

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.01.2021

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.53 of 2015

G.Rajeshwari
No.10, Ward No.23
Sannathi Street Extension
Ganapathipuram
Chrompet, Chennai-600 042.

... Petitioner

vs.

1. Sriram Transport Finance Company Limited
Rep. by its Authorized Representative
Mr.S.Varadhan
No.54/417, Mudichur Road
Near Pattammal Gas Agency
West Tambaram, Chennai-45.
2. M.Pughazhendi
Sole Arbitrator / Arbitral Tribunal
No.6, 1st Street, Kurinji Nagar
West Tambaram
Chennai-45.
3. S.Shivasankaran
No.26, Krishnasami Street
Ganapathipuram
Chrompet
Chennai-45.

... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award passed by the learned

Arbitrator in Arbitration Case No.64/2014 dated 30.07.2014.

For petitioner : Mr.S.P.Hari Krishnan
for M/s.K.M.Vijayan Associates
For respondents : No representation

ORDER

Captioned 'original petition' [hereinafter 'OP' for the sake of brevity] is an application under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, assailing an 'arbitral award dated 30.07.2014 bearing reference No.Arbitration Case No.64/2014' [hereinafter 'impugned award' for the sake of convenience, brevity and clarity].

2. Read this in conjunction with and in continuation of earlier proceedings made in previous listing on 23.12.2020 which reads as follows:

'Read this in conjunction with and in continuation of earlier proceedings dated 08.09.2020 and 22.09.2020.

2. Today in this virtual hearing, Mr.S.Sharath Chandran of M/s.K.M.Vijayan Associates (Law Firm) on behalf of sole petitioner is before me, but there is no representation for respondents.

3. To be noted, there are three respondents in captioned OP, all three respondents have been duly served and their names are

shown in cause list.

4. In the cause list today, with regard to first respondent, full/complete address of first respondent as in the short and long cause titles of OP is shown, the same shall be done with regard to respondents 2 & 3 also in the next listing. To be noted, names of respondents 2 & 3 are nonetheless shown in cause list today.

5. Be that as it may, in the light of earlier proceedings dated 08.09.2020 and 22.09.2020, Registry to verify if any counsel has entered appearance on behalf of first respondent and if that be so, needful shall be done in the cause list in the next listing.

6. List on 06.01.2021.'

3. Pursuant to earlier proceedings, Registry has put up a note today that no Vakalatnama has been filed for first respondent.

4. To be noted, today also, the names and full/complete addresses of all three respondents as in short and long cause titles in captioned OP have been shown in cause list, but there is no representation.

5. Mr.S.P.Hari Krishnan, learned counsel of M/s.K.M.Vijayan Associates (Law Firm) on behalf of sole petitioner is before me in this web hearing on a video conferencing platform i.e., Virtual Court.

6. Captioned OP being an application under Section 34 of A and C Act, short facts shorn of unnecessary particulars/details or in other words factual matrix in a nutshell containing essential facts imperative for appreciating this order will suffice. To be noted, this is owing to the short statutory perimeter and limited legal landscape of Section 34 of A and C Act which is neither an appeal nor a revision. It is not even a full fledged review. This is a limited challenge to an arbitral award within the contours and confines of Section 34 of A and C Act.

7. Short facts are that third respondent in captioned OP (S.Shivashankaran) was first respondent before the 'Arbitral Tribunal' [hereinafter 'AT' for the sake of brevity], who entered into a loan-cum-hypothecation agreement bearing reference Ag.No.TMBRMO 203300003 for purchase of AL TUSKER SUPER 2214 FBT, Vehicle 1999 model bearing Registration No.TN 28 AA 9363 at the cost of Rs.6,86,948/-; that the purchase of the vehicle which is the subject matter of loan-cum-hypothecation agreement shall be referred to as 'said truck' and 'loan-cum-hypothecation agreement' shall be referred to as 'said contract'; to be noted

the said contract is dated 30.03.2012; that the petitioner in captioned OP who was second respondent before AT was a guarantor qua said contract; that the loan amount was financed/loaned by contesting first respondent before me (claimant before AT) which shall hereinafter be referred to as 'finance company' for the sake of convenience and clarity; that third respondent purchased said truck; that financed loan amount had to be repaid in 48 monthly installments; that the first monthly installment payable is Rs.16,035/-, 2nd to 47th monthly installments payable is Rs.14,275/- each and 48th monthly installment payable is Rs.14,263/-; that the first installment commenced from 05.05.2012; that there is an arbitration clause in said contract; that alleging default/delay in payment of monthly installments and specifically alleging that borrower has paid only Rs.30,051/-, said truck was repossessed by finance company, sold for a sum of Rs.2 Lakhs on 23.07.2013 and as the sale proceeds were not sufficient to make good the outstanding qua said contract, the arbitration clause was triggered by finance company; that on arbitration clause being triggered, a sole Arbitrator who constituted the AT was appointed; that AT entered upon reference, adjudicated upon the dispute, issued notices to the borrower and guarantor; that guarantor who is the protagonist i.e., petitioner qua captioned OP was duly served, but did not

choose to go before AT; that AT after appreciation of oral and documentary evidence before it on behalf of claimant finance company, made the impugned award holding that borrower and guarantor are liable to pay a sum little over 5.3 Lakhs together with future interest @ 36% per annum.

8. Learned counsel for petitioner, notwithstanding very many averments and grounds in OP submitted that he would make submissions on two points and they are as follows:

(a) The impugned award refers to a valuation report qua said truck, but that has not been placed before the AT and this is violation of Section 23 of A and C Act.

(b) Future interest awarded @ 36% per annum qua impugned award is very excessive.

9. This Court now proceeds to consider the aforesaid two points.

10. This Court now embarks upon the exercise of discussing the aforementioned two points on which challenge to the impugned award has been made and give its dispositive reasoning.

11. Learned counsel submitted that the first point of valuation report not being placed before AT turns on Section 23(2) of A and C Act. Section 23(2) of A and C Act talks about documents which are considered relevant. Therefore, the petitioner who is protagonist in captioned OP having not chosen to go before AT inspite of being duly served (to be noted, second respondent before AT) cannot now be heard to contend that the valuation report ought to have been treated as a relevant document. I am not sitting on appeal. Be that as it may, as a legal point, under Sub-Section (2) of Section 23 of A and C Act, parties can submit documents which are considered to be relevant. Therefore, in this case i.e., on the facts and circumstance of this case, it does not become a ground to dislodge the impugned award.

12. This takes us to the next point regarding interest. In this case, nothing has been placed before me to demonstrate that the rate of interest is not in accordance with the covenants contemplated in said contract or that it is impermissible. In this view of the matter, this Court is of the considered view that this is not a fit case to consider this as an argument that is good enough to dislodge the impugned award.

M.SUNDAR. J

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13. Owing to the narrative thus far, discussion and dispositive reasoning this Court is not inclined to judicially intervene qua the impugned award. Captioned OP is dismissed. There shall be no order as to costs.

06.01.2021

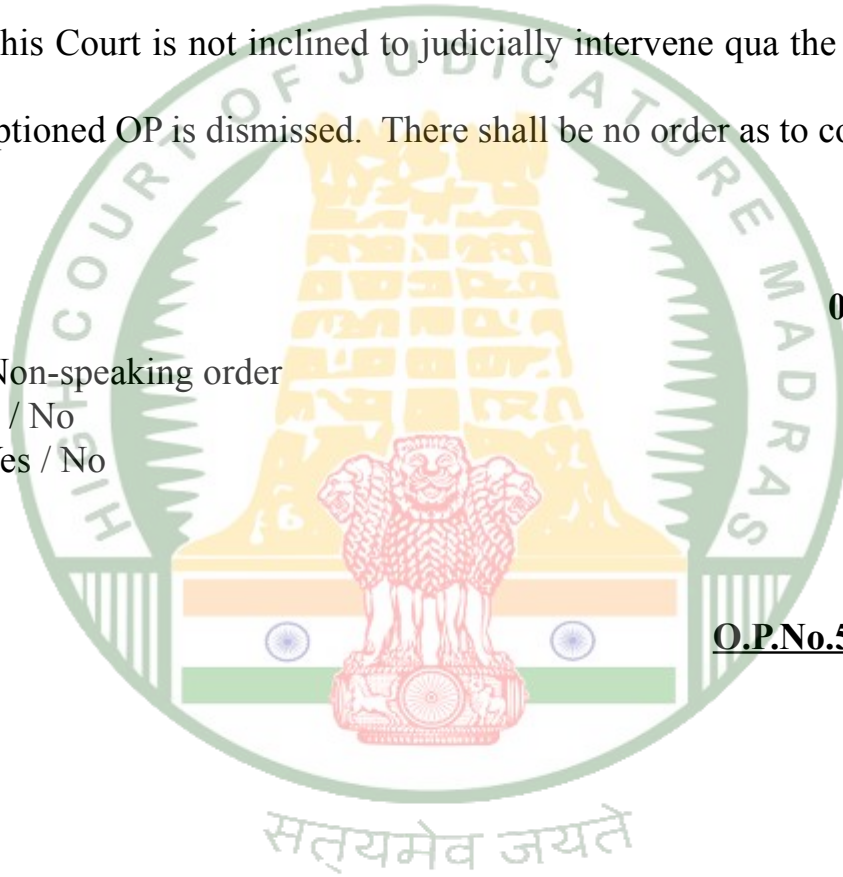
Speaking/Non-speaking order

Index : Yes / No

Internet : Yes / No

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O.P.No.53 of 2015



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