IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

CMA NO.1757 OF 2021
AND
CMP NO.9335 OF 2021

1.Kannan C.V
2.Mrs.Praseetha Kannan

... Appellants/Respondents

vs

M/s Mahindra & Mahindra Financial Services Ltd.,
New No.244, (Old No.713), 3rd Floor,
Level 4, Carex Centre, Rear Block Mount Road,
Thousand Lights, Chennai - 600 006.

... Respondent/Claimant

Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 against the order passed in Interim Order dated 15.03.2021 in RR No.1 in NV20-NPA-ARB(M&M):QD119/RR57/5216596 of 2020 passed by the Arbitrator Mr.K.Ragavendran at Chennai in so far as it is against the Appellant.

For Appellants : Mr.J.Venkatachalam

For Respondent : Mr.A.Prabhakaran

JUDGMENT

(Heard through Video Conference)

This appeal has been filed challenging the order dated 15.03.2021 passed by the sole Arbitrator Mr.R.Ragavendran in RR No.1 in NV20-NPA-ARB(M&M):QD119/RR57/5216596 of 2020 passed under Section 17 of the Arbitration and Conciliation Act, 1996, directing the respondent to take custody of the subject vehicle from the appellant, which is the subject matter of the loan agreement No.52116596, dated 29.01.2018.

2. Admittedly, the appellant has availed the loan under the aforesaid agreement from the respondent for the purpose of purchasing a vehicle, which was registered as KL49J6726, under

the loan agreement dated 29.01.2018. The appellant has to repay the loan amount of Rs.45,57,000/-(Rupees forty five lakhs fifty seven thousand only) in 60 equal monthly instalments. The monthly instalment amount payable by the appellant under the loan agreement is Rs.75,950/-(Rupees seventy five thousand nine hundred fifty only).

3. According to the respondent, the appellant has defaulted in repayment of the loan amount. According to them, the appellant has paid the monthly instalments only upto June 2019 and thereafter, he has committed default. The respondent initiated arbitration proceedings in accordance with the arbitration clause contained in the agreement and Mr.Ragavendran has been appointed as the sole Arbitrator.

4. By order dated 15.03.2021, on an application filed by the respondent in RR No.1 in NV20-NPA-ARB(M&M):QD119/RR57/5216596 of 2020, the sole Arbitrator has directed the respondent to re-possess the vehicle from the appellant, which is the subject matter of the loan agreement dated 29.01.2018. Aggrieved by the order dated 15.03.2021 passed by the sole Arbitrator under Section 17 of the Act of 1996, the present appeal has been filed by the appellant under Section 37 of the Act of 1996.

5. Heard Mr.J.Venkatachalam, learned counsel for the appellant and Mr.A.Prabhakaran, learned counsel for the respondent.

6. The primary ground of challenge to the impugned award passed under Section 17 of the Act of 1996 is that the sole Arbitrator has not taken into consideration the moratorium period declared by the Government of India with regard to collection of payments during the Government imposed lockdown, from March 2020 to October 2020, before passing the impugned order. According to the learned counsel for the appellant, the appellant has paid the dues under the loan agreement upto March 2020 and only due to the moratorium issued by the Government of India, the appellant has stopped making payment from March 2020 onwards. However, it is the contention of the learned counsel for the respondent that the appellant has committed default even from June 2019 onwards and not from March 2020, as alleged by the learned counsel for the appellant.

7. Even though the learned counsel for the appellant submits before this Court that the appellant has paid a sum of Rs.20,00,000/-(Rupees Twenty lakhs only) towards repayment of the loan amount under the loan agreement, no documentary evidence has been produced before this Court to prove that the appellant has paid the said sum. The monthly instalment amount payable under the loan agreement is Rs.75,950/-(Rupees Seventy

five thousand Nine hundred fifty only) and the total value of the loan contract is Rs.45,57,000/-(Rupees Forty five lakhs Fifty seven thousand only), which has to be paid in 60 equal monthly instalments. According to the respondent, the appellant has paid the monthly instalment only upto June 2019, and thereafter committed default.

8. It may be true that the Government of India has granted moratorium during the initial period of pandemic to the borrowers in order to grant them some relief considering the lockdown. However, even if such moratorium is applicable, it was only for a limited period, i.e., six months. Taking advantage of the same, the appellant seems to have committed perpetual default. Admittedly, the possession of the vehicle, which is the subject matter of the loan agreement, is presently with the appellant for nearly twelve months after expiry of the moratorium period, which expired even according to the appellant in October 2020 itself. Till date, the appellant has not surrendered the vehicle to the respondent in accordance with the terms and conditions of the loan contract, which clearly stipulates that in case of default, the appellant has to surrender the vehicle. As seen from the materials and documents available on record, it is clear that the appellant is a defaulter under the loan contract entered into with the respondent. No documentary evidence has been produced till date by the appellant to prove that he has paid monthly instalment upto March 2020 without default, when the moratorium period is alleged to have commenced.

9. The impugned order has been passed under Section 17 of the Arbitration and Conciliation Act, 1996 directing the respondent to take custody of the hypothecated vehicle from the appellant. Admittedly, when the appellant is a defaulter under the loan contract entered into with the respondent, the sole Arbitrator under the impugned order has exercised his discretion judiciously by directing the respondent to re-possess the vehicle from the appellant.

10. This Court does not find any infirmity in the findings given by the sole Arbitrator under the impugned order. Accordingly, the civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

sr/rgi

To

Mr.R.Ragavendran (Arbitrator)
"Green Enclave",
No3/7, Flat No.4, 1st Floor,
Annai Parvathi Street,
Thoraipakkam, Chennai - 600 097.

+1cc to Mr.A.Prabhakaran, Advocate, S.R.No.50578

CMA No.1757 of 2021

SRA(CO)
RLP(26/10/2021)