

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated : **05.03.2020**

Coram

**THE HONOURABLE MR. JUSTICE M.SUNDAR**

**O.P.No.199 of 2014**

K.M.Suresh Babu ..... Petitioner

vs.

1. M/s.Sundaram Finance Limited  
No.21, Pattulos Road  
Chennai - 600 002

2. P.Valsalan

3. Sri.Y.K.Rajagopal ..... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned award dated 27.05.2013 passed in Arbitration Case No.R/SF/32 of 2007 and served on the petitioner on 30.05.2013.

For Petitioner : Mr.Manoj Sreevalsan

For Respondents : No appearance for R1 & R3  
R2 Given up

**ORDER**

Mr.Manoj Sreevalsan, learned counsel on record for petitioner is before this Court.

## **2. PREFATORY NOTE:**

2(i) Instant 'Original Petition' ('OP' for the sake of brevity) has been filed under Section 34 of 'The Arbitration and Conciliation Act, 1996' (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity and it has been filed assailing an arbitral award dated 27.05.2013 made by an Arbitral Tribunal constituted by a sole Arbitrator qua a 'Hire Purchase agreement dated 06.02.1998 bearing HP Con.No.RP3347' (hereinafter 'said contract' for the sake of brevity, clarity and convenience). One covenant in said contract is an arbitration clause and therefore, the same serves as 'arbitration agreement' between the parties being 'arbitration agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.

2(ii) Challenge to an arbitral award under Section 34 of A and C Act, going by the language in which Section 34 of A and C Act is couched, is by way of an 'application', but this Court is giving the nomenclature 'Original Petition' for such applications under Section 34 of A and C Act. Therefore, this Court will continue to refer to instant matter as 'OP'. A OP under Section 34 of A and C Act is neither an appeal nor a revision. It is not even a full-fledged judicial review, but it

is a limited judicial review within the contours and confines of Section 34 of A and C Act. By 'contours and confines' of Section 34 of A and C Act, this Court refers to the 8 designated slots adumbrated in Section 34 of A and C Act. To be noted, 5 slots are adumbrated under Section 34(2)(a), two slots are adumbrated under Section 34(2)(b) and one slot figures under Section 34(2-A). This Court chooses to deploy the term 'slots' in preference to 'grounds' as instant OP (as mentioned earlier) is neither an appeal nor a revision and it is not even a full-fledged judicial review. To put it differently, it is a mere 'challenge to an award'. When it comes to 'challenge to an award', the principle is, if a petitioner/applicant is able to fit his case into any one or more of the eight slots snugly, the award will be dislodged or in other words set aside. If that not be so, the award will not be interfered with as 'minimum judicial interference' in 'Alternate Dispute Resolution' ('ADR') mechanism, which is the sublime philosophy and salutary principle underlying the scheme of A and C Act. In this context, this Court chooses to describe the eight slots adumbrated in Section 34 as eight pigeon holes. To be noted, some of these pigeon holes are even in the nature of keyholes and pinholes, as some of these slots have been circumscribed by limitations. An illustrative list is, a) not entailing review on merits, b) re-appreciation of evidence

impermissible being made impermissible and c) eliminating even erroneous application of law, from patent illegality slot i.e., sub-section (2-A) of Section 34. Therefore patent illegality slot is narrowed down in concentric circles by such circumscribing list in proviso making the slot a keyhole or may be a pinhole.

3. Having set out the scope and ambit of instant OP under Section 34 of A and C Act and having noticed that minimum judicial interference is one of the important pillars of ADR mechanism, this Court reminds itself that expeditious disposal of OPs under Section 34 is also another important facet of the matter. This facet of the matter finds statutory expression in sub-section (6) of Section 34 of A and C Act, which mandates that such OPs shall be disposed of expeditiously and in any event within a period of one year from the date on which notice under sub-section (5) is served on the party concerned. This sub-section (6) and importance of disposing of OPs of instant nature as expeditiously as possible and within the one year time line was emphasised by Hon'ble Supreme Court in *State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti* reported in (2018) 9 SCC 472. To be noted, though *Bhumi Vikas* case law is an authority for the broad proposition that sub-section (5) of

Section 34 is only directory and not mandatory, but there is a categorical observation in the ***Bhumi Vikas*** case law that every endeavour should be made by courts dealing with Section 34 OPs to adhere to one year time line in sub-section (6) of Section 34 and this observation is instructive. To be noted, this observation is set out in Paragraph 26 of Bhimi Vikas case law and the same reads as follows:

“26. We are of the opinion that the view propounded by the High Courts of Bombay and Calcutta represents the correct state of the law. However, we may add that it shall be the endeavour of every court in which a Section 34 application is filed, to stick to the time-limit of one year from the date of service of notice to the opposite party by the applicant, or by the Court, as the case may be. In case the Court issues notice after the period mentioned in Section 34(3) has elapsed, every court shall endeavour to dispose of the Section 34 application within a period of one year from the date of filing of the said application, similar to what has been provided in Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This will give effect to the object sought to be achieved by adding Section 13(6) by the 2015 Amendment Act.”

4. To be noted, it has become relevant to allude to this time line and observation in Bhumi Vikas case law as instant OP was presented in

this Court more than 6 years and 6 months ago, to mention with specificity, it was presented on 23.08.2013 and it has been awaiting disposal for more than half a decade. Six years and six months pendency makes sub-section (6) of Section 34 meaningless. It is in this backdrop that this Court is proceeding with the exercise of disposing of instant OP on merits without endlessly waiting for first respondent which has entered appearance through counsel after being duly served who has chosen not to come before this Court. This is more so as instant OP is predicated on lone limitation plea.

5. Broad summation of prefatory note is:

- a) Contours/confines of Section 34 OP are limited;
- b) The adumbration under Section 34 are in the nature of pigeon holes (some being keyholes and pinholes) and not grounds;
- c) A OP under Section 34 is neither an appeal nor a revision. It is not even a full-fledged judicial review, but a limited judicial review within the contours and confines of 8 pigeon holes;
- d) Minimum judicial interference which is one of the pillars of ADR mechanism is the sublime philosophy and

salutary principle underlying the scheme of A and C Act;

and

e) expeditious disposal of OPs of this nature is imperative for ADR mechanism to be successful.

**6. FACTUAL MATRIX IN A NUTSHELL:**

6(i) In the light of prefatory note supra, short facts shorn of elaboration or in other words, factual matrix in a nutshell will suffice for disposal of instant OP. To put it differently, it is not necessary to dilate in detail qua facts. Suffice to say that the fulcrum of instant OP is said contract i.e., a loan agreement dated 06.02.1998, wherein the first respondent company financed purchase of a truck by the petitioner and the second respondent stood guarantee. To be noted, today second respondent has been given up. Third respondent is the sole arbitrator, who constituted the Arbitral Tribunal. With regard to first respondent, though the first respondent company has entered appearance through a counsel and though the name of the counsel is shown in the cause list, no one has come before this Court to oppose this OP. Notwithstanding this position, this Court proceeds to embark upon the exercise of deciding the OP on merits. To be noted, while embarking upon this exercise, this

Court has reminded itself of sub-section (6) of Section 34, which prescribes one year time line for disposal of OPs under Section 34. This one year time line for disposal of OPs under Section 34 of A and C Act has been emphasised by Hon'ble Supreme Court in **Bhumi Vikas Bank** case law (supra). Though **Bhumi Vikas Bank** case law is an authority for the broad proposition that sub-section (5) of Section 34 is directory and not mandatory, the observation in Paragraph 25 of **Bhumi Vikas Bank** case law is of significance and this Court, respectfully follows the observation made by Hon'ble Supreme Court. In other words, this Court notices that instant OP was presented in this Court on 23.08.2013 more than six years and six months ago and further delay on account of first respondent company's counsel not appearing before this Court cannot be countenanced. This has already been alluded to supra under the caption 'PREFATORY NOTE'.

6(ii) Continuing with the narration of short facts, as mentioned supra, 06.02.1998 finance agreement i.e., said contract is the fulcrum. Vide 06.02.1998 agreement i.e., said contract loan advanced is Rs.3,26,900/- repayable in 24 'Equated Monthly Installments' ('EMIs' in plural and 'EMI' in singular for brevity); that first EMI is payable on 06.02.1998 and 24<sup>th</sup> EMI is payable on 06.02.2000; learned counsel for

petitioner very fairly submitted that there was a default after payment of 14<sup>th</sup> EMI on 06.04.1999 and that thereafter, the vehicle/truck, which is subject matter of the loan agreement, was repossessed by the first respondent company on 17.01.2002. To be noted, repossessed truck has been sold and sale proceeds have been appropriated by first respondent company towards liability of petitioner qua said contract.

6(iii) In the aforesaid backdrop, arbitration proceedings (even according to the impugned award) was initiated on 20.03.2007 claiming what according to the first respondent company is the balance due from the petitioner and the second respondent guarantor after adjusting the sale proceeds of the vehicle / truck, which was repossessed on 17.01.2002 sold thereafter and sale proceeds appropriated. The claim was predicated on the basis that the vehicle/truck that was repossessed on 17.01.2002 was sold on 25.06.2004 for Rs.1,55,000/-, more than 2½ years after repossession.

6(iv) The petitioner, who was first respondent before the Arbitral Tribunal, entered appearance through a counsel and resisted the arbitration claim made by the first respondent company. One of the grounds on which claim of the first respondent company was resisted is limitation. In other words, it was the pointed submission and stated

position of the petitioner before me that the arbitral claim of the first respondent company had become stale / time barred and that the arbitration proceedings was hit by law of limitation. This aspect was considered by the Arbitral Tribunal vide impugned award dated 27.05.2013 and it was held that the arbitration is not barred by limitation as it has been initiated within three years from the date of sale of the re-possessed vehicle/truck.

6(v) Thereafter, instant OP was filed / presented in this Court in the year 2013 and it has been pending on the file of this Court for more than 6 years.

**7. SUBMISSIONS AND DISPOSITIVE REASONING:**

7(i) I have set out both factual matrix (albeit in a nutshell) as well as the trajectory which instant OP has taken until the hearing today under the caption 'FACTUAL MATRIX IN A NUTSHELL' supra, Now this Court proceeds to examine instant OP on merits on the basis of submissions made by Mr.Manoj Sreevalsan, learned counsel for petitioner.

7(ii) Learned counsel for petitioner submits that the limitation is three years and that this is vide No.113 or Entry No.113 of the First

Division of Schedule to the Limitation Act, which reads as follows:

| <i>Description of application</i>                                                     | <i>Period of Limitation</i> | <i>Time from which period begins to run</i> |
|---------------------------------------------------------------------------------------|-----------------------------|---------------------------------------------|
| 113.Any suit for which no period of limitation is provided elsewhere in this schedule | Three years                 | When the right to sue accrues               |

7(iii) This takes us to what is the reckoning date for computing limitation. Learned counsel submits that the vehicle was repossessed on 17.01.2002 and at best or at the highest, this can be taken as the reckoning date. Learned counsel submits that this is a demurrer submission without prejudice to his submission that cause of action accrued on 06.04.1999 when default regarding 14<sup>th</sup> EMI occurred. Even if the date projected on a demurrer i.e., 17.01.2002 is taken, arbitration proceedings are clearly barred by limitation as even according to the impugned award, arbitration proceedings were initiated only on 20.03.2007, well beyond three years from 17.01.2002. In support of his contention, learned counsel pressed into service a judgment Hon'ble Supreme Court in ***Sundaram Finance Limited Vs. Noorjahan Beevi and Another*** reported in (2016) 13 SCC 1. Incidentally, the first respondent company is the appellant in ***Noorjahan Beevi*** case also.

Learned counsel drew the attention of this Court to Paragraph 14 of *Noorjahan Beevi* 's case, which reads as follows:

'14. There is no dispute between the parties that the hirer committed default in payment of instalments on 20-5-1984. The High Court has further held that there is no clause in the agreement permitting the plaintiff to sell the vehicle. The submission of the learned counsel for the appellant that limitation to file the suit for recovery of balance amount shall begin with effect from the date of sale, that is, 30-5-1985, does not appeal to us. The contract was to be determined ipso facto on default being committed. The power of seizing the vehicle and to take possession as contemplated under Clause 4 of the agreement was consequent to default being committed by the hirer.'

*(Underlining and double underlining  
made by this Court to supply emphasis  
and highlight)*

7(iv) Adverting to paragraph 14 of *Noorjahan Beevi*'s case, it was submitted that the three years limitation period has to be reckoned not from the date of sale of the truck, but the date on which installment fell due as already alluded to supra. The pointed submission of learned counsel for petitioner is that at the highest (albeit on a demurrer) it can be from the date of repossession and the date of repossession is 17.01.2002.

7(v) This takes us to how the Arbitral Tribunal has dealt with this limitation aspect. Arbitral Tribunal has formulated the limitation issue as

one of the points for consideration, namely clause (e) and has dealt with the same in Pages 14 and 15 of the award. This Court deems it appropriate to usefully extract entire point (e) and the narrative thereunder as in the impugned award. It reads as follows:

*'Point No.e) Whether the claim is barred by limitation?*

*The next important point raised by the respondents are the claim is barred by limitation. The respondents submits that even as per the claim statement the alleged agreement was executed on 06-02-1998 and last installment has to be paid by 06-02-2000 and as such if at all any remedies were available to the claimants against this respondents are barred by limitation as they did not took any steps within three years of the date of agreement or the date of last installment to be paid. It is pertinent to note that this claimants admitted that this respondents defaulted the payment with effect from 06-04-1999 and as such the present proceedings initiated much after the limitation period is prima facie not maintainable. More over as per the statement the agreement was terminated on 17-01-2002 and as such if at all any claims against this respondents are there it has to be preferred within the limitation period. On the contrary the claimant submits that the claim was laid well within the period of limitation. As stated in claim statement, the vehicle that was subject matter of the Hire purchase was sold on 25-06-2004, on which date the damages were quantified. It is pertinent to note that under Clause 4 of the Hire Purchase Agreement, the claimant is entitled to sue for damages for breach of the Agreement and the damages were*

*quantified on 25-06-2004, the date of sale of the vehicle. The Arbitration Proceedings were initiated on 20-03-2007, which was well within the period of 3 years from the date of crystallisation of damages. Hence, the allegations that the claim is barred by limitation is not correct. As per the terms and conditions mentioned to the said agreement the hirer is liable for damages and the claimant is quantify the damages. The claimant quantified the damages on 25-06-2004. From the date of quantifying the damages within 3 years the present Arbitration Proceedings were initiated and the present claim is not barred by limitation as claimed by the respondents. Hence, this point is answered against the respondents.'*

**(Underlining made by this Court to supply emphasis and highlight)**

7(vi) From point (e), extracted and reproduced supra, it is clear that Arbitral Tribunal has held or returned a finding that the dispute is not barred by limitation as the arbitration proceedings have been initiated on 20.03.2007, which is within three years from the date of sale of the vehicle/truck on 25.06.2004. In the light of the principle laid down in *Noorjahan Beevi's* case, this is obviously and plainly incorrect.

7(vii) This takes us to dispositive reasoning qua instant Section 34 petition. As already alluded to supra, in the prefatory note, there are

eight pigeon holes available under Section 34 of A and C Act for entertaining a petition assailing an arbitral award. In the instant case, from the submissions made by learned counsel for petitioner, this case fits snugly and neatly into Section 34(2)(b)(ii) read with Clause (ii) of Explanation 1. In other words, it is in conflict with the public policy of India and it is in contravention with the fundamental policy of Indian law.

7(viii) Though not cited at the Bar, I took it upon myself to place reliance on *N.Balakrishnan Vs. M.Krishnamoorthy* case rendered by Hon'ble Supreme Court in 1998 and reported in **(1998) 7 SCC 123**. In N.Balakrishnan's case, Hon'ble Supreme Court held that limitation is founded on public policy. If limitation is founded on public policy, the plea of limitation being raised in a challenge to an arbitral award certainly fits into Section 34(2)(b)(ii) read with Clause (ii) of Explanation 1 of A and C Act.

7(ix) In this backdrop, there is no difficulty in accepting the plea that limitation is certainly a ground available for assailing an arbitral award under Section 34.

7(x) Now the question is, whether this is opposed to public policy. Prior to 23.10.2015, public policy was neither defined nor described. It

was not explained also. On and from 23.10.2015, the term/expression 'public policy' stood statutorily explained vide Explanation 1 to aforementioned Section 34(2)(b)(ii) of A and C Act. A perusal of Explanation 1 and more particularly, Clause (ii) reveals that an award being in contravention with the fundamental policy of Indian law is one that can be tested for being in contravention with public policy. This is more so in the light of N.Balakrishnan's principle.

7(xi) This takes the discussion and dispositive reasoning back to public policy. Hon'ble Supreme Court in **ONGC Ltd. v. Western Geco International Ltd.**, reported in (2014) 9 SCC 263 followed by **Associate Builders Vs. Delhi Development Authority** reported in (2015) 3 SCC 49 dealing with public policy qua A and C Act culled out three distinct juristic principles. Not only were three distinct juristic principles culled out, but the litmus tests for each of the three distinct juristic principles were also laid down. The three distinct juristic principles qua public policy culled out by Hon'ble Supreme Court are

- a) Judicial approach;
- b) Natural justice principle (NJP for brevity); and
- c) Irrationality/perversity.

7(xii) The litmus tests for the aforesaid three distinct juristic principles laid down by Hon'ble Supreme Court are a) fidelity to judicial approach; b) *audi alteram partem* and c) time honoured *Wednesbury* principle of reasonableness. To be noted, these principles were laid down by Hon'ble Supreme Court in aforementioned ***Western Geco*** case law and reiterated in ***Associate Builders*** case, both of which were rendered by Hon'ble Supreme Court prior to 23.10.2015 and prior to the term 'public policy' being statutorily explained in A and C Act. Be that as it may, this principle continues to govern the field post 23.10.2015 also as the ***Western Geco*** principle, more particularly the three distinct juristic principles culled out by Hon'ble Supreme Court and reiterated in ***Associate Builders*** case was reaffirmed by the Supreme Court in ***Centrotrade Minerals and Metal Inc. Vs. Hindustan Copper Ltd.***, reported in (2017) 2 SCC 228 which was rendered post 23.10.2015.

7(xiii) In the aforesaid backdrop, this Court finds that two of the distinct juristic principles culled out by Hon'ble Supreme Court become significant and relevant for instant case, namely a) judicial approach and b) Irrationality/perversity.

7(xiv) To be noted, it is nobody's case that NJP has been violated. With regard to judicial approach, as mentioned supra, litmus test is

fidelity to judicial approach. A perusal of discussion on point (e) of impugned award (extracted and reproduced supra) reveals that the arbitral award lacks fidelity of judicial approach as it proceeded by taking the date of the sale of the repossessed truck as the reckoning date by ignoring the factual position and this was a date which was fully within the control of the first respondent company besides overlooking the legal principle that said contract stood *ipso facto* determined on default being committed. With regard to Irrationality/perversity, one cannot choose a date, which is entirely at the discretion of one of the parties to be the reckoning date for computing the period of limitation giving a go by to relevant article in the schedule to Limitation Act. It is also a case where the sale of the vehicle is said to have happened even according to the stated position of the first respondent company 2 ½ years after the date of repossession. This is clearly unacceptable. If a finance company chooses to sell the re-possessed vehicle a decade later, the goal post cannot be altered by a decade. This clearly militates the basic principle underlying the law of limitation, which in turn militates against public policy and results in a situation which is in conflict with public policy and in contravention with fundamental policy of Indian law. To be noted, limitation is the only aspect projected before this

Court and that one aspect neatly and snugly fits into 34(2)(b)(ii) read with Clause (ii) of Explanation 1 of A and C Act as alluded to supra.

**8. CONCLUSION:**

In the light of the submission and dispositive reasoning supra, this Court has no hesitation in coming to the conclusion that the impugned award cannot but be dislodged as it has entertained a time barred claim and as it is opposed to law of limitation. In other words, impugned award is liable to be set aside as one being in conflict with public policy and the ground of challenge is one that snugly and neatly fits into 34(2)(b)(ii) of A and C Act.

**9. DECISION:**

Instant OP is allowed. Though this is a fit case for imposing costs, considering the nature of the matter and considering the trajectory which this matter has taken, this Court refrains itself from imposing costs in this case.

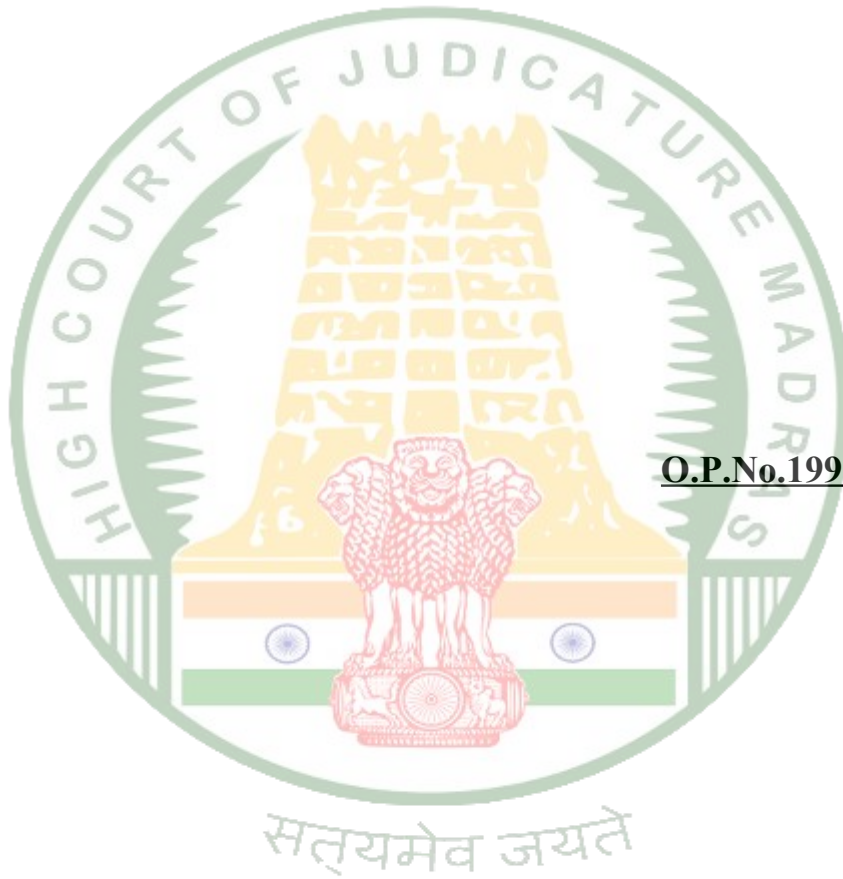
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Speaking Order  
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