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Arb.O.P.No.21 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Arb. Original Petition No.21 of 2022

and

Application No.3367 of 2022

Sumathi Srinivas

... Petitioner

Versus

M/s.Kotak Mahindra Prime Ltd.,

rep by its authorised signatory

Mr.Muruganantham

... Respondent

Prayer: The Original Petition filed under Section 34 (2) (iii) of the Arbitration and Conciliation Act, 1996, praying to set aside the Arbitral Award dated 21.03.2022 passed by the Arbitrator, Chennai and for the costs of the suit.

For Petitioner : Mr.S.Parthasarathy

For Respondent : Mr.M.Arunachalam

ORDER

The petitioner has suffered an award dated 21.03.2022 passed by the



learned Arbitrator and aggrieved by the same, had approached this Court by filing this petition taking advantage of Section 34 of the Arbitration and Conciliation Act, 1996.

2. I am extremely aware that the scope of examining any application under Section 34 of the said Act is quite limited.

3. The primary issues which have to be examined are whether the petitioner herein had been given sufficient notice and an opportunity been granted to participate in the arbitration proceedings and whether the award suffers from violation of public policy.

4. They may be broad two grounds for questioning an award under Section 34 of the Arbitration and Conciliation Act, 1996.

5. The petitioner in this case, pleads helplessness to challenge the award.

6. The brief facts are that the petitioner had approached the



respondent for purchase of a vehicle and the respondent had offered some loan with the normal clause that if there is a default in payment of equal monthly installments, then the respondent would be in a position to seize the vehicle.

7. There has been a default in the payment of equal monthly installments.

8. In the agreement between the petitioner and the respondent, there had been a clause to refer the disputes of arbitration.

9. Accordingly, the default in payment was considered to be a dispute between the parties and it was referred to be examined by an Arbitrator.

10. A sole Arbitrator had also been appointed. He entered into reference. Finally, after going through the process, an award had been passed that the petitioner herein should pay a sum of Rs.5,14,030/- together



with attendant interest on the same.

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11. It was also stated that the petitioner herein should surrender the vehicle failing which, the respondent herein can initiate necessary process to seize the vehicle.

12. Questioning that award, the petitioner is before this Court.

13. As stated in the earlier part of the order, the principles of natural justice will have to be examined whether the petitioner herein had been given necessary opportunity for putting forward his case.

14. It had been stated that the award is *exparte* and that, the petitioner also could not pay the installments owing to Covid 19 pandemic.

15. I must appreciate the stand taken by both the learned counsels who thankfully re-worked the equal monthly installments to be paid which would ensure that the vehicle is retained in the custody of the petitioner herein and also that the respondent is benefitted by payment of equal



monthly installments towards the outstanding.

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16. Both the learned counsels were requested to file necessary affidavits/statements regarding the manner in which the award amount could be satisfied.

17. The learned counsel for the petitioner had filed a memo stating that the petitioner would come forward to pay a sum of Rs.15,500/- per month towards outstanding and held out an assurance of the said amount would be paid.

18. The respondent on the other hand had given a statement of the amounts due and it is stated that the EMI agreed was Rs.13,824/- and that if it had been paid in accordance with the terms, the period would come to an end in October 2023. The loan was spread over by 60 months.

19. It is stated by the learned counsel that the petitioner had paid only 25 installments. There is an outstanding of about 35 installments as on date.



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20. It is therefore contended that the EMI should be at least Rs.26,000/- which is twice the amount agreed every month.

21. Let me strike a balance and in order to enable the petitioner also to pay without any default, I would direct that the petitioner should pay a sum of Rs.20,000/- towards EMI every month, commencing from the first week of December 2022 and continue to do so.

22. If at all, there is default in payment for three successful months, the respondent is at liberty to proceed with directions issued by the Arbitrator to seize the vehicle and also take any other steps to protect the interest of the respondent who had advanced the money with which the petitioner had purchased the vehicle.

23. I hope that both the parties would comply with their respective responsibilities and bring to an end this litigation particularly because, the petitioner appears to have taken another loan for purchase of yet another



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vehicle and the respondent has that key in his hands.

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24. With the above observation, the Original Petition stands disposed of. No costs. Consequently, the connected application stands closed.

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Index:Yes/No
Speaking Order : Yes/No
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