was

no default at his end. However, there is nothing to show that this letter has been sent/served on the claimant or the learned Arbitrator.

8. The learned Arbitrator has proceeded to pass impugned award allowing the Claim Petition as prayed for on the basis of the documents provided by the claimant. It is challenging the Claim statement that the respondent is before this Court. The counsel for the respondent Ms.Parameshwri would draw the attention of this Court to the loan statement which has been exhibited at page no.29 of the Typed set of papers, wherein, it is seen that except in the month of January 2019, all other instalments have been paid and it is only one instalment where the cheque has bounced. She would therefore contend that there was no cause of action for filing the Claim Petition as there was no amounts due from the respondent to the claimant. She would further argue that the documents forwarded by her to the learned Arbitrator in response to the letter of reference to

arbitration have not been taken note by the learned Arbitrator and the learned Arbitrator has simply reproduced the claim statement in his award.

9. Heard, the learned counsel for the respondent/petitioner and perused the original records submitted by the learned Arbitrator.

10. The claim has been preferred by the claimant seeking recovery of amounts due under a loan agreement. The claim statement does not give any details as to the date from which the respondent had started defaulting in the payment of the equated monthly instalments. The learned Arbitrator in response to the orders of this Court dated 17.10.2019 has also forwarded the original records. Ex.A.9 is the statement of accounts which has been produced for the scrutiny of the learned Arbitrator and which is the basis upon which the award has come to be passed. A mere reading of the statement would clearly indicate that the

instalments have been paid right upto 15.02.2019. In fact the statement of account would show that only a balance of Rs.590/- is due on 22.02.2019 and that too toward Cheque bounce charges. From 15.12.2016 there is no penal interest which has been added to the respondent's account which would clearly demonstrate that there are no arrears. It is not clear as to how the learned Arbitrator had come to the conclusion that a sum of Rs.3,36,041/- was due on 21.03.2019, when the statement of accounts would disclose that as on 22.02.2019, only a sum of Rs.590/- was due and owing from the respondent as indicated in Ex.A.9. The order is also totally bereft of any reasoning except for extracting the claim statement and detailing the documents filed. There is no discussion as to the period of default and period upto which the respondent had been making payment to the claimant, according to the claimant as reflected in the statement of accounts. Further the counsel for the respondent produced the pass book of the respondent/petitioner with the claimant Bank for the period 13.11.2018 to 16.08.2019 which would show that every month a sum of Rs.11,022/- is being debited to the EMI except for the month of January 2019.

11. In the light of the above, the award deserves to be set aside as it suffers from a patent illegality. There is a total non-application of mind on the part of the learned Arbitrator, who has not even considered the statement of accounts to verify as to whether any amounts were due from the respondent especially when this fact is obvious from a mere reading of the statement of accounts.

12. In the result, the Original Petition is allowed. The award passed by the learned Arbitrator dated 13.06.2019 is set aside. Consequently, connected application is also closed. No costs.

03.12.2019

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Index : Yes/No
Speaking order/non-speaking order

P.T.ASHA, J.,

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