

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.M.A.No.3185 of 2017

1.K.Raju

2.R.Pandiyarajan

...Appellants/Petitioners

Vs.

1. M/s.Sakthi Finance Limited,
Rep. by its General Manager (Operations),
No.62, Dr.Nanjappa Road,
Coimbatore - 641 018.

2. The Sole Arbitrator,
Mr.S.C.Subramaniam,
Conference Hall, Sakthi Finance
Limited, New 62 (Old 475),
Dr.Nanjappa Road,
Coimbatore - 641 018.

...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, to set aside the fair and final order dated 19.12.2016 made in Arb.O.P.No.330 of 2013 on the file of the Principal District Court, Coimbatore.

For Appellants: Mr.A.Saravanan

for M/s.K.S.Karthik Raja

For R1 : Mr.Elayaraja

for M/s.Ramalingam Associates

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order dated 19.12.2016 made in Arb.O.P.No.330 of 2013 on the file of the Principal District Court, Coimbatore, confirming the arbitral award passed by the Sole Arbitrator, the 2nd respondent herein, in Arbitration Proceedings No.26 of 2010 dated

16.06.2012.

2.The brief facts leading to the filing of this appeal are as follows :

2.1.The 1st appellant being the borrower and the 2nd appellant being the guarantor availed a loan of Rs.8,25,000/- along with finance charges of Rs.2,70,270/-, totally a sum of Rs.10,95,270/-, for purchase of a vehicle and agreed to repay the amount in 35 monthly installments. As a dispute arose with regard to the repayment of the amount, the matter was referred to the Sole Arbitrator, the 2nd respondent herein, in Arbitration Proceedings No.26 of 2010.

2.2.It is the case of the claimant/1st respondent before the Sole Arbitrator that, except one installment, all other installments have been defaulted by the appellants, and therefore, the matter was referred for arbitration. The learned Arbitrator, after giving opportunities to both sides, finally passed an award for a sum of Rs.4,63,945/-, as against which, a petition in Arb.O.P.No.330 of 2013 under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act" for brevity) was filed before the Principal District Court, Coimbatore, and the same was also dismissed.

3.Challenging the order of the Principal District Judge, this appeal has been filed under Section 37 of the Act.

4.The main contention of the learned counsel for the appellants is that the hire purchase agreement which was relied upon by the Arbitrator did not contain the particulars as to the loan amount, type of vehicle, Registration Certificate, etc. Hence, it is his contention that the award passed by the Arbitrator is patently illegal. Further, it is the contention of the learned counsel that the vehicle was also seized and sold out and this aspect also has not been taken into consideration by the Arbitrator. Moreover, the signature found in the hire purchase agreement was obtained in blank papers and hence, those documents are not enforceable. Therefore, it is the main contention of the learned counsel that the learned Arbitrator and the Court below have not considered any of these facts while passing the arbitral award or the impugned order in the petition under Section 34 of the Act and hence, they suffer from patent illegality and hence, the learned counsel prayed to set aside the impugned order and the Arbitral Award.

5. Per contra, the learned counsel for the 1st respondent contended that the Arbitrator has considered all the relevant materials of the case. The learned counsel submitted that, in fact, hire purchase agreement was executed between the appellants and the 1st respondent towards the loan; as the appellants committed default in payment of monthly installments, the matter was referred for arbitration. Hence, it is his contention that, no ground has been made out to entertain this appeal and the appeal lacks merits and prayed for dismissal of the appeal.

6. This Court gave its anxious consideration to the rival submissions and perused the entire materials on record.

7. The factual matrix of the case need not be re-iterated here, as already briefed supra. The entire dispute is with regard to the default in payment of monthly installments by the appellants as agreed by both the parties. It is not the case of the appellants that they had not been given any opportunity by the Arbitrator or had not been served with notice as contemplated under Section 34 of the Act. The only ground that is canvassed by the appellants before this Court is patent illegality. However, on appreciation of the entire materials, this Court does not find any patent illegality in this matter.

8. It is trite that, only when the ground(s) contemplated under Section 34 of the Act is/are made out, the award passed by Arbitrator can be interfered with by the Court and the Court cannot sit as an Appellate Court and re-appreciate the entire evidence. On a perusal of the entire materials, it could be seen that, in fact, opportunity has been given to the appellants and their counter affidavit has also been filed. Despite the appellants having taken a stand that they have discharged the loan amount, they failed to appear for cross-examination. Moreover, the notice sent by the 1st respondent was also received by the appellants, wherein, the disposal of the vehicle has also been intimated to the appellants. All these facts have been considered by the learned Arbitrator while passing the award. Therefore, it cannot be said that relevant materials have not been taken note of by the Arbitrator and the arbitral award is only the result of irrelevant materials.

9. In view of the above, I do not find any ground contemplated under Section 34 of the Act to interfere with the order of the Court below or the arbitral award passed by the Sole Arbitrator.

Therefore, this Civil Miscellaneous Appeal lacks merits and accordingly, stands dismissed. The impugned order of the Court below is confirmed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mkn

To

1. The Principal District Judge,
Coimbatore.

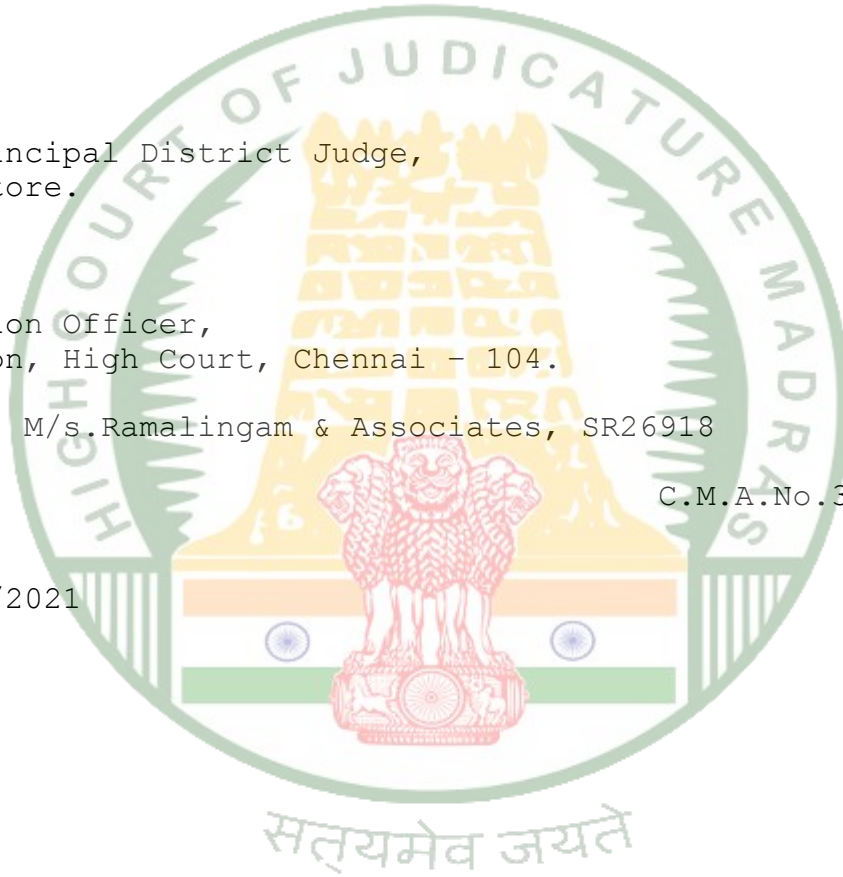
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The Section Officer,
VR Section, High Court, Chennai - 104.

+2cc's to M/s.Ramalingam & Associates, SR26918

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