IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2020

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.568 of 2020

1.Mr.K.Palani
2. Mrs. Vanitha ... Petitioners

vs.

Shriram Transport Finance Co. Ltd.,
Represented by its P.A.Holder
Mr.S.Varadhan
No.8/2, Bazaar Street, Near A.T.Mahal
Periyampalayam, Thiruvalur- 601 102 ... Respondent

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Arbitration Award in Arbitration Case No.5 of 2019 dated 05.11.2019 passed by the sole Arbitrator and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.D.Bharathy

ORDER

Captioned 'Original Petition' ('OP' for the sake of brevity) has been filed assailing an 'arbitral award dated 05.11.2019 bearing reference Arbitration Case No.5 of 2019' (hereinafter 'impugned award' for the sake of brevity) made by a sole Arbitrator who constituted the 'Arbitral Tribunal' ('AT' for the sake of brevity).

2. Captioned OP has been presented in this Court on 06.01.2020 and therefore, applying the ***Ssangyong*** principle or in other words law laid down by Hon'ble Supreme Court in ***Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India*** *reported in* ***(2019) 15 SCC 131,*** captioned OP will be governed by post 23.10.2015 regime of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' which shall hereinafter be referred to as 'A & C Act' for the sake of brevity and convenience. To be noted, captioned OP is an application under Section 34 of A and C Act assailing the impugned award.

3. Today in a web-hearing on a video-converencing platform Mr.D.Bharathy, learned counsel on record for two petitioners is before me. Learned counsel submits that there is no disputation that the petitioners have taken Rs.10 lakhs loan from the respondent (lone respondent in captioned OP) agreeing to repay the same in 60 'Equated Monthly Installments' ('EMIs' in plural and 'EMI' in singular for the sake

of convenience and clarity). Learned counsel submits that the issue turns on the rate of interest and quantum of EMI. According to learned counsel, while the loan has been availed by the petitioners for construction of a house, it has been classified as a business loan. In this view of the matter , learned counsel submits that the EMI ought not have been Rs.26,500/- (Rs.26,494/- to be precise), but it should have been Rs.18,000/-. It was also pointed out that in this regard, legal notice dated 24.11.2017 was sent to the respondent. In this regard, photocopies of this legal notice and postal receipt have been placed before me as part of the case file. There is no disputation that the respondent acceded to the request and reduced the EMI, but the EMI was not reduced to Rs.18,000/- as sought for by the petitioners and it was reduced to Rs.20,500/-.

4. In the aforesaid backdrop, alleging that the petitioners started paying the reduced EMI without clearing the arrears, arbitration clause was triggered, AT was constituted, AT entered upon reference, issued notice and made the impugned award after full contest. To be noted, when this Court says 'full contest', it means that this Court has noticed that the first petitioner in the captioned OP has deposed as DW1 before AT besides placing pleadings before the AT.

5. In this regard, this Court notices that though the first petitioner, who is first respondent before AT, has gone before the AT, filed pleadings and has even deposed as DW1, he has not chosen to file any document, much less the aforementioned 24.11.2017 notice. Therefore, going by the ***Canara Nidhi Limited*** principle, being law laid down by Hon'ble Supreme Court in ***Canara Nidhi Limited vs M. Shashikala*** reported in ***2019 SCC Online SC 1244,*** a document which was not part of the records before AT cannot now be looked into as leave of this Court has not been sought in this regard. Be that as it may, there is no disputation that the respondent has shown some concession and has reduced the EMI from Rs.26,494/- to Rs.20,050/- though not to Rs.18,000/- as sought for by the petitioners. In any event, AT has noticed that the first petitioner has issued legal notice requesting reduction of EMI from Rs.26,494/- to Rs.18,000/- and the claimant, as respondent, has issued a reply to the request by reducing the EMI to Rs.20,500/-, but AT has noticed that such scaling down of EMI is with a condition that the outstanding arrears of Rs.2,35,346/- should be cleared. Though there is no mention (in the impugned award in the list of exhibits) about the 24.11.2017 notice referred to supra, other legal notices and reply exchanged between the parties has been marked as

exhibits by the claimant before the AT (first respondent before me) i.e., as Exs.C4 and C5, AT has taken note of this. This is captured in the impugned award and the relevant portion of the impugned award reads as follows:

'The 1st respondent issued a legal notice requesting the claimant to revise the EMI of Rs.26,494 to Rs18,000/-. The claimant had issued reply notice considering the request by reducing the EMI to Rs.20,500/- with the condition to clear arrears outstanding due of Rs.2,35,346/-. But without clearing the arrears outstanding due the 1st respondent started to pay Rs.20500/- as EMI. Even after that 1st respondent committed default. Hence the matter is referred to arbitration on 22.12.2018, calling upon them to settle the amount, due to them..........'

6. Thereafter, AT has considered the rival pleadings and formulated five points for consideration, which (as culled out from the impugned award) read as follows:

'3.POINTS FOR CONSIDERATION:

1. Whether the Term Loan agreement entered between the Claimant and Respondent is true & valid?

2. Whether the Respondent committed default in payment of monthly installments and accumulated the arrears of outstanding?

3. Whether the Claimant is entitled for an award for the amount claimed in the claim petition?

4. Whether the Claimant is entitled for subsequent interest at *the rate of 36% per annum?*

5. What relief the Claimant is entitled to?

7. The crux and gravamen of this reduction of EMI issue has been captured in the first paragraph of impugned award captioned/dealing with Points 2 to 5 and the same reads as follows:

> *One Mr.Raghuraman, Branch Manager in the claimant company in his eveidence as CW1, states that, the Respondent had paid only a sum of Rs.4,13,823/- towards monthly instalments and failed to pay the further monthly instalments even after the demands made by the Claimant. The respondent had committed default in payment of the monthly installments. Further, the 1st respondent issued a legal notice requesting the claimant to revise the EMI of Rs.26,494 to Rs.18,000/-. The claimant had issued reply notice considering the request by reducing the EMI to Rs.20,500/- with the condition to clear arrears outstanding due of Rs.2,35,346/-. But without clearing the arrears outstanding due the 1st respondent started to pay Rs.20,500/- as EMI. Even after that 1st respondent committed default. Hence the claimant sent a reply notice on 22.12.2018, calling upon the respondents to settle the amount and in default to refer the matter to arbitration. As the Respondent failed and neglected to pay the amount, the Claimant referred this dispute, as per the Clause/Article 9 of the agreement. After service of arbitrator summons the first respondent appeared before the tribunal.*

8. This leaves this Court with the considered opinion that AT has considered this reduction of EMI aspect and returned a finding. More importantly, the finding returned by AT qua the lone point that is projected before me in the captioned OP is not an implausible view or in other words, it is not a view which no reasonable would take. As already alluded to supra, captioned OP has been presented in this Court on 06.01.2020 and therefore, it is governed by post 23.10.2015 regime of the A and C Act and statutory perimeter of Section 34, as impacted by 23.10.2015 amendment, which has been elucidatively explained by Hon'ble Supreme Court in oft-quoted ***Ssangyong*** case law and therefore, there can be no review of the impugned award on merits. In other words, captioned OP is neither an appeal nor a revision. It is not even a full-fledged review. It is a mere challenge to an arbitral award within the limited/short statutory perimeter of Section 34 of A and C Act or in other words, within the limited legal landscape of Section 34. In this view of the matter, this Court finds that there is no ground to judicially intervene qua the impugned award by perambulating within the limited legal landscape of Section 34 of A and C Act, as no such aspect of the matter qua grounds adumbrated in Section 34 of A and C Act has been projected before me. Therefore this Court is convinced that it cannot judicially

intervene qua impugned award.

Owing to narrative thus far, campign against the impugned award fails, as a result of which the captioned OP will stand dismissed. There shall be no order as to costs.

10.12.2020

Speaking order: Yes
Index: No

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M.SUNDAR.J.,

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