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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.2463 OF 2021

AND

C.M.P.NO.14112 OF 2021

1. Bholu Ram Jat
2. Mahesh Kumar Bhamu

... Appellants/Respondents

.Vs.

1. Daimler Financial Services India Pvt. Ltd.,
Rep. by its Authorized representative.

... Respondent-I/Claimant

2. K.Mohan,
Sole Arbitrator,
'CNICA', "Orient Chambers",
No.90 (Old No.73), 4th Floor,
North Wing, Armenian Street,
Chennai - 600 001.

... 2nd Respondent/Sole Arbitrator

PRAYER:- Civil Miscellaneous Appeal filed under Section 37 (2) of Arbitration and Conciliation Act, 1996, to set aside the order dated 19-02-2021 made in M.P.No.2/2020 in M.P.No.1/2020 in A.C.P. (Daimler) No:251/2020 on the file of the Sole Arbitrator Mr.Mohan, Chennai/2nd respondent herein and allow the present CMA.

For Appellants : Mr.P.Srinivasan

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed under Section 37 (2) of Arbitration and Conciliation Act, 1996 challenging the order dated 19.02.2021 passed by the Arbitral Tribunal under Section



17 of the Arbitration and Conciliation Act, 1996 in M.P.No.2/2020 in M.P.No.1 of 2020 in A.C.P.(Daimler) No.251/2020.

Brief facts leading to the filing of this appeal :

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2. It is the case of the Appellants that they never borrowed any money from the first respondent company for the purchase of any vehicle as alleged in the claim statement filed by the first respondent before the Arbitral Tribunal. It is their case that only the deceased, son of the first Appellant by name Rughnath was the borrower and not they.

3. However it is the case of the respondent as seen from the claim statement filed by them before the Arbitral Tribunal that the Appellants borrowed money for the purchase of Benz Car under a loan agreement dated 01.12.2018. According to the first respondent, the Appellants have committed default in the payment of the instalments under the loan agreement and therefore, they have initiated arbitral proceedings against the Appellants in ACP (Daimler) No.251 of 2020 seeking recovery of a sum of Rs.14,62,328/- together with interest and cost from the Appellants.

4. MP No.1 of 2020 was filed by the first respondent in the said arbitration under Section 17 of the Arbitration and Conciliation Act for re-possession of the vehicle, which was the subject matter of the loan agreement dated 01.12.2018 and by order dated 21.08.2020 in MP No.1 of 2020, the sole arbitrator ordered for re-possession of the vehicle. Thereafter, the appellants filed MP No.2 of 2020 before the sole Arbitrator seeking to set aside the ex-parte order dated 21.08.2020 passed in MP No.1 of 2020 on the ground that they are not liable to pay the dues of the first respondent. It is the case of the appellants that the first appellant is the son of the borrower who is dead and is not a Class-I Legal Heir. According to the appellants, the wife and children of the deceased borrower are alone the Legal Heirs. The second appellant has also alleged that he is not a guarantor to the transaction and it is the case of the appellants that all the documents available with the first respondent are all fabricated documents, which were never signed by either of the appellants. It is also the case of the appellants that they are permanent residents of Rajasthan and they never came down to Chennai and executed any agreement as alleged by the first respondent. Under the impugned order dated 19.02.2021 passed in MP No.2 of 2020 in MP No.1 of 2020 in ACP No.251 of 2020, the sole arbitrator has dismissed the application filed by the appellants seeking to set aside the ex-parte order of re-possession of the vehicle passed by the sole arbitrator on 21.08.2020 in MP No.1 of 2020 in ACP No.251 of 2020 Aggrieved by the same, this appeal has been filed under



Section 37 of the Arbitration and Conciliation Act.

5. Heard Mr.P.Srinivasan, learned counsel for the appellants and perused the materials and record placed before this Court.

Discussion :

6. Admittedly, the appellants are not interested in the subject vehicle, which was ordered to be re-possessed by the sole arbitrator under the interim order dated 21.08.2020 passed under Section 17 of Arbitration and Conciliation Act in MP No.1 of 2020 in ACP No.251 of 2020, as according to them, neither the first appellant nor the second appellant, are the Class - I Legal Heirs of the deceased borrower Rughnath. This being the stand taken by the appellants, this Court is of the considered view that insofar as the subject vehicle which has been ordered to be re-possessed is considered, they cannot claim any right over the same and the order dated 21.08.2020 passed in MP No.1 of 2020 in ACP No.251 of 2020 will not be prejudicial to their interest. Even according to the appellants, the wife and children of the deceased borrower are alone the Legal Heirs. The said Legal Heirs are not before this Court. The impugned order passed on 19.02.2021 is an order dismissing the application filed by the appellants seeking to set aside the ex-parte order dated 21.08.2020 passed by the learned Arbitrator under Section 17 of the Arbitration and Conciliation Act in MP No.1 of 2020, wherein, the sole Arbitrator had permitted the first respondent to re-possess the vehicle, which is the subject matter of the loan agreement. As observed earlier, the said order no way prejudices the interests of the appellants as it is their categorical stand that they never entered into a loan agreement with the first respondent nor did they borrow any money from the first respondent, nor did they sign any document as alleged by the first respondent. Further, the Legal Heirs viz., the wife and children of the deceased borrower are also not before this Court. Therefore, there is no merit as regards the challenge made by the appellants with regard to the impugned order dated 19.02.2020 passed by the learned Arbitral Tribunal in MP No.2 of 2020 in MP No.1 of 2020 in ACP No.251 of 2020. However, it is made clear that the learned Arbitrator shall consider all the objections that the appellants have raised before this Court in the main arbitration claim and only thereafter pass an arbitral award. It is also brought to the notice of this Court by the learned counsel for the appellants that the appellants have already filed their counter statement before the arbitral Tribunal raising all their defences, including the defences raised in the grounds of appeal filed in this appeal. Therefore, the arbitral Tribunal will have to consider all the said defences on merits and in accordance with law and only thereafter pass the arbitral award.



7. In the result, there is no merit in this appeal and it is dismissed with the aforesaid observations. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi2/ab

To

Mr.K.Mohan,
Sole Arbitrator,
'CNICA', "Orient Chambers",
No.90 (Old No.73), 4th Floor,
North Wing, Armenian Street,
Chennai - 600 001.

+2ccs to Mr.R.M.Jayabalan, Advocate, S.R.No.44423 (09/11/2021)

C.M.A.NO.2463 OF 2021 AND
C.M.P.NO.14112 OF 2021

BS (CO)
PBS/28/09/2021