

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

O.P.No.1039 of 2018
and A.No.9068 of 2018

1. K.Mathiayan

2. M.Chinnapappa

...Petitioners

/Vs/

M/s.Cholamandalam Investment and
Finance Company Limited,
Represented by its Authorized Signatory
'Dare House' No.2, N.S.C. Bose Road,
Parrys, Chennai 600 001.

...Respondent

PRAYER: Original Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 to pass Judgment and Decree setting aside the arbitration award dated 17.03.2017 passed by the sole arbitrator.

For Petitioners : Mr.S.Senthil Nathan

For Respondent : Mr.D.Pradeep Kumar

ORDER

The Respondent Company is the claimant before the Arbitrator.

The petitioners who are the respondents before the Arbitral Tribunal have

filed the Original Petition challenging the award dated 17.03.2017 made in A.C.P.No.SP.1355 of 2016 by the sole arbitrator.

2. The challenge is on the ground that notice was not given to the petitioners and that the claimant has not sold the vehicle for fair price and the amount has not been given credit to. Apart from the above, the petitioners have also raised the defence that the arbitrator's award had not been served on them either by the arbitrator or by the claimant.

3. This Court, by an order dated 17.02.2020, had directed the learned counsel for the claimant, to produce the records of the Arbitrator today. The said records have been produced.

4. On a perusal of the records, it is seen that the notice dated 25.07.2016 has been issued by the claimant to the applicants/petitioners company, informing about the appointment of the Arbitrator and acknowledgment of the same has been received from both the petitioners on 03.08.2016. Thereafter, the Arbitrator, in turn, has issued a letter dated 09.08.2016, informing the parties about the posting of the case and also referred that the first hearing will be on 13.09.2016, including the claim

statement of the claimant. However, there is no proof to show that this letter has been served on the respondents. The proceedings of the Arbitrator dated 13.09.2016 has been sent to the petitioners herein and the same has also been received by both the petitioners on 03.10.2016.

5. The Arbitrator had vide his proceedings dated 13.09.2016 informed the petitioners that the matter was adjourned to 25.10.2016, for recording evidence since the petitioner had not appeared despite notice. However, despite receipt of the notice as early as on 03.10.2016, the petitioners herein not entered appearance. Therefore, they had not participated in the 2nd hearing of the arbitral proceedings. Thereafter, the award has also not been sent to the petitioners herein by the learned Arbitrator which is contrary to the provision of Section 31(5) of the Arbitration and Conciliation Act.

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6. The next issue is whether the vehicle had been sold by the respondent/claimant for a fair price. The learned counsel for the respondent company would contend that the vehicle was involved in criminal case and had been seized by the police authorities and the same is

kept in the Magistrate Court in the open. The respondent company had to thereafter file necessary application for return of property, by which time, the value of the vehicle also get deteriorated and that apart, the vehicle had incurred legal and parking charges, to the tune of Rs.53,750/- and considering the fact that these charges have also to be settled, the vehicle was sold and a sum of Rs.18,000/- was given credit to after setting therefrom the legal and parking charges.

7. The above said arguments raised by the respondent is not reflected in the award. Considering the fact, that adequate notice has not been served on the petitioner and the respondents have not substantiated the reason for selling the vehicle for such a low price, the original petition is liable to be allowed.

8. In fine the original petition is allowed and the Award is set aside. Both parties agreed that the dispute can be once again referred to the very same Arbitrator for fresh consideration of the issues. Therefore the registry is directed to return the original documents to Mr.D.Pradeep Kumar, learned counsel for the respondent to be handed over to the

Arbitrator Mr.Suchit Anant Palande. The Arbitrator shall dispose of the Arbitral proceedings within a period of two months from the date of receipt of the copy of this order. There shall be no costs.

24.02.2020

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Index: Yes/No

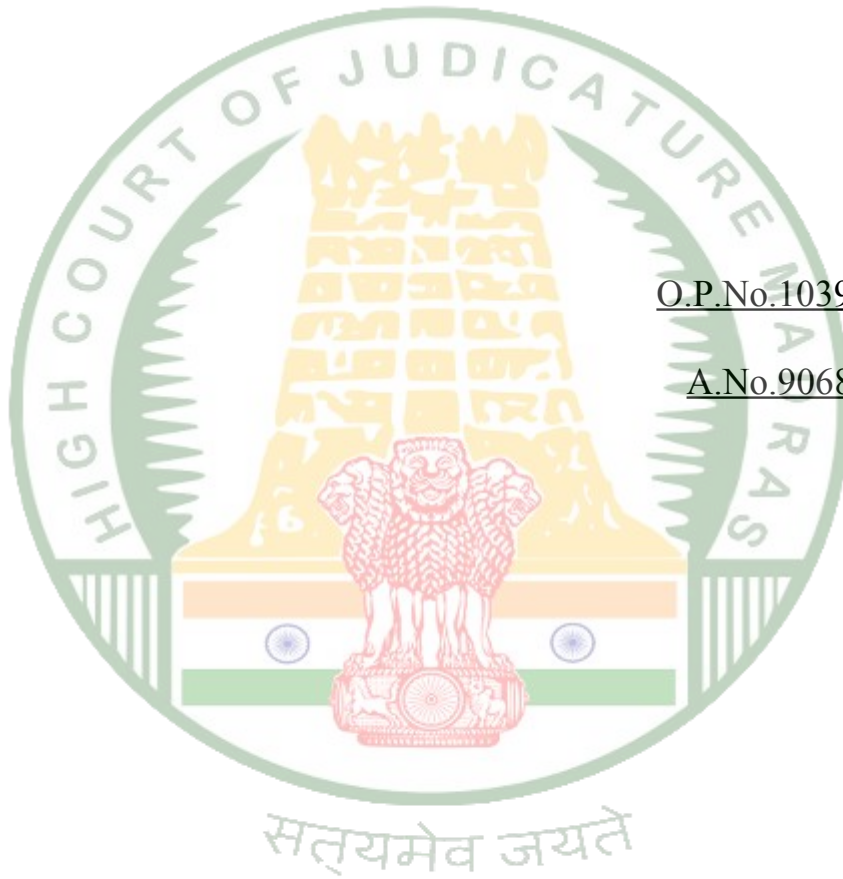


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