IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No.392 of 2017

K.Raman ... Petitioner

vs.

M/s.Kotak Mahindra Prime Limited,
rep. By its Manager/Executive Legal,
1st Floor, CEEBROS Centre,
No.45, Montieth Road,
Egmore, Chennai 600 008. ... Respondent

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 25.01.2017.

For Petitioner : Mr.V.Venkadasalam

For Respondent : Ms.Rajeni Ramadass

O R D E R

This Original Petition is filed challenging the Arbitral Award dated 25.01.2017 passed by the Sole Arbitrator vide Arbitration Case ACP No.87 of 2015.

2. It is seen that one M.Balaji has entered into a Loan Agreement with the Respondent/Finance Company, as borrower, on 30.06.2014 for purchase of Toyota Etios G vehicle and a sum of Rs.2,88,000/- was financed to him as loan. The Petitioner herein, viz. K.Raman stood as Guarantor to the loan. Since the

borrower was irregular in making payments towards instalments, the Respondent/Finance Company issued a Loan Recall letter dated 16.04.2015 to the Borrower/M.Balaji and the Petitioner herein, calling upon them to pay the outstanding amount or handover possession of the vehicle. In the meantime, the Respondent/Finance Company received a letter dated 02.06.2015 from the Deputy Official Assignee, High Court, by informing that the Borrower/M.Balaji has been adjudicated as insolvent in I.P.No.31 of 2015 on 16.04.2015. Therefore, the Respondent/Finance Company initiated Arbitration proceedings against the the Petitioner herein.

3. Before the Arbitrator, Exhibits A1 to A5 were marked in support of the claim of the Respondent/Finance Company. However, no document was filed on behalf of the Petitioner herein. The learned Arbitrator, on consideration of the material evidence on record, passed the following Award:

> "In the result, the Award is passed in favour of the Claimant herein as follows:
>
> (a) The claim sum of Rs.2,11,115/- (Rupees Two Lakhs Eleven Thousand One Hundred and Fifteen only)
>
> (b) Further interest @ 18% per annum for Rs.2,11,115/- from 05.06.2015 until the date of actual payment.
>
> (c) A sum of Rs.1000/- towards cost."

4. Learned counsel for the Petitioner submitted that the Petitioner is

not a Co-borrower of the loan financed to the borrower/M.Balaji and that he only stood as a Guarantor to the loan. He contended that the Arbitral Award passed against the Petitioner will have to be set aside and it is for the Respondent/Finance Company to initiate appropriate action against the borrower/M.Balaji in respect of the claim against him, in the manner known to law.

5. In reply, learned counsel appearing for the Respondent/Finance Company submitted that the Petitioner herein actually stood as a Guarantor to the loan financed to the borrower/M.Balaji and in the Claim Statement, it has been wrongly mentioned that the Petitioner herein is a co-borrower and that a Memo has been filed to correct the said error. She further submitted that the borrower/M.Balaji has been declared as an 'Insolvent' and hence, the Petitioner, who stood as a Guarantor is liable to pay the outstanding amount to the Respondent/Finance Company, as per the Agreement. Learned counsel added that Arbitration proceedings against the Petitioner were initiated after due notice to him.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. Admittedly, the Petitioner herein stood as a Guarantor to the loan financed to the Borrower viz. M.Balaji. This Court is of the view that unless a settlement is arrived at between the parties, the matter could not be given a quietus.

8. When this Court questioned the learned counsel for the Respondent/Finance Company as to whether the Respondent is willing to reduce the amount due to them in this matter, learned counsel submitted that the outstanding is more than Rs.2 lakhs, however, the Respondent/Finance Company is willing to accept a sum of Rs.1.5 lakhs as full and final settlement, which is less than the principal amount. Though the said suggestion was initially resisted by the learned counsel for the Petitioner, he agreed to the same and submitted that the Petitioner may be granted sufficient time to pay the amount in instalments, to which, the learned counsel for the Respondent/Finance Company did not express any objection.

9. Taking note of the submissions made by the learned counsel on either side, the Petitioner herein is directed to pay a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only), as full and final settlement of the amount due to the Respondent/Finance Company, in three equal monthly

instalments commencing on the first working day following the second Saturday in March 2019. The Arbitral Award dated 25.01.2017 thus stands modified. It is made clear that if the Petitioner fails to pay the reduced amount within the time stipulated, the Arbitral Award will revive.

The Original Petition is disposed of with the above direction. No costs.

30.01.2019

Index : Yes/No
Speaking order : Yes/No

<u>Note to Registry</u>:

Issue copy of this order on or before 22.02.2019.

(aeb)

S.VAIDYANATHAN,J.

(aeb)

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