IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 187 OF 2018

Shankarlal Mewalal Gupta ….Petitioner

V/s.

L & T Finance Ltd. & Anr ….Respondents

Mr. Deepak Arun Lad for Petitioner;
Ms. Nikita Pawar a/w Ms. Jalpa Pithadia i/b S. I. Joshi and Co. for Respondent No. 1;
Mr. Shadad Khan i/b M/s. India Law for CFM ARC.

CORAM : K.R.SHRIRAM, J.
DATED : 8th FEBRUARY 2021

P.C. :

1 At the outset, in the order dated 18th January 2021, in the appearance for respondent no.1, the words ***"S. I. Shah & Co."*** to be corrected to read as ***"S. I. Joshi & Co."***.

2 Rest of the order remains unaltered. Original order to be corrected accordingly.

3 Ms Pawar, at the outset stated that she has no instructions to appear for respondent no.1. Ms Pawar submitted that the loan or the claim under the impugned award in this petition has been assigned to a third party namely; CFM Asset Reconstruction Company, pursuant to an agreement dated 30th September 2019. Ms Pawar submitted that L & T Finance Ltd is no more concerned in the matter and the assignee should be concerned.

CFM ARC has not taken steps to be brought on record. They did not appear even on 18th January 2021. Today, Mr. Khan appears for CFM ARC and states CFM ARC is yet to take steps to be brought on record. Ms Pawar states no steps have been taken by CFM ARC to even take the records and proceedings from S. I. Joshi & Co.

4 Have considered the petition and affidavit in reply opposing the petition. The facts and circumstances are rather straightforward and hence this petition can be disposed at the admission stage itself.

5 Petitioner has impugned the award on the ground of perversity in as much as according to petitioner, the award has been given without application of mind. Mr. Lad appearing for petitioner submits that the transaction was relating to a vehicle loan of Rs.15 lacs taken by petitioner. According to Mr. Lad, petitioner had repaid about Rs.10 lacs and sometime in 2014 respondents took possession of the vehicle and sold it for a sum of Rs.6 lacs, which means respondents have recovered more than what was due from petitioner. These points admittedly have not been taken by respondents in its reply filed in the arbitral proceedings. At the same time, it was the bounden duty of respondents who were claimants in arbitral proceedings to place the true and correct facts before the Arbitrator.

In the affidavit in reply to this petition, respondents have not denied that they took repossession of the vehicle or that petitioner had repaid Rs.10 lacs. Paragraph 19 of the petition reads as under:

> *"19 The petitioner submits that though he had taken a loan under the loan agreement of Rs.15,50,000/-, however, had made a substantial*

payment of around Rs.10,00,000/- to the Respondent no.1. The petitioner had not given any specific statement towards payment made for reimbursement of loan and thereby was misrepresented by the respondent no.1 by claiming an exorbitant amount towards its alleged recovery. Furthermore, it is an admitted fact that the vehicle / truck for which the loan was taken from respondent no.1 was of worth around Rs.15,00,000/- which the respondent no.1 without consultation with the petitioner had sold the said vehicle for an absolutely hangdog price, thereby thus causing severe loss and prejudice to the petitioner. The petitioner in the circumstances seek protective relief as prayed herein below in relation to injuncting respondent no.1 from taking any coercive measures pursuant to the impugned ex parte award."

6 In the affidavit in reply, respondents have not even dealt with paragraph 19 let alone denying the allegations..

In paragraph 14(N) to the petition, petitioner has alleged that respondents had sold the vehicle for a low price of Rs.6 lacs, thereby causing loss of Rs.9 lacs to petitioner and the amount of Rs.9 lacs ought to have been adjusted towards the repayment of the loan. Respondents in its reply has denied that the vehicle was sold for a low price of Rs.6 lacs or it caused loss of R.9 lacs to petitioner. What is relevant to note is, respondents have not denied that it ever took possession of the vehicle or that it sold the vehicle for whatever price it felt was right. In paragraph 15 of the award, the Learned Arbitrator has noted that respondents who are the claimants in the arbitration proceedings, have produced statement of accounts maintained by them, which also establish the claim in the present arbitration proceedings. If respondents have been truthful, the Arbitrator would not have passed the award as stated in paragraph (b) of his conclusions. Paragraph (b) reads as under:

> *"(b) The claimants are entitled to possession of the agreement equipment/vehicle. The respondents do forthwith surrender possession of the said equipment / vehicle to the claimants. The claimants are permitted to dispose off the said equipment/vehicle for recovery of their dues under this Award and the claimants do credit the net sale proceeds thereof in the accounts of respondents, after deducting the expenses incurred to affect the said sale. If the amounts so recovered after the said sale of the equipment / vehicle is more than the amounts recoverable from the respondents under this award, the claimants do refund the excess amount to the respondent and if the amounts recovered after said sale is less than the awarded amount, the claimants are entitled to recover balance amount from the respondents."*

The other way of looking at it is the fact that the Arbitrator has mentioned in paragraph (b) as quoted above, would indicate respondents who were the claimants, were economical with truth and did not point out to the Arbitrator that they had taken possession of the vehicle and they have sold the vehicle and give credit for the amount recovered. The other possibility is the arbitrator has not applied his mind.

7 On these grounds, I will have to hold that arbitral award smacks of perversity and has to be set aside. Award set aside.

8 Petition allowed and accordingly stands disposed.

(K.R.SHRIRAM, J)