

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NOS.1119, 1143 & 1201 OF 2021

AND

C.M.P.NOS.6094, 5840, 5841, 5752 & 5754 OF 2021

1. Prema Paranthaman
2. Vinod Paranthaman

... Appellants in
C.M.A.No.1119 of 2021

1. Pramod Paranthaman
2. Vinod Paranthaman

... Appellants in
C.M.A.No.1143 of 2021

1. Vinod Paranthaman
2. Pramod Paranthaman

... Appellants in
C.M.A.No.1201 of 2021

.Vs.

M/s.Kotak Mahindra Bank,
Zone 2, 8th Floor,
TVH Agnito Park,
141, Old Mahabalipuram Road,
Kandanchavadi,
Chennai - 600 096.

... Respondent in
all the CMAs

PRAYER IN ALL THE CMAS:-

Civil Miscellaneous Appeal filed under Section 37 (2) of the Arbitration and Conciliation Act, 1996 seeking to set aside the order dated 15.09.2020 in I.A.No.1 of 2018 in A.C.P.No.KMBL/CV/3723872/424 of 2020, I.A.No.1 of 2018 in A.C.P.No.KMBL/CV/3833493/423 of 2020 and I.A.No.1 of 2018 in A.C.P.No.KMBL/CV/3846002/425 of 2020 respectively on the file of the Sole Arbitrator.

For Appellant : Mr.S.Mukunth
in all the CMAs For M/s.Sarvabhauman Associates

For Respondent : Mr.K.Moorthy
in all the CMAs

C O M M O N J U D G M E N T

(The case has been heard through video conference)

These appeals have been filed by family members, who had availed loan from the respondent under various loan agreements for the purchase of vehicles. According to the respondent, the appellants are defaulters under their respective loan agreements. In accordance with the Arbitration Clause contained in the respective loan agreements, the respondent has initiated Arbitration proceedings before the Sole Arbitrator. By separate orders dated 15.09.2020, passed under Section 17 of the Arbitration and Conciliation Act, the Sole Arbitrator directed the respondent to take repossession of the respective hypothecated vehicles from the respective appellants, who are the borrowers. Aggrieved by the orders dated 15.09.2020, passed in all the applications under Section 17 of the Arbitration and Conciliation Act, these appeals have been filed under Section 37 of the Arbitration and Conciliation Act. Since the issues raised in all these appeals are one and the same, these appeals are disposed of by means of this common judgment.

2. Heard Mr.S.Mukunth, learned counsel appearing for the appellants and Mr.K.Moorthy, learned counsel appearing for the respondent.

3. The learned counsel appearing for the appellants at the outset would submit that the impugned orders have to be set aside as the principles of Natural Justice has been violated by the Sole Arbitrator. He also drew the attention of this Court to the notices dated 07.03.2020, issued by the respondent to the respective appellants, calling upon them to pay the outstanding amount and also intimating the respective appellants about the appointment of Mr.R.Tamilselvan as Sole Arbitrator for deciding the dispute between the parties under their respective loan agreements. He then drew the attention of this Court to the letter dated 08.12.2020, issued by the Sole Arbitrator Mr.R.Tamilselvan to the respective appellants, calling upon them to appear for Arbitration on 30.12.2020 at 2.30 p.m. He then drew the attention of this Court to the impugned orders, all dated 15.09.2020, passed under Section 17 of the Arbitration and Conciliation Act, wherein, the vehicles which are the subject

matter of hypothecation were directed to be repossessed by the respondent from the respective appellants by the Sole Arbitrator.

4. The learned counsel appearing for the appellants would further submit that the impugned orders passed under Section 17 of the Arbitration and Conciliation Act, which is the subject matter of challenge in these appeals have been issued without issuing notice to the appellants and in the intimation dated 08.12.2020, given by the Sole Arbitrator to the respective appellants, the Sole Arbitrator has suppressed the passing of the impugned orders on 15.09.2020.

5. Further, the learned counsel appearing for the appellants would submit that the impugned orders have been passed prior to 3 1/2 months from the date of commencement of the arbitration proceedings i.e., before the date of the first hearing without any notice whatsoever to the respective appellants.

6. However, the learned counsel appearing for the respondent would submit that the Sole Arbitration is having power under Section 17 of the Arbitration and Conciliation Act to pass ex-parte orders against the appellants. He would submit that the respective appellants are defaulters in their respective loan agreements and they have been declared as NPA. He would further submit that only in terms of the condition of the loan contract, the vehicles were directed to be repossessed from the respective appellants by the Sole Arbitrator under the impugned orders.

7. As seen from the documents filed along with the typed set of papers, it is clear that the respondent has desired to initiate arbitration proceedings in respect of the loan contract entered into with the appellants for the alleged non repayment of their respective loan amount by their respective letters dated 07.03.2020, to the respective appellants and in the said letters, they have nominated Mr.R.Tamilselvan as the Sole Arbitrator, who has passed the impugned orders under Section 17 of the Arbitration and Conciliation Act. Only on 08.12.2020, the Sole Arbitrator, nominated by the respondent, has sent notices to the respective appellants stating that the hearing of the arbitration will take place on 30.12.2020 at 02.30 p.m. In the same notice, dated 08.12.2020, the Sole Arbitrator has mentioned that due to COVID-19 pandemic the first hearing did not happen and it has been postponed. However, in the said notice dated 08.12.2020, the date of the first hearing of the arbitration has not been mentioned by the Sole Arbitrator. The notice also does not reveal as to when the Sole Arbitrator has acted upon the reference and has accepted the nomination as Sole Arbitrator by the respondent. Further without any notice to the appellants, the impugned orders dated 15.09.2020, have been passed by the

very same Sole Arbitrator directing the respondent to repossess the hypothecated vehicles from the respective appellants. The operative paragraph of the respective impugned orders are as follows:

".....Therefore, this application is allowed as prayed for and Mr.Durgaprasad K.J. working, with the claimant is hereby appointed to take custody of the vehicle morefully described in the Schedule to this order and to keep it in their safe custody till further order from this Tribunal. The said Mr.Durgaprasad K.J. is hereby advised to take all the legal protection for his safety at the time of seizure/repossession of the vehicle including police protection. Further in case if it requires break open for repossession, the above named receiver is permitted to break open in the presence of the police with in whose jurisdiction the vehicle is lying and the receiver is directed to take photos at the time of repossession."

8. Even in the impugned orders passed under Section 17 of the Arbitration and Conciliation Act, the Sole Arbitrator has not revealed as to when he has accepted the nomination as Sole Arbitrator by the respondent and when the Arbitration has commenced and when the respective appellants have been intimated about the date of hearing of the Arbitration as 30.12.2020 at 02.30 p.m. Even without notice to the respective appellants, the impugned orders have been passed for repossession of the vehicles from them.

9. The Sole Arbitrator under the impugned orders has violated the principles of Natural Justice, that too when the respondent has appointed the Sole Arbitrator by their letters dated 07.03.2020 itself. When the respondent has appointed the Sole Arbitrator on 07.03.2020 itself, the Sole Arbitrator ought to have given notice to the respective appellants before passing any interim order under Section 17 of the Arbitration and Conciliation Act.

10. For the foregoing reasons, these appeals will have to be necessarily allowed as the impugned orders passed under Section 17 of the Arbitration and Conciliation Act is not in accordance with law. Accordingly, all the impugned orders dated 15.09.2020, are hereby set aside and the appeals are allowed. After dictation of this judgment, the learned counsel appearing for the appellants submitted that in respect of C.M.A.No.1119 of 2021, the subject vehicle has already been repossessed by the respondent and the appellants in the said appeal seeks liberty

to workout their remedies for return of the vehicle by filing necessary application before the Sole Arbitrator under Section 17 of the Arbitration and Conciliation Act. The said liberty is granted. However, the Sole Arbitrator has to decide the said application, if at all filed, on merits and in accordance with law. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kk

To

1. Mr.R.Tamilselvan, B.A., B.L.,
Sole Arbitrator,
Room No.4, 1st Floor, "Mubarak Plaza",
No.260/128, Angappan Naicken Street,
Parrys, Chennai - 600 001.

+3ccs to Mr.K.Moorthy, Advocate, S.R.Nos.50181 to 50183
+3ccs to M/s.Sarvabhauman Associates, Advocate, S.R.Nos.50448 to
50450

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KV(CO)
PBS/28/10/2021