

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2021

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.521 of 2018

Azariah.G

862, Christopher Street

Vettoornimadam

Nagercoil, Kanyakumari District

Tamil Nadu - 629 003.

... Petitioner

vs.

1. M/.s.Cholamandalam Investment
and Finance Company Ltd,

Rep. by its Authorised Signatory

No.45 Justice Basheer Ahmed Sayeed Building II Floor

2nd Line Beach, Moore Street, Parrys

Chennai-600 001.

2. Thangam L

862, Christopher Street

Vettoornimadam

Nagercoil

Kanyakumari District

Tamil Nadu - 629 003.

... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 14.02.2018 passed by the sole Arbitrator in Arbitration Case No.1439 of 2008 and direct the first respondent to pay the petitioner a sum of Rs.78,154/- with interest from July 2005 to till date.

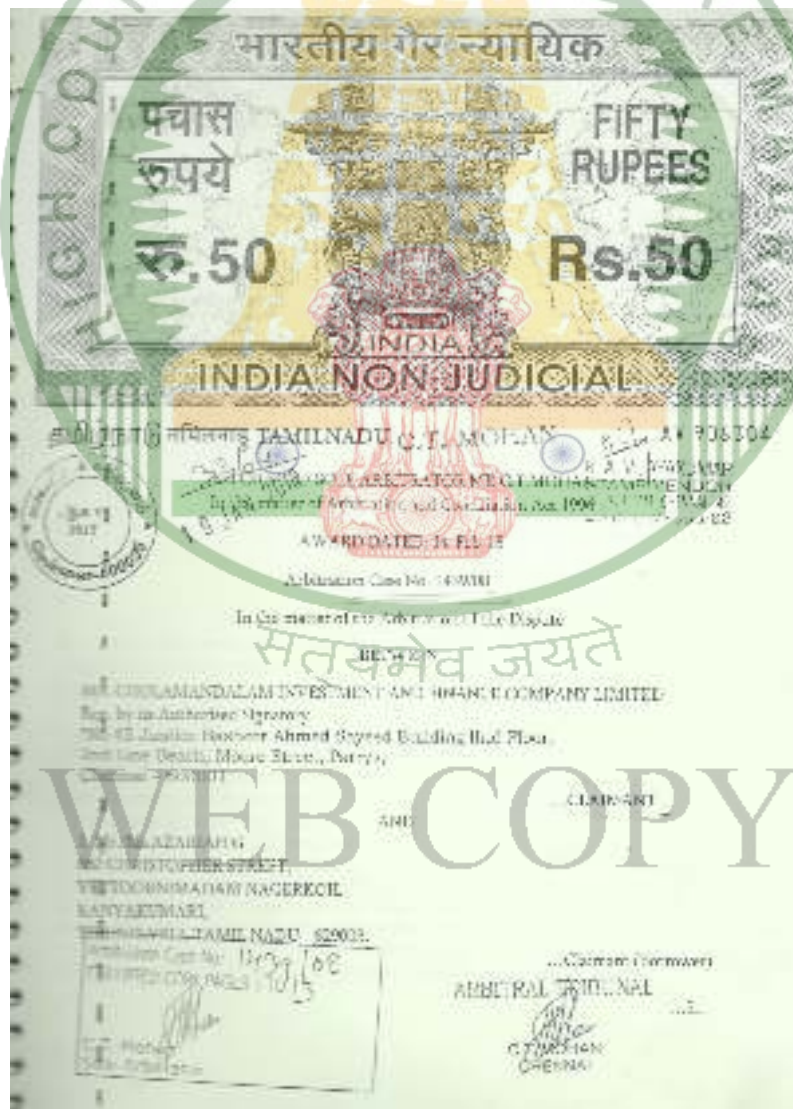
For petitioner : Mr.K.S.Gnanasambandan
for Ms.N.Fidelia
For respondents : Mr.D.Pradeep Kumar, for R1
For R2-NA

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. Captioned OP has been filed assailing an 'arbitral award dated 14.02.2018 bearing reference Arbitration Case No.1439/2008' [hereinafter 'impugned award' for the sake of convenience, brevity and clarity] made by an 'Arbitral Tribunal' [hereinafter 'AT' for the sake of convenience and brevity] constituted by a sole Arbitrator.

2. Claimant before AT is petitioner in captioned OP and Cholamandalam Investment and Finance Company Limited which this Court is informed is a 'Non-Banking Finance Company' ['NBFC' for brevity] which was respondent before AT, is first respondent in captioned OP. The petitioner's spouse, who stood guarantee for transactions between claimant and NBFC has been arrayed as respondent No.2 in captioned OP.

3. Before I proceed further it is being necessary and pertinent to record that in the impugned award, NBFC has been shown as claimant, petitioner has also been shown as claimant but with 'borrower' within parenthesis and petitioner's spouse has also been shown as claimant but with guarantor within parenthesis. The cause title in the impugned award reads as follows:



4. However, NBFC has thereafter been described as respondent. It is mentioned only for adding clarity to this order. As there is no dispute or disagreement before me that borrower is claimant before AT and NBFC is respondent before AT.

5. Captioned OP being an application under Section 34 of A and C Act, short facts shorn of elaboration will suffice in terms of factual matrix. It will suffice to say that an agreement captioned 'Hire Purchase Agreement dated 10.12.2001' [hereinafter 'said contract' for the sake of convenience] is the fulcrum of the lis between parties; that claimant/borrower took financial assistance for purchase of an Automobile; that claimant/borrower agreed to repay the financed amount in 'Equated Monthly Instalments' ['EMIs' in plural and 'EMI' in singular for convenience]; that claimant's spouse stood guarantee and signed said contract as guarantor; that claimant/borrower gave 'Post Dated Cheques' ['PDCs' in plural and 'PDC' in singular] towards EMIs; that alleging default in repayment, NBFC seized the Automobile on 27.09.2004; that thereafter, the entire account was closed on 13.10.2004 and the Automobile was returned to the claimant/borrower; that thereafter, claimant/borrower sometime in the year 2005 presented a suit in XVII

Assistant Judge's Court, City Civil Court, Chennai, being O.S.No.5564/2005 *inter-alia* claiming a sum of Rs.78,154/- together with interest and seeking a direction to return 13 dishonoured cheques; that this amount of Rs.78,154/- was claimed essentially on what according to claimant/borrower is difference in the amount financed and the actual amount paid by NBFC to the Automobile dealer resulting in certain attendant expenses; that NBFC took out an application under Section 8 of A and C Act in the said suit citing arbitration clause in said contract; that Civil Court acceded to the prayer in Section 8 application; that Section 8 order was given quietus; that the AT was constituted; that AT entered upon reference, adjudicated upon the lis and made the impugned award dismissing the claim of claimant/borrower with costs; that assailing the impugned award, captioned OP has been presented in this Court on 28.04.2018.

6. The issue on hand is fair, simple and straight. However, for the purpose of better appreciation of this order, I deem it appropriate to extract and reproduce break up of the claim which has been set out in captioned 'Memo of Calculation' in statement of claim which reads as follows:

MEMO OF CALCULATION

1. Difference of the amount financed and actual payment made to Kodai Automobiles.	Rs. 21,673 (3, 41,000 - 3, 19,327)
2. Excess interest paid.	Rs. 13,075.
3. Additional finance charges paid.	Rs. 13,764
4. Seizing charges claimed by the Respondent.	Rs. 9,485
5. The value of diesel to take the vehicle from Nagercoil to Madurai on 27.09.2004.	Rs. 575
6. Transit expenses of the van after releasing the vehicle from Madurai to Nagercoil.	Rs. 1,328
7. Loss caused to the Claimant towards illegal detention of the vehicle from 27.09.2004 to 15.10.2004.	Rs. 9,500.
8. For mental agony and strain to the Claimant from 18.01.2002.	Rs. 10,000.
Amount received from the Respondent	Rs. 80400 - Rs. 2245 Rs. 78154
Dated at Chennai on this the 10 th day of June 2008.	
COUNSEL FOR CLAIMANT	CLAIMANT

7. NBFC resisted the claim by saying that claimant/borrower had paid margin money in excess of what was required and therefore, there was a difference but NBFC had not pinched any monies from the hands of claimant/borrower. To be noted, even according to the aforementioned Memo of Calculation, NBFC has returned a sum of Rs.2,246/- to claimant/borrower, after noticing some excess payment.

8. In the final hearing of captioned OP before me today, Mr.K.S.Gnanasambathan, learned counsel representing Ms.N.Fidelia, learned counsel on record for claimant/borrower (petitioner in captioned OP) and Mr.D.Pradeep Kumar, learned counsel for first respondent/NBFC is before me. Second respondent/petitioner's spouse who has been duly served has not chosen to come before this Court. I am informed that second respondent has not entered appearance through any counsel. To be noted, name of second respondent together with full/complete address as in the short and long cause titles of OP has been duly shown in the cause list today.

9. Primary contention of learned counsel for petitioner is, claimant/borrower entered into said contract being enticed by an

advertisement in Tamil daily 'Dina Malar' on 21.12.2021. It was submitted that one M.Muthukumar represented NBFC submitted that the rate of interest is 7.75% per annum flat and there would be only 31 EMIs. It was submitted that trusting such representation said contract was entered into but the rate of interest was 8.15% per annum flat and EMIs were 36. Interestingly and intriguingly, there was no oral evidence before AT. Documents were filed along with pleadings and the same has been referred to in the impugned award. On the rival pleadings, AT framed six issues which read as follows:

1. Whether the hire purchase agreement was executed on basis of calculation given by representation of respondent?

2. As to on what rate the claimants are liable to pay interest?

3. Whether the claimants are liable to pay additional finance charges, late fee and cheque dishonour charges?

4. Whether the possession of the vehicle by the respondent is in violation of the terms and conditions of the approved hire purchase agreement and not as per law?

5. Whether the respondents are liable to pay claimant the sum of Rs.78,154/- along with interest at 18% per annum from date of award till date of realisation?

6. To what relief the claimant/respondents are entitled to?'

10. In answering Issue Nos.1 and 2, AT has found that a calculation sheet dated 13.12.2001 given by Finance Section of one Ganapathy Motors

was unsigned and therefore, it cannot be gainsaid that said contract was executed on the basis of calculation given by respondent. Regarding Issue No.2, AT has stated that claimant/borrower has not filed any document or evidence to prove that the rate of interest is 7.75% whereas said contract dated 10.12.2001 makes it clear that the rate of interest is 8.15%.

11. In answering Issue No.3, AT has perused said contract and come to the conclusion that the interest has been calculated for 36 months. AT has also noticed that Clause 18 of said contract talks about additional finance charges, clause qua default says in case of default in payment of EMIs additional finance charges mentioned in Schedule-II of said contract compounded monthly is payable. In other words, AT has gone by terms of said contract and answered Issue No.3.

12. In answering Issue No.4, AT has come to the conclusion that allegation of possession of automobile is unlawful as it is not established on the basis of evidence and the relevant portion of impugned award reads as follows:

'The allegation of claimant that the possession is unlawful is

not based on any evidence since the respondent has established that there was default and amounts due to the respondent were not paid in time as evidenced by the statement of account dated 14-Oct-03.'

13. In answering Issue No.5, AT has held that seizing of automobile is as per clauses of said contract, it has also found that additional finance charges are payable and therefore the plea of seizure was negated. Regarding mental agony and strain, AT has opined that there has been delay on the part of claimant/borrower in paying the installment and failing to pay the other amount due within the stipulated time and from this alone, it is clear and evident that claimant has not substantiated their claim.

14. In answering Issue No.6 which is in the nature of residuary issue, AT quantified cost of arbitration and the claim has been dismissed with costs.

15. Learned counsel for NBFC pointed out that said contract is dated 10.12.2001, whereas on a demurrer even if the unsigned notice is to be believed, it is dated 13.12.2001, which is post said contract. I do not propose to enter into this arena as that would supplement findings in the impugned award. Owing to the short statutory perimeter of Section 34 of A and C Act, I

have only read the impugned award as placed before me and I have extracted and reproduced in a concise narrative findings of AT on the six issues before it. I now proceed to test the impugned award as to whether it is vitiated by any other grounds adumbrated under Section 34 of A and C Act. In captioned OP eight grounds have been raised and the same read as follows :

'i) The award passed by the Hon'ble Arbitrator is wholly unsustainable against the all principles of law and natural justice and is therefore liable to be set aside.

ii) The Arbitrator has not acted in fair manner and has acted in partisan and biased manner taking into consideration only the interest of the respondent. Hence the award is not fair and is just therefore, liable to be set aside.

iii) The learned Arbitrator has failed to see that a purchaser of a vehicle totally believes on the representation of the company's representative and in this case, the petitioner has believed the representation putforth by one Mr.Muthukumar, who represented the respondent and his calculation in the first document to be relied upon and then, only the basis of the hire purchase agreement. The Arbitrator had failed to discuss whether the representation of the said Muthukumar was to be relied upon or not.

iv) The learned Arbitrator has failed to see that as per the advertisement and representation, the rate of interest was only 7.75% and not 8.15%. The respondent company misguided the petitioner by making one statement by their representative and

relying upon the terms of the Agreement to disown the statement of the representative and the other correspondence agreeing the interest of 7.75% only and not 8.15%.

v) The learned Arbitrator has failed to see that the respondent company agreed that the EMI was 31 as the first installment was paid along with the initial charges. The respondent then turned down and said that it was 36 installments which is contrary to the agreed terms. Therefore the company is guilty of extracting money and causing loss to the petitioner on various items of their transaction. The calculation of the company was erroneously agreed by the Arbitrator.

vi) The Arbitral Award is erroneous in holding the petitioner was liable to the additional financial charges, late fee charges etc., which is contrary to the representation and the calculation of the payments made by the petitioner. On the other hand, the respondent who is at fault is liable to pay the claim amount the petitioner.

vii) The learned Arbitrator has failed to see that the vehicle was seized illegally without any prior notice and inspite of payment of the monthly installments. Therefore, the petitioner has suffered due benefit and service of the vehicle, which is to be compensated.

viii) The Arbitrator has failed to see that the petitioner has given the proof and materials to prove his claim Rs.78,154/- and the claim of interest which could not be just brushed aside at the behest of the respondent company. The standard of proof needed to prove a case is the same even in a Arbitration case. The Learned Arbitrator has totally negated the entire evidence of the petitioner and dismissed his claim with cost which is illegal and

unsustainable in law.'

16. Eight grounds are in the nature of regular grounds of first appeal under Section 96 of 'The Code of Civil Procedure, 1908' [hereinafter 'CPC' for the sake of convenience]. No elucidation is required to say that Section 34 legal drill is neither an appeal nor a revision. This is certainly not a regular first appeal under Section 96 of CPC.

17. Though there is a adumbration of specific slots under Section 34 of A and C Act by which the impugned award should be vitiated, they are not articulated or highlighted in the hearing. I find that out of 8 grounds, I can cull out two aspects which may have traces of trappings of a Section 34 legal drill. One is, AT has not acted in a fair manner as it is alleged that it has taken into account the interest of NBFC alone. This is ground (ii) and this turns on equal treatment of parties which is ingrained under Section 18 of A and C Act.

18. Second facet which has traces of trappings of Section 34 of A and C Act drill are that AT had failed to discuss whether the representation of one

Muthukumar was to be relied upon or not. This is ground (iii) and this turns on Section 31(3) of A and C Act which mandates that an arbitral award should state reasons upon which it is based. Two exceptions to Section 31(3) of A and C Act are parties agreeing that no reasons are to be given and/or an award being on agreed terms under Section 30. These two exceptions are absent in this case. Therefore, Section 31(3) of A and C Act applies. I now, proceed to test these two aspects, which have traces of trappings of a challenge to arbitral award by perambulating within legal landscape of Section 34 of A and C Act.

19. Regarding equal treatment of parties, as already alluded to supra, no oral evidence was let in. Rival pleadings have been extracted, reproduced and 6 pointed issues have been drawn. Thereafter, each of the six issues have been answered by giving reasons and that has been set out in a concise narrative supra in this order. There is nothing demonstrable before this Court to show that the sanctity of legal philosophy underlying Section 18 of A and C Act, i.e., Equal treatment of parties has been breached, therefore, this ground fails.

20. This takes us to Section 31(3) of A and C Act. Though the ground raised only says that AT has not discussed about Muthukumar, as already alluded to supra, in answering Issue No.1, AT has held that calculation sheet dated 13.12.2001 of Finance Section of Ganapathy Motors is unsigned. Besides this, in answering point No.1 that said contract is dated 10.12.2001 whereas advertisement in Dinamalar is dated 21.12.2001, AT has also held that the visiting card (business card) of G.M. credit cars which is said to be a unit of Sree Ganapathy Motors where the name of Muthukumar was found, is not a reliable document. To be noted, AT has used expression 'Fraud document', suffice to say that the unsigned calculation sheet being dated 13.12.2001 (post said contract dated 10.12.2001) clinches the issue as rightly observed by AT. Therefore, it cannot be gainsaid that representation of Muthukumar has not been dealt with and it has not been set out as to whether the representation of Muthukumar was relied upon or not. For convenience, this Court deems it appropriate to extract the entire point No.1:

'POINT NO.1

Whether the hire purchase agreement was executed on basis of calculation given by representation of respondent?

On perusing the claim statement, proof affidavit and

documents filed by the claimant as well as the respondent for counter, proof affidavit. It is evident that as early as 10-Dec-01 the respondent has sent the terms and conditions to the claimants whereas the advertisement in dinamalar is dated 21-Dec-01, a visiting card of G.M. Credit cars is filed which is said to be a unit of Sree Ganapathy Motors, Muthukumar name is a fraud document. The calculation sheet dated 13-Dec-01 of Ganapathy Motors Finance section is unsigned. From this alone, it cannot be concluded that the hire purchase agreement was executed on the basis of calculation given by representation of the respondent. Further what is to be considered is the approved hire purchase agreement between the claimant and respondent. Thus the point is answered against the claimant.'

21. With regard to Section 31(3) of A and C Act, lead case is **Dyna Technologies** in **Dyna Technologies Pvt. Ltd. Vs. Crompton Greaves Ltd.** reported in (2019) 20 SCC 1 = 2019 SCC OnLine SC 1656 Hon'ble Supreme Court has clearly put in a caveat that arbitral award should not be set aside on Section 31(3) plea in a casual and cavalier manner. Besides this in **Dyna Technologies principles**, with regard to Section 31(3) of A and C Act, Hon'ble Supreme Court has culled out three facets namely, (a) proper, (b) intelligible and (c) adequate. To put it as a ground, the test is whether the impugned award is improper, unintelligible and/or inadequate. Most relevant

paragraphs in ***Dyna Technologies case law*** are paragraph Nos.34 and 35 which read as follows:

'34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the Courts from a fair reading of the award and documents referred to thereunder; if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regards to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasoning in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion

that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.'

22. This Court has extracted and reproduced the manner in which AT has dealt with the alleged representation said to have been made by one Muthukumar. As representation *per se* is by way of calculation sheet dated 13.10.2001, which is post said contract, the very argument falls flat on its face. Therefore, it cannot be gainsaid that the award is improper or inadequate in this regard. It is not unintelligible as Hon'ble Supreme Court in ***Dyna Technologies principle*** has laid down that unintelligible facet would be equivalent to providing no reason at all. That is obviously not the case here.

M.SUNDAR. J

mk/vsi

23. This Court has also taken note of the undisputed position that the entire account has been closed on 13.10.2004 and automobile have been returned to claimant/borrower. To be noted, this is only to capture undisputed submissions made before this Court.

24. In the light of the narrative thus far, discussion and dispositive reasoning supra, claim of claimant/borrower against the impugned award fails and consequently, captioned OP is dismissed. There shall be no order as to costs.

सत्यमेव जयते

22.02.2021

Speaking/Non-speaking order

Index : Yes / No

Internet : Yes / No

mk

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