IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

O.P.No.537 of 2015

1.Jagdish Khurana,
Proprietor,
Khurana Rent-a-Car
behind Dhanalaxmi C.H.S. Ltd.,
SVP Nagar,
Andheri (West),
Mumbai – 400 053.

2.Poorti Rent-a-Car Logistics Pvt. Ltd.
Rep. by it sDirector,
Flat No.1702, 17th Floor, A-Wing,
Sweet Home, Plot No.24, SVP Nagar,
Andheri (West),
Mumbai – 400 053. ...Petitioners/Respondents

-Vs.-

1.M/s.Kogta Financial India Limited
rep. by its Manager Mr.Arif Khan,
Kogta House,
Azad Mohalla,
Bijainagar,
Rajasthan – 305 624. ... 1st Respondent/Claimant

2.K.S.Gowthaman,
Sole Arbitrator,
New No.49, 224-B, 4th Cross Street,
Natesa Nagar,
Virugambakkam,
Chennai – 600 092. ... 2nd Respondent

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Award dated 14.08.2013 rendered by the 2nd respondent in Claim No.KSG/GMAC/04/2009.

For petitioners : Mr. Ravi

For Respondents: Mr.R.Umashankar
for M/s.Sri & Shankar Associates

ORDER

The respondents before the Arbitral Tribunal are the petitioners before this Court seeking to challenge the Award dated 14.08.2013 passed by the Arbitrator in and by which the learned Arbitrator has directed the petitioners herein to pay a sum of Rs.10,13,338/- together with interest @12% per annum from 02.12.2009 till the date of realization.

2.2.The 1st respondent/claimant is the Assignee of the various contracts from M/s.GMAC Financial Services Limited (hereinafter referred to as GMAC). The respondent had entered into various agreements with GMAC. GMAC had thereafter entered into Assignment Deeds with the 1st respondent herein in May 2010. The 1st respondent had come forward with the claim *inter alia* contending that the petitioners herein had approached GMAC with a request to extend loan facility for the purchase of vehicles. The GMAC apart from the loan in question had also entered into several Agreements. The total amount which is the subject matter of the arbitral proceedings is a sum of Rs.34,18,632/- due towards the finance facility granted for the purchase of 6 cars. As per the Loan-cum-hypothecation and Guarantee Agreement, the petitioners agreed to repay the said sum in 36 monthly instalments of Rs.94,962/ each. The petitioners herein had in all executed 6 Agreements dated 23.01.2008. The details of various Contracts had been set out in the Claim Statement.

3.The 2nd petitioner is the guarantor guaranteeing the due performance of the obligations under the Contract by the 1st petitioner/Principal borrower. The 1st petitioner had hypothecated the subject vehicles in favour of the said GMAC creating a first charge over the vehicles in their favour.

4.The 1st respondent herein would contend that right from the inception of the Contract, the petitioners were highly irregular in repayment of the loan. It is the further case of the 1st respondent that on 24.10.2008, they had sent a Demand Notice calling upon the petitioners to pay the said amount. The petitioners herein did not respond to the said notice and the 1st respondent was constrained to terminate the loan and thereafter, exercise their rights under the Arbitration and Conciliation Act in view of the arbitration clause in the Agreements.

5.GMAC herein had filed an application under Section 9 of the Arbitration and Conciliation Act against the Garnishees requesting the Court to grant a Prohibitory Order. This Court by order dated 15.12.2008 was pleased to order the said application and a direction was given to the Garnishee, namely, M/s. Kingfisher Airlines to retain a sum of Rs.2 crores until further orders. Ultimately, a sum of Rs.64,63,830/- was released and given to GMAC. The GMAC would contend that in view of the default, the petitioners were bound to pay interest @36% per annum as per the terms of the loan agreement between the petitioners and the GMAC. By letter dated 24.03.2009, the arbitration clause was initiated and the claim filed.

6.Originally, the arbitration case was filed by M/s.GMAC Financial Service India Limited. The original claimant has also filed a memo on 03.08.2010 stating that they had sold their salvage portfolio to the respondent herein and that the respondent has decided to wind up their activities and that all future proceedings will be handed over by the present respondent.

7.The counter that was filed by the petitioners was that there was no arbitration agreement between them and the present respondent and therefore, the proceedings cannot be continued by them in the place of the claimant. Thereafter, a detailed counter has also been filed by the petitioners herein *inter alia* contending that the assignment in favour of the respondent by GMAC does not reflect the assets that had been assigned and whether the vehicle which is the subject matter of the present proceedings has been assigned to the respondent herein.

8.The respondent would further contend that the amount claimed is the entire loan amount which is erroneous since the petitioners can only seek to have the unpaid installments. The 1st respondent had adduced evidence before the learned Arbitrator and marked documents. However, was no evidence on behalf of the petitioners herein was produced/adduced despite time being granted to them. After perusing the pleadings and the evidence, the learned Arbitrator passed an Award directing the petitioner to pay the amounts due under the claim statement less the amount received from the garnishee. It is this Award which is the subject matter of challenge before this Court. The challenge is on the ground of the assignment deed under which the respondent has made the claim is totally bereft of details of the vehicles that have been assigned to them by the original letter of GMAC.

9.Mr.Ravi, learned counsel appearing on behalf of the petitioners would contend that the assignment dated 23.01.2008 does not reflect or provide details of the assets that had been assigned, though reference to assets made in the Agreement. He was however very fair in submitting that the Memorandum of Understanding dated 09.12.2011 that was entered into between the petitioners and the respondent pending the arbitration proceedings would clearly indicate that the petitioners were very much aware of the properties that were the subject matter of the assignment.

10.As regards the amounts demanded, it is the argument of the petitioners that the Arbitrator has erred in granting the entire loan amount as shown in the schedule without giving credit to the amounts already paid and also overlooking the fact that in the future payment, the Principal amount would automatically come down and therefore, the amount calculated would also definitely change.

11.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

12.A perusal of the Memorandum of Understanding dated 09.12.2011 produced on the side of the respondent/claimant clearly indicates that the parties were very much aware of the subject matter of the assignment.

13.The Memorandum of Understanding clearly describes that the subject matter of the arbitral proceedings are the 72 cars under finance. Therefore, it is very clear that both the parties had entered into an Agreement and further, the petitioners had acknowledged the assignment in favour of the respondent. Therefore, that argument put forward by the learned counsel for the petitioner fails.

14.Coming to the next argument, it is clearly seen that as per the schedule to the Loan Agreement, the entire amounts were repayable as early as in the year 2011. However, payments have not been made todate. In these circumstances, it is immaterial whether the loan has been recalled midway or at the end of the Contracts. The petitioners are overdue for nine years. The learned Arbitrator has passed the award after perusing the entire evidence. No grounds whatsoever under Section 34 of the Act has been made out and in these circumstances, this Court is not inclined to set aside the award of the sole Arbitrator. Accordingly, this Original Petition is dismissed.

06.02.2020

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
mps

P.T. ASHA. J,

mps

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