



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 09th DAY OF SEPTEMBER 2021

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Arb.O.P(Comm.Div.)No.66 of 2021

and

A.No.2611 of 2021

In the matter of Arbitration and
Conciliation Act 1996

and

In the matter of dispute between
M/s.Shriram Transport Finance
Company Ltd.,

Mr.K.Suresh
S/o.Late Karunanidhi
No.17/1, Thiruvallur Street,
Kennedy Square, Perambur,
Chennai 600 011.

.....Petitioner/Applicant

Vs

1. M/s.Shriram Transport Finance Company Ltd.,
Rep by its G.P.A. Holder Shri S.Varadhan,
No.26B, Sri Lakshmi Building 1st Floor,
Karthikeyan Salai, Periyar Nagar,
Perambur, Chennai 600082.

2. Mr.Prasath
S/o.Kannan,
No.9/5, Gandhi Street,
Kennedy Square,
Perambur, Chennai 600 011.

...Respondent/Respondent

**Arb.O.P(Comm.Div.)No.66 of 2021**

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Original Petition praying that this Hon'ble Court be pleased to

- i) Set aside the exparte award passed by the sole Arbitrator, dated 30.6.2019 in Arbitration Case No.279 of 2019
- ii) direct the respondents to pay the cost of this O.P.

A.No.2611 of 2021

Application praying that this Hon'ble Court be pleased to stay all further proceedings of the Award dated 30.06.2019 passed in Arbitration Case.No.279 of 2019 by the Sole Arbitrator.

This Original Petition along with the Application coming on this day before this Court for hearing, in the presence of Mr.Rajendra Prasad for M/s.K.Seetha Ram, Advocates for the petitioner in Arb.O.P(Comm.Div)No.66 of 2021 and for applicant in A.No.2611 of 2021 and Ms.Seethalakshmi, Advocate for the Respondents in Arb.O.P(Comm.Div)No.66 of 2021 and A.No.2611 of 2021 and upon reading the Petition and Affidavit of Mr.K.Suresh filed in Arb.O.P(Comm.Div)No.66 of 2021 and for the Judges Summons and the affidavit of K.Suresh filed in A.No.2611 of 2021

It is ordered as follows:-

That the exparte award passed by the sole Arbitrator, dated 30.6.2019

in Arbitration Case No.279 of 2019 be and is hereby set aside.



2. That there shall be no costs of this petition.

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3. That the A.No.2611 of 2021 do stand closed.

WITNESS THE HON'BLE MR.JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 09th DAY OF SEPTEMBER 2021.

Sd./-

ASSISTANT REGISTRAR(Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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Arb.O.P(Comm.Div.)No.66 of 2021
and
A.No.2611 of 2021

ORDER:-

DATED :09.09.2021

THE HON'BLE MR.JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 01.10.2021

APPROVED ON : 04.10.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Arb. O.P.(Comm Div.) No.66 of 2021
and A.No.2611 of 2021

K.Suresh

... Petitioner

Vs.

1. Shriram Transport Finance Company Ltd.
Rep. By its G.P.A. Holder S.Varadhan
No.26B, Sri Lakshmi Building 1st Floor,
Karthikeyan Salai, Periyar Nagar,
Perambur, Chennai – 600 082.

2. Prasath

... Respondents

PRAYER : Arbitration Original petition (Comm. Div.) filed under Section 34 (a) (2) (iv), b(ii) of the Arbitration and Conciliation Act 1996 to set aside the exparte award passed by the sole Arbitrator, dated 30.6.2019 in Arbitration Case No.279 of 2019 and for costs.

For Petitioner : Mr.Rajendran Prasad for
M/s.Seetharam

For Respondents : Ms.Seethalakshmi

ORDER

This original petition has been filed to set aside the award passed by the sole Arbitrator in respect of the dispute arose out of the loan cum hypothecation agreement, dated 21.1.2013 to purchase TATA INDICA



V2 vehicle, bearing registration No.TN03B-8025. The total agreement value of Rs.2,39,206/- payable in 24 monthly installments commencing from 5.3.2013 till 5.2.2015.

2. It is the case of the first respondent before the sole Arbitrator that the petitioner was irregular in payment of installments and they have paid only a sum of Rs.62,020/- towards monthly loan installments. Since the petitioner did not pay the remaining dues as per terms and conditions of the agreement, the claimant/first respondent herein took possession of the vehicle and sold it for Rs.31,001/- After adjusting the sale proceeds of Rs.31,001/- and all other expenses, the petitioner is still liable to pay a sum of Rs.4,53,403/- at the rate of 36% p.a. from the date of claim petition till the date of realization.

3. The learned Arbitrator has passed an award directing the petitioner and the second respondent to pay the claimants/first respondent herein a sum of Rs.4,53,403/- along with further interest i.e. 18% p.a. from the date of claim petition i.e. 30.4.2019 till the date of realization.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and perused the materials available on record.

5. A perusal of the award shows that the vehicle has been seized in the year 2014 itself whereas the arbitration proceedings initiated



in the year 2019. The loan cum hypothecation agreement itself expired on 5.2.2015. Taking note of the limitation period to refer the dispute to arbitrator, the limitation period expired on 4.5.2018, whereas the first respondent invoked arbitration proceedings in the year 2019 much beyond the period of limitation. Further, no notice was served on the petitioner for appointment of an Arbitrator. The learned Arbitrator also not even whispered anything in the entire award regarding the date on which he was nominated as Arbitrator. He simply carried on the arbitration proceedings on the basis of loan agreement without serving notice of hearing to the petitioner and passed the award. The learned Arbitrator has not even adverted to the number of installments payable by the petitioner and failed to note as to whether the limitation period expired or not. The Arbitrator has simply followed the loan agreement and passed an award. Further, there is no indication in the award to show that notice has been served on the petitioner before passing the award.

6. As rightly pointed out by the learned counsel appearing for the petitioner, the loan agreement entered on 21.1.2013 and 24 installments commencing from 5.3.2013 to 5.2.2015. Therefore, even assuming that the limitation period starts from the last date of agreement, the limitation for recovery of money expired on 4.5.2018 whereas the arbitration proceedings

invoked in the year 2019 much beyond the period of limitation. Further,



there is no indication in the award that the first respondent has invoked arbitration by issuing notice under Section 21 of the Act within a period of limitation.

7 Such view of the matter, the award passed by the sole Arbitrator is contrary to the substantial provisions of law, cannot be sustained in the eye of law. Further, the proceedings of the arbitration has not been communicated to the petitioner and therefore, the award also suffers on the ground of violation of principles of natural justice and perversity goes on the root of the matter.

8 Consequently, the petition is allowed. The arbitral award passed by the sole Arbitrator, dated 30.6.2019 in arbitration case No.279 of 2019 is set aside. No costs. Connected application is closed.

Sd./-N.S.K.J
09.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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