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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 2ND DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE N.SATHISHKUMAR

O.P.No.743 of 2019

In the matter of Arbitration and Conciliation Act, 1996
and
In the matter of disputes between M/s. Sundaram Finance Limited and V.Anitha and 2 others in respect of Loan Agreement No. J015200280 dated 28.04.2014.

1. V.Anitha
W/o. Kalyanam

2. B.Kalyanam
S/o. Bharathan
Both are residing at
Plot No.4, New No.1/185
Lakshmi Nagar Main Road, Mowlivakkam,
Porur, Chennai 600 116. ... Petitioners

Vs.

1. M/s Sundaram Finance Limited,
at No.21, Patullos Road,
Chennai 600 002. : 1st Respondent/Claimant

2. HDFC -Ergo Insurance Company Limited,
Head Office at Raman House, H.T.Parekm Marg,
No.169, Backbay Reclamation,
Mumbai 400 020.

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Branch office at No.94/95,
R.R.Towers 2nd floor, Guindy,
Industrial Estate, Chennai 600 032. ... Respondent/3rd Respondent

Original petition praying that this Hon'ble Court be pleased to setaside the award dated 21.05.2019 passed in the Arbitration Case No.KEF/SF/383/2017 with the cost of this proceedings.

This Original Petition coming on this day before this court for hearing in the presence of Mr.S.Mahaveer Sivaji for M/s. Law Vision, Advocates for the petitioners herein and Mr.R.Umashankar for M/s. Sri and Shankar Associates, Advocates for the 1st respondent herein and Mr.M.B.Raghavan for M/s. M.B.Gobalan Associates, Advocates for the 2nd respondent herein and upon reading the petition and the Award dated 21.05.2019 filed herein and this court is of the view that the insurance company has to reconsider the claim of the petitioner afresh and settle the same, after verifying the genuineness of the claim, irrespective of the period of limitation if any and as far as the Award passed by the Sole Arbitrator is concerned, it has been passed on the basis of the dispute arose between the parties on the Hire Purchase Agreement, further, the Arbitrator had considered all the documents and passed the Award, hence, no ground is made out to interfere with the Award passed by the Arbitrator, under the proviso to Section 34 of the Arbitration and Conciliation Act.

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<u>It is ordered as follows:-</u>

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That the Award dated 21.05.2019 passed by the Arbitrator be and is hereby confirmed.

2. That the O.P.No.743 of 2019 be and is hereby dismissed.

3. That the petitioners herein be and are hereby directed to give a fresh representation to the second respondent/insurance company within a period of 15 days from this date and on such representation being given by the petitioner, the Insurance company shall reconsider the claim of the petitioners and settle the amount, as per the terms of the policy.

4. That there shall be no costs of this petition.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 02nd DAY OF AUGUST 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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SK-12.08.2021

O.P.No.743 of 2019

ORDER:-
DATED: 02.08.2021

THE HON'BLE MR. JUSTICE
N.SATHISHKUMAR

FOR APPROVAL: 12.08.2021

APPROVED ON: 12.08.2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 02.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Arb. O.P.No.743 of 2019

1. V.Anitha

2. B.Kalyanam ... Petitioners

Vs.

1. M/s Sundaram Finance Limited,
   at No.21, Patullos road, Chennai 600 002.

2. HDFC -Ergo Insurance Company Limited,
   Head Office at Raman House, H.T.Parekm Marg,
   No.169, Backbay Reclamation,
   Mumbai 400 020.

   Branch office at No.94/95,
   R.R.Towers 2nd floor, Guindy,
   Industrial Estate, Chennai 600 032. ... Respondents

PRAYER: Original Petition filed under Section 34(1) of the Arbitration and Conciliation Act 1996 to setaside the award dated 21.05.2019 passed in the Arbitration Case No.KEF/SF/383/2017 with the cost of this proceedings.

For petitioners : Mr.Mr.S.Mahaveer Sivaji
for M/s Law Vision

For Respondents : Mr.R.Umashankar
for M/s Sri and Shankar Associates

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for -R1.
Mr.M.B.Raghavan
for M/s M.B.Gobalan Associates
for -R2.

ORDER

Challenging the Arbitration Award passed by the Sole Arbitrator dated 21.05.2019 in Arbitration Case No.KEF/SF/383/2017, this original petition has been filed by the petitioners.

2. A dispute was arose on the Hire Purchase Agreement dated 28.04.2014, entered into between the petitioners and the first respondent/Finance Company, wherein the first petitioner being the borrower and the second petitioner being the guarantor, committed default in paying the installments, as per the agreement. Hence, the matter was referred to the Sole Arbitrator by the first respondent, the financier. During the Arbitration Proceedings, the second respondent, Insurance Company was impleaded as the third respondent to the proceedings.

3. In the Arbitration proceedings, the defence taken by the petitioners (respondents therein) was to the effect that the vehicle was met with an accident on 22.05.2015 and a surveyor of the Insurance Company valued the vehicle and reported 'totally damaged' and hence, as per the policy, once the vehicle is totally damaged, the Insurance Company has to pay the amount directly to the Financier. In that context, the Insurance Company was impleaded as the third respondent in the Arbitration Proceedings.

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4. The learned Sole Arbitrator after considering the materials and evidence produced before the Tribunal, had passed the Award dated 21.05.2019, directing the first and second petitioners herein to pay a sum of Rs.3,36,533/- with interest to the first respondent, the Financier.

5. Challenging the above said order, the present Arbitration Original Petition has been filed.

6. Heard both sides. I have perused all the grounds raised in the Petition filed under Section 34 of the Arbitration and Conciliation Act. Except challenging the Award on the factual grounds, none of the grounds available under Section 34 of the above Act to interfere with the Award made out.

7. The main grievance of the petitioners is that the Insurance Company has not paid the amount directly to the Finance Company and the Award has been passed against them, whereas, the contention of the Insurance Company is that, the claim has been rejected.

8. It appears from the records that the Insurance Company has repudiated the claim of the petitioners on the ground of "deficiency in documents". It is to be noted that such rejection has not been challenged by the petitioners, but they have proceeded the Arbitration proceedings by impleading the Insurance Company as a party to the above proceedings.

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9. The learned Arbitrator has rightly found that the dispute as to

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whether the Insurance Company has liability to pay the amount or not cannot be decided. This court is of the view that such findings, does not require any interference. Admittedly, the insurance company is not a party to the Hire Purchase Agreement. Such being the position, merely impleading the Insurance Company as a party to the Arbitration Proceedings, contract will not bind them, since, the Hire Purchase Agreement being entered into between the petitioners and the Financier.

10. Such being the matter, it is the contention of the learned counsel appearing for the petitioners that the vehicle has been met with an accident and due to the accident the first petitioner was in Coma stage for six months. His further contention is that the Insurance Company having assessed the vehicle, the claim ought to have been settled by them then and there, but, the claim of the petitioners has been rejected by them on flimsy grounds that there is deficiency in documents, which are all very much available with the financier, the insurance company has not taken note of the above fact. Hence, he prayed that the insurance company has to be directed to settle the claim to the petitioners.

11. This court is not oblivious of the fact of limitation and the scope of the Section 34 of the Arbitration and Conciliation Act. However, taking note of the submissions that the vehicle met with an accident, which has not

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been disputed and it appears that the vehicle got totally damaged and also

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considering the fact that the claim of the petitioners was rejected only on the ground of deficiency in documents, this court is of the view that the insurance company has to reconsider the claim of the petitioner afresh and settle the same, after verifying the genuineness of the claim, irrespective of the period of limitation if any.

12. Accordingly, the petitioners are directed to give a fresh representation to the second respondent/Insurance company within a period of 15 days from today and on such representation being given by the petitioner, the Insurance Company shall reconsider the claim of the petitioners and settle the amount, as per the terms of the policy.

13. Though this direction is beyond Section 34 of the Arbitration and Conciliation Act, taking note of the facts of the case and the genuineness appearing in the face of the submissions of the petitioner, such direction has been issued. As far as the Award passed by the Sole Arbitrator is concerned, it has been passed on the basis of the dispute arose between the parties on the Hire Purchase Agreement. Further, the Arbitrator had considered all the documents and passed the Award. Hence, no ground is made out to interfere with the Award passed by the Arbitrator, under the proviso to Section 34 of the Arbitration and Conciliation Act.

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14. Accordingly, The Award passed by the Arbitrator is confirmed

and the petition is dismissed. No costs.

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Sd./-(N.S.K.J.,)

02.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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